# Memorandum

MIAMI-DADE COUNTY

**Date:** February 15, 2012

EDSS
Agenda Item No. 3(A)

**To:** Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

**From:** Carlos A. Gimenez
Mayor

**Subject:** Recommendation for Approval to Award: Establishment of Pre-qualification Pool for Head Start Program Diagnostic and Therapeutic Services

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## RECOMMENDATION

It is recommended that the Board of County Commissioners approve establishment of a pre-qualification pool for Head Start Program Diagnostic and Therapeutic Services, as defined by the U. S. Department of Health & Human Services (DHHS), for the Community Action and Human Services Department. Approximately 400 children in the Head Start Program and their families will be served via this pool.

**CONTRACT NUMBERS:** RFQ782a, RFQ782b, RFQ782c, RFQ782d, and RFQ782e

**CONTRACT TITLE:** Head Start Program Diagnostic & Therapeutic Services Pool

**TERM:** The term of this pool will be from the effective date until the end of the fifth Program year, July 31, 2017.

**APPROVAL TO ADVERTISE:** July 28, 2011

**METHOD OF AWARD:** To qualified responsive and responsible proposers to establish a pre-qualification pool. Vendors in the pool will receive initial assignment of services (i.e., speech, occupational and/or physical diagnostic and therapeutic services) in the target geographic areas they serve. After the pool is established, the County may adjust the assigned services and/or the target geographic area to ensure that the County's goals and Head Start Program needs are met.

**PREVIOUS CONTRACT AMOUNT:** $650,000 for a one year period

**CONTRACT AMOUNT:** $1,750,000 for the initial term. This estimated amount may increase or decrease depending upon federal funding, which is awarded on a yearly basis.

## BACKGROUND

Miami-Dade County has been providing comprehensive child development services through the Head Start Program since 1965. The Head Start Program (Program) promotes school readiness for low-income children, from birth to five years of age. The Program enhances the cognitive, social, and emotional development of the participants in a learning environment that supports their growth in language, literacy, mathematics, science, social and emotional functioning, creative arts and physical skills.

In accordance with the Head Start Act, Head Start Program Services must include the provision of early childhood specialized instruction and disability related services, such as speech, occupational, and physical therapy to enrolled children who have a developmental impediment or a medical condition. Through these services, the Head Start Program addresses individual educational goals to ensure appropriate developmental skill levels are achieved by the time the child enters elementary school. Services are typically provided in pre-school classrooms and/or other settings depending on the unique needs of the child and their family.

Head Start Program diagnostic and therapeutic services are currently being provided under a pool contract which expires on March 31, 2012. The successor pool contract will replace the existing pool. The services to be provided are substantially the same as the current pool with enhancements as defined by Department of Health & Human Servcies to ensure a consistent referral process, and that staff development training requirements are met.

Seven firms responded to the solicitation. As further described in the atttached Report of the Evaluation/Selection Committee, the Committee recommended that the County enter into negotiations with five firms. The Committee considered 1) services to be provided (i.e., speech/occupational and/or physical diagnostic and therapeutic services), 2) number of children to be served, and 3) coverage of services required for each of the designated target geographic areas (Hialeah, Northwest, Northeast, Central, West Central and Southwest) in making its recommendation. The Report of the Evaluation/Selection Committee includes a chart titled "Recommended Firms by Target Geographic Areas/Service Provided/Numbers Served" which provides detailed information on the recommendation.

The five recommended firms possess the required licenses and are authorized Medicaid providers. Being an authorized Medicaid provider is critical to the mission and goals of the Program, as most of the Program children are Medicaid recipients. These firms have qualified diagnostic and therapeutic service professionals with the capacity to screen, assess, evaluate and provide the Head Start Program's educationally relevant speech, occupational, and/or physical diagnostic and therapeutic services. The recommended firms specialize in providing diagnostic and therapeutic care services for low-income families and traditionally underserved populations in the targeted geographic areas. Additionally, the recommended firms concentrate on providing services to children from birth to five years of age, and have specific knowledge of child development milestone assessment techniques. The recommendation ensures coverage for all of the target geographic areas and the anticipated service needs.

Medicaid negotiated rates apply for all diagnostic and therapeutic services provided to children. In the event that services authorized by the Program are not covered under the Medicaid guidelines, and when no other funding source (i.e., private insurance or third party payer) is available, the Program shall pay for said services, subject to appropriation of funds and funding availability.

**USING/MANAGING AGENCY**
**AND FUNDING SOURCE:**

| Department | Allocation | Funding Source | Contract Manager |
|---|---|---|---|
| Community Action and Human Services | $ 1,750,000 | Federal Funds | Jane McQueen |
| **Total** | **$ 1,750,000** | | |

**PROCUREMENT CONTRACTING OFFICER:** María Carballeira

**VENDORS RECOMMENDED FOR AWARD:**

| Awardees | Address | Principal |
|---|---|---|
| BioNetworks, Inc. (Local Vendor) | 1441 S.W. 1 Street Miami, FL 33135 | Joaly Tojeiro |
| Easter Seals South Florida, Inc. (Local Vendor) | 1475 N.W. 14 Avenue Miami, FL 33125 | Louise K. Welch |
| Hearing & Speech Center of FL, Inc. (Local Vendor) | 9425 S.W. 72 Street, Suite 261 Miami, FL 33173 | Debra Knox |
| Intergrated Rehabilitation Center, Inc. (Local Vendor) | 5931 N.W. 173 Drive, Unit 10 Miami, FL 33015 | Ana C. Espinosa |
| Speech Pathology & Educational Center, Inc. (Local Vendor) | 8510 S.W. 8 Street Miami, FL 33144 | Mildred M. Suarez |

**PERFORMANCE DATA:** There are no performance issues with the recommended firms.

**COMPLIANCE DATA:** There are no compliance issues with the recommended firms.

**VENDORS NOT RECOMMENDED FOR AWARD:**

| Proposers | Reason for Not Recommending |
|---|---|
| All Star Kids Rehab, Inc. (Local Vendor) | Evaluation Scores/Ranking |
| Speech Therapy Associates of South Florida, P.A. (Local Vendor) | |

**REVIEW COMMITTEE DATE:** June 17, 2011

**CONTRACT MEASURES:** No measures due to federal funding source.

**LIVING WAGE:** The services being provided are not covered under the Living Wage Ordinance.

**USER ACCESS PROGRAM:** This contract does not include the 2% User Access Program provision due to federal funding source.

**LOCAL PREFERENCE:** The Local Preference Ordinance was not applicable due to federal funding source.

**ESTIMATED CONTRACT COMMENCEMENT DATE:** Ten days after date adopted by the Board of County Commissioners, unless vetoed by the Mayor.

**DELEGATED AUTHORITY:** If this item is approved, the County Mayor or designee will have the authority to exercise, at County Mayor's or designee's discretion, subsequent extensions in accordance with the terms and conditions of the contract.

Deputy Mayor

# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

**DATE:**

FROM: R. A. Cuevas, Jr.
County Attorney

**SUBJECT:** Agenda Item No.

**Please note any items checked.**

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

✓ **Statement of fiscal impact required**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous_____) to approve**

✓ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor Agenda Item No.
Veto _____
Override _____

RESOLUTION NO. _____

RESOLUTION AUTHORIZING EXECUTION OF AGREEMENTS IN THE AGGREGATE AMOUNT OF $1,750,000 WITH HEARING & SPEECH CENTER OF FL, INC.; SPEECH PATHOLOGY & EDUCATIONAL CENTER, INC.; EASTER SEALS SOUTH FLORIDA, INC.; BIONETWORKS, INC.; AND INTEGRATED REHABILITATION CENTER, INC., TO ESTABLISH A POOL OF QUALIFIED VENDORS TO PROVIDE HEAD START PROGRAM DIAGNOSTIC & THERAPEUTIC SERVICES, AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE AGREEMENTS FOR AND ON BEHALF OF MIAMI-DADE COUNTY AND TO EXERCISE ANY CANCELLATION AND RENEWAL PROVISIONS, AND TO EXERCISE ALL OTHER RIGHTS CONTAINED THEREIN CONTRACT NOS. RFQ782A, RFQ782B, RFQ782C RFQ782D AND RFQ782E

**WHEREAS,** this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA,** that this Board approves the execution of agreements in the aggregate amount of $1,7500,000 with Hearing & Speech Center of FL, Inc.; Speech Pathology & Educational Center, Inc.; Easter Seals South Florida, Inc.; BioNetworks, Inc.; and Intergrated Rehabilitation Center, Inc., in substantially the form attached hereto and made a part hereof, and authorizes the County Mayor or County Mayor's designee to execute same for and on behalf of Miami-Dade County and to exercise any cancellation and renewal provisions and all other rights contained therein.

The foregoing resolution was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Joe A. Martinez, Chairman
Audrey M. Edmonson, Vice Chairwoman

| | |
|---|---|
| Bruno A. Barreiro | Lynda Bell |
| Esteban L. Bovo, Jr. | Jose "Pepe" Diaz |
| Sally A. Heyman | Barbara J. Jordan |
| Jean Monestime | Dennis C. Moss |
| Rebeca Sosa | Sen. Javier D. Souto |
| Xavier L. Suarez | |

The Chairperson thereupon declared the resolution duly passed and adopted this 6th day of March 2012. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Estephanie S. Resnik

Head Start Program Diagnostic & Therapeutic Services Pool

Contract No. RFQ782a

Target Geographic Areas: Hialeah, Southwest, and Central Miami-Dade County

Services: Speech and Occupational

THIS AGREEMENT made and entered into as of this _____ day of _____ by and between Hearing and Speech Center of Florida, Inc., a corporation organized and existing under the laws of the State of Florida, having its principal office at 9425 S. W. 72nd Street, Suite 261, Miami, FL 33173 (hereinafter referred to as the "Contractor"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County"),

WITNESSETH:

WHEREAS, the Contractor has offered to provide Services as part of the Speech, Occupational and Physical Diagnostic & Therapeutic Services Pool for the Head Start Program, on a non-exclusive basis, that shall conform to the Scope of Services (Appendix A); Miami-Dade County's Request for Qualifications (RFQ) No. 782 and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the Contractor has submitted a written proposal dated August 19, 2011, hereinafter referred to as the "Contractor's Proposal" which is incorporated herein by reference; and,

WHEREAS, the County desires to procure from the Contractor such Diagnostic and Therapeutic Services for the County, in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

## ARTICLE 1. DEFINITIONS

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:

a) The words "Contract" or "Contract Documents" or "Agreement" to mean collectively these terms and conditions, the Scope of Services (Appendix A), the Business Associate Addendum (Appendix B), RFQ No. 782 and all associated addenda and attachments, the Contractor's Proposal, and all other attachments hereto and all amendments issued hereto.

b) The words "Contract Date" to mean the date on which this Agreement is effective.

c) The words "Contract Manager" to mean Miami-Dade County's Director, Internal Services Department, or the duly authorized representative designated to manage the Contract.

d) The word "Contractor" to mean Hearing and Speech Center of Florida, Inc. and its permitted successors and assigns.

e) The word "Days" to mean Calendar Days.

f) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the County's Project Manager for review and approval pursuant to the terms of this Agreement.

g) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the County's Project Manager; and similarly the words "approved", acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the County's Project Manager.

h) The words "Extra Work" or "Additional Work" resulting in additions or deletions or modifications to the amount, type or value of the Work and Services as required in this Contract, as directed and/or approved by the County.

i) The words "Project Manager" to mean the County Manager or the duly authorized representative designated to manage the Project.

j) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Contractor.

k) The word "subcontractor" or "subconsultant" to mean any person, entity, firm or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.

l) The words "Work", "Services" "Program", or "Project" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.

## ARTICLE 2. ORDER OF PRECEDENCE

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) these terms and conditions, 2) Appendices to these terms and conditions (the Scope of Services and Business Associate Addendum) 3) the Miami-Dade County's RFQ No. 782 and any associated addenda and attachments thereof, and 4) the Contractor's Proposal.

## ARTICLE 3. RULES OF INTERPRETATION

a) References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.

b) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.

c) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.

d) The titles, headings, captions and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor affect the meaning thereof.

## ARTICLE 4. NATURE OF THE AGREEMENT

a) This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto or their authorized representatives.

b) The Contractor shall provide the services set forth in the Scope of Services, and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.

c) The Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.

d) The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract.

All Work and Services shall be accomplished at the direction of and to the satisfaction of the County's Project Manager.

e) The Contractor acknowledges that the County shall be responsible for making all policy decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the County. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the County with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

## ARTICLE 5. CONTRACT TERM

The Contract shall become effective on date indicated on the front page and shall continue through July 31, 2017. The County reserves the right to exercise its option to extend this Contract for up to one hundred-eighty (180) calendar days beyond the current Contract period and will notify the Contractor in writing of the extension. This Contract may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners.

## ARTICLE 6. NOTICE REQUIREMENTS

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by Registered or Certified Mail, with return receipt requested; or delivered personally; or delivered via fax or e-mail (if provided below) and followed with delivery of hard copy; and in any case addressed as follows:

**(1) to the County**

a) to the Project Manager:

Miami-Dade County
Community Action and Human Services Department
701 N. W. 1st Court
OTV 9-102
Miami, FL 33136
Attention: Head Start Program Disability Services Coordinator
Phone: 786-469-4668
Fax: 786-469-4756
E-mail: LGRACE@miamidade.gov

and,
b) to the Contract Manager:

Miami-Dade County
Internal Services Department
111 N.W. 1st Street, Suite 1375
Miami, FL 33128-1974

Attention: Procurement Management
Phone: (305) 375-5548
Fax: (305) 375-2316

**(2) To the Contractor**

Hearing and Speech Center of Florida, Inc.
9425 S. W. 72nd Street, Suite 261
Miami, FL 33173
Attention: Debra Knox, M.S., CCC-SLP, Executive Director
Phone: (305) 271-7343
Fax: (305) 271-7949
E-mail: dknox@hearingandspeechcenter.org

Either party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

## ARTICLE 7. PAYMENT FOR SERVICES/AMOUNT OBLIGATED

The Contractor warrants that it has reviewed the County's requirements and has asked such questions and conducted such other inquiries as the Contractor deemed necessary in order to determine the price the Contractor will charge to provide the Work and Services to be performed under this Contract. The compensation for all Work and Services performed under this Contract, including all costs associated with such Work and Services, shall be in accordance with the Medicaid approved rates as specified in the Scope of Services (Appendix A), unless otherwise approved by the County, subject to appropriation and availability of funds.

All Services undertaken by the Contractor before County's approval of this Contract shall be at the Contractor's risk and expense.

## ARTICLE 8. PRICING

The Contractor's Medicaid negotiated rates apply for all diagnostic and/or therapeutic services rendered for the term of the Contract, including any extension periods; however, the Contractor may offer incentive discounts to the County at any time during the Contract term, including any extension thereof.

With respect to travel costs and travel related expenses paid by the County, the Contractor agrees to adhere to Section 112.061 of the Florida Statutes as they pertain to out-of-pocket expenses including employee lodging, transportation, per diem, and all miscellaneous cost-and fees. The County shall not be liable for any such expenses that have not been approved in advance, in writing, by the County.

## ARTICLE 9. METHOD AND TIMES OF PAYMENT

The Contractor agrees that under the provisions of this Agreement, payment for the Services shall be processed in accordance with the invoicing requirements as specified in Appendix A, Scope of Services. All invoices shall be taken from the books of account kept by the Contractor, shall be supported by copies of payroll distribution, receipt bills or other documents reasonably

required by the County, shall show the County's contract number, and shall have a unique invoice number assigned by the Contractor. It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that interest payments be made on late payments. In accordance with Florida Statutes, Section 218.74 and Section 2-8.1.4 of the Miami-Dade County Code, the time at which payment shall be due from the County or the Public Health Trust shall be forty-five (45) days from receipt of a proper invoice. The time at which payment shall be due to small businesses shall be thirty (30) days from receipt of a proper invoice. All payments due from the County or the Public Health Trust, and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Manager, or his or her designee(s), not later that sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust.

Invoices and associated back-up documentation shall be submitted in duplicate by the Contractor to the County as follows:

Miami-Dade County
Community Action and Human Services Department
Head Start Program
701 N. W. 1st Court
OTV 10-177
Miami, FL 33136
Attention: Fiscal Coordinator
Phone: 786-469-4743

The County may at any time designate a different address and/or contact person by giving written notice to the other party.

## ARTICLE 10. INDEMNIFICATION AND INSURANCE

The Contractor shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners principals or subcontractors. The Contractor shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

Upon County's notification, the Contractor shall furnish to the Internal Services Department, Certificates of Insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

1. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440.

2. Commercial General Liability Insurance on a comprehensive basis in an amount not less than $300,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage. The mailing address of Miami-Dade County 111 N.W. 1st Street, Suite 1300, Miami, Florida 33128-1974, as the certificate holder, must appear on the certificate of insurance.**

3. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, in an amount not less than $300,000 combined single limit per occurrence for bodily injury and property damage.

4. Malpractice Insurance in an amount not less than $250,000 per claim.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operation of the Contractor. All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

OR

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued by the State of Florida Department of Financial Services and are members of the Florida Guaranty Fund.

**Certificates of Insurance must indicate that for any cancellation of coverage before the expiration date, the issuing insurance carrier will endeavor to mail thirty (30) day written advance notice to the certificate holder. In addition, the Contractor hereby agrees not to modify the insurance coverage without thirty (30) days written advance notice to the County.**

**NOTE: MIAMI-DADE COUNTY CONTRACT NUMBER AND TITLE MUST APPEAR ON EACH CERTIFICATE OF INSURANCE.**

Compliance with the foregoing requirements shall not relieve the Contractor of this liability and obligation under this section or under any other section in this Agreement.

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within ten (10) business days after notification of recommendation to award. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Contractor shall have an additional five (5) business days to submit a corrected certificate to the County. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement within fifteen (15) business days, the Contractor shall be in default of the contractual terms and conditions and award of the Contract may be rescinded, unless such timeframe for submission has been extended by the County.

The Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the County. If insurance certificates are scheduled to expire during the contractual period, the

Contractor shall be responsible for submitting new or renewed insurance certificates to the County at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the County shall suspend the Contract until such time as the new or renewed certificates are received by the County in the manner prescribed herein; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the County may, at its sole discretion, terminate this contract.

## ARTICLE 11. MANNER OF PERFORMANCE

a) The Contractor shall provide the Services described herein in a competent and professional manner satisfactory to the County in accordance with the terms and conditions of this Agreement. The County shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services. At the request of the County the Contractor shall promptly remove from the project any Contractor's employee, subcontractor, or any other person performing Services hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.

b) The Contractor agrees to defend, hold harmless and indemnify the County and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the County, occurring on account of, arising from or in connection with the removal and replacement of any Contractor's personnel performing services hereunder at the behest of the County. Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and or demotion of such Contractor's personnel.

c) The Contractor agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to replace any its personnel if so directed upon reasonable request from the County, should the County make a determination, in its sole discretion, that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.

d) The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner.

e) The Contractor shall at all times cooperate with the County and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.

f) The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

## ARTICLE 12. EMPLOYEES ARE THE RESPONSIBILITY OF THE CONTRACTOR

All employees of the Contractor shall be considered to be, at all times, employees of the

Contractor under its sole direction and not employees or agents of the County. The Contractor shall supply competent employees. Miami-Dade County may require the Contractor to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on County property is not in the best interest of the County. Each employee shall have and wear proper identification.

## ARTICLE 13. INDEPENDENT CONTRACTOR RELATIONSHIP

The Contractor is, and shall be, in the performance of all work services and activities under this Agreement, an independent contractor, and not an employee, agent or servant of the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Contractor's sole direction, supervision and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Contractor's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees and agents of the County.

The Contractor does not have the power or authority to bind the County in any promise, agreement or representation other than specifically provided for in this Agreement.

## ARTICLE 14. AUTHORITY OF THE COUNTY'S PROJECT MANAGER

a) The Contractor hereby acknowledges that the County's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Contractor's Proposal; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.

b) The Contractor shall be bound by all determinations or orders and shall promptly obey and follow every order of the Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Contractor agrees with the Project Manager's determination or order. Where orders are given orally, they will be issued in writing by the Project Manager as soon thereafter as is practicable.

c) The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Contractor and the Project Manager are unable to resolve their difference, the Contractor may initiate a dispute in accordance with the procedures set forth in this Article. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.

d) In the event of such dispute, the parties to this Agreement authorize the County Manager or designee, who may not be the Project Manager or anyone associated with this Project, acting personally, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the County Manager's purview as set forth above shall be conclusive, final and binding on parties. Any such dispute shall be brought, if at all, before the County Manager within 10 days of the occurrence, event or act out of which the dispute arises.

e) The County Manager may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether Contractor's performance or any Deliverable meets the requirements of this Agreement and any specifications with respect thereto set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the County Manager participated therein, or by any prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the Agreement. All such disputes shall be submitted in writing by the Contractor to the County Manager for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. Whenever the County Manager is entitled to exercise discretion or judgement or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The County Manager, as appropriate, shall render a decision in writing and deliver a copy of the same to the Contractor. Except as such remedies may be limited or waived elsewhere in the Agreement, Contractor reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.

## ARTICLE 15. MUTUAL OBLIGATIONS

a) This Agreement, including attachments and appendixes to the Agreement, shall constitute the entire Agreement between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of both parties.

b) Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.

c) In those situations where this Agreement imposes an indemnity obligation on the Contractor, the County may, at its expense, elect to participate in the defense if the County should so choose. Furthermore, the County may at its own expense defend or settle any such claims if the Contractor fails to diligently defend such claims, and thereafter seek indemnity for costs from the Contractor.

## ARTICLE 16. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING

The Contractor shall maintain, and shall require that its subcontractors and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in the Scope of Services. The Contractor and its subcontractors and suppliers, shall retain such records, and all other documents relevant to the Services furnished under this Agreement for a period of three (3) years from the expiration date of this Agreement and any extension thereof.

## ARTICLE 17. AUDITS

The County, or its duly authorized representatives or governmental agencies shall, until the expiration of three (3) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Contractor's books,

documents, papers and records and of its subcontractors and suppliers which apply to all matters of the County. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, as applicable, and shall only address those transactions related to this Agreement.

Pursuant to County Ordinance No. 03-2, the Contractor will grant access to the Commission Auditor to all financial and performance related records, property, and equipment purchased in whole or in part with government funds. The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

## ARTICLE 18. SUBSTITUTION OF PERSONNEL

In the event the Contractor wishes to substitute personnel for the key personnel identified by the Contractor's Proposal, the Contractor must notify the County in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution.

## ARTICLE 19. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT

The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, including its rights, title or interest in or to the same or any part thereof without the prior written consent of the County.

## ARTICLE 20. SUBCONTRACTUAL RELATIONS

a) If the Contractor will cause any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.

b) The Contractor, before making any subcontract for any portion of the services, will state in writing to the County the name of the proposed Subcontractor, the portion of the Services which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the County may require. The County will have the right to require the Contractor not to award any subcontract to a person, firm or corporation disapproved by the County.

c) Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed. Such Services performed by such Subcontractor will strictly comply with the requirements of this Contract.

d) In order to qualify as a Subcontractor satisfactory to the County, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the satisfaction of the County that it has the necessary facilities, skill and experience, and ample financial resources to perform the Services in a satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of

the County that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.

e) The County shall have the right to withdraw its consent to a subcontract if it appears to the County that the subcontract will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the County's and County's proprietary and confidential information. Contractor shall furnish to the County copies of all subcontracts between Contractor and Subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the County permitting the County to request completion of performance by the Subcontractor of its obligations under the subcontract, in the event the County finds the Contractor in breach of its obligations, the option to pay the Subcontractor directly for the performance by such subcontractor. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County to any subcontractor hereunder as more fully described herein.

## ARTICLE 21. ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS

The Contractor understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the County were provided to the Contractor for evaluation purposes only. However, since these assumptions, parameters, projections, estimates and explanations represent predictions of future events the County makes no representations or guarantees; and the County shall not be responsible for the accuracy of the assumptions presented; and the County shall not be responsible for conclusions to be drawn therefrom; and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Contractor. The Contractor accepts all risk associated with using this information.

## ARTICLE 22. SEVERABILITY

If this Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

## ARTICLE 23. TERMINATION AND SUSPENSION OF WORK

a) The County may terminate this Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the County through fraud, misrepresentation or material misstatement.

b) The County may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the County and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.

c) The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be debarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the

County Code.

d) In addition to cancellation or termination as otherwise provided in this Agreement, the County may at any time, in its sole discretion, with or without cause, terminate this Agreement by written notice to the Contractor.

e) In the event that the County exercises its right to terminate this Agreement, the Contractor shall, upon receipt of such notice, unless otherwise directed by the County:

i. stop work on the date specified in the notice ("the Effective Termination Date");

ii. take such action as may be necessary for the protection and preservation of the County's materials and property;

iii. cancel orders;

iv. assign to the County and deliver to any location designated by the County any noncancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services:

v. take no action which will increase the amounts payable by the County under this Agreement; and

f) In the event that the County exercises its right to terminate this Agreement, the Contractor will be compensated as stated in the payment Articles herein for the:

i. portion of the Services completed in accordance with the Agreement up to the Effective Termination Date; and

ii. noncancelable Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement but not incorporated in the Services.

g) All compensation pursuant to this Article are subject to audit.

## ARTICLE 24. EVENT OF DEFAULT

a) An Event of Default shall mean a breach of this Agreement by the Contractor. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an Event of Default, shall include the following:

i. the Contractor has not delivered Deliverables on a timely basis.

ii. the Contractor has refused or failed, except in case for which an extension of time is provided, to supply enough properly skilled Staff Personnel;

iii. the Contractor has failed to make prompt payment to subcontractors or suppliers for any Services;

iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or

debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;

v. the Contractor has failed to obtain the approval of the County where required by this Agreement;

vi. the Contractor has failed to provide "adequate assurances" as required under subsection "b" below;

vii. the Contractor has failed in the representation of any warranties stated herein.

b) When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the County may request that the Contractor, within the timeframe set forth in the County's request, provide adequate assurances to the County, in writing, of the Contractor's ability to perform in accordance with terms of this Agreement. Until the County receives such assurances the County may request an adjustment to the compensation received by the Contractor for portions of the Services which the Contractor has not performed. In the event that the Contractor fails to provide to the County the requested assurances within the prescribed time frame, the County may:

i. treat such failure as a repudiation of this Agreement;

ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.

c) In the event the County shall terminate this Agreement for default, the County or its designated representatives, may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.

## ARTICLE 25. NOTICE OF DEFAULT - OPPORTUNITY TO CURE

If an Event of Default occurs, in the determination of the County, the County may so notify the Contractor ("Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured immediately or this Agreement with the County may be terminated. Notwithstanding, the County may, in its sole discretion, allow the Contractor to rectify the default to the County's reasonable satisfaction within a thirty (30) day period. The County may grant an additional period of such duration as the County shall deem appropriate without waiver of any of the County's rights hereunder, so long as the Contractor has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the County prescribes. The default notice shall specify the date the Contractor shall discontinue the Services upon the Termination Date.

## ARTICLE 26. REMEDIES IN THE EVENT OF DEFAULT

If an Event of Default occurs, the Contractor shall be liable for all damages resulting from the default, including but not limited to:

a) lost revenues;

b) the difference between the cost associated with procuring Services hereunder and the amount actually expended by the County for reprocurement of Services, including

procurement and administrative costs; and,

c) such other direct damages.

The Contractor shall also remain liable for any liabilities and claims related to the Contractor's default. The County may also bring any suit or proceeding for specific performance or for an injunction.

## ARTICLE 27. PATENT AND COPYRIGHT INDEMNIFICATION

a) The Contractor warrants that all Deliverables furnished hereunder, including but not limited to: equipment programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any patent, copyrights, service marks, trade secret, or any other third party proprietary rights.

b) The Contractor shall be liable and responsible for any and all claims made against the County for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the Work, or the County's continued use of the Deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the County and defend any action brought against the County with respect to any claim, demand, cause of action, debt, or liability.

c) In the event any Deliverable or anything provided to the County hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation to, at the County's option to (i) modify, or require that the applicable subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the County, at the Contractor's expense, the rights provided under this Agreement to use the item(s).

d) The Contractor shall be solely responsible for determining and informing the County whether a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Deliverable hereunder. The Contractor shall enter into agreements with all suppliers and subcontractors at the Contractor's own risk. The County may reject any Deliverable that it believes to be the subject of any such litigation or injunction, or if, in the County's judgment, use thereof would delay the Work or be unlawful.

e) The Contractor shall not infringe any copyright, trademark, service mark, trade secrets, patent rights, or other intellectual property rights in the performance of the Work.

## ARTICLE 28. CONFIDENTIALITY

a) All Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County in connection with the Services performed under this Agreement, made or developed by the Contractor or its subcontractors in the course of the performance of such Services,

or the results of such Services, or which the County holds the proprietary rights, constitute Confidential Information and may not, without the prior written consent of the County, be used by the Contractor or its employees, agents, subcontractors or suppliers for any purpose other than for the benefit of the County, unless required by law. In addition to the foregoing, all County employee information and County financial information shall be considered confidential information and shall be subject to all the requirements stated herein. Neither the Contractor nor its employees, agents, subcontractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the County. Additionally, the Contractor expressly agrees to be bound by and to defend, indemnify and hold harmless the County, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.

b) The Contractor shall advise each of its employees, agents, subcontractors and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the County in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.

c) It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the County shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Services performed hereunder, the Contractor shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors or suppliers without the prior written consent of the County. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall accompany such materials.

## ARTICLE 29. PROPRIETARY INFORMATION

As a political subdivision of the State of Florida, Miami-Dade County is subject to the stipulations of Florida's Public Records Law.

The Contractor acknowledges that all computer software in the County's possession may constitute or contain information or materials which the County has agreed to protect as proprietary information from disclosure or unauthorized use and may also constitute or contain information or materials which the County has developed at its own expense, the disclosure of which could harm the County's proprietary interest therein.

During the term of the contract, the Contractor will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the County's property, any computer programs, data compilations, or other software which the County has developed, has used or is using, is holding for use, or which are otherwise in the possession of the County (hereinafter "Computer Software"). All third-party license agreements must also be honored by the contractors and their employees, except as authorized by the County and, if the Computer Software has been leased or purchased by the County, all hired party license agreements must also be honored by the contractors' employees with the approval of the lessor or Contractors

thereof. This includes mainframe, minis, telecommunications, personal computers and any and all information technology software.

The Contractor will report to the County any information discovered or which is disclosed to the Contractor which may relate to the improper use, publication, disclosure or removal from the County's property of any information technology software and hardware and will take such steps as are within the Contractor's authority to prevent improper use, disclosure or removal.

## ARTICLE 30. PROPRIETARY RIGHTS

a) The Contractor hereby acknowledges and agrees that the County retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the County to the Contractor hereunder or furnished by the Contractor to the County and/or created by the Contractor for delivery to the County, even if unfinished or in process, as a result of the Services the Contractor performs in connection with this Agreement, including all copyright and other proprietary rights therein, which the Contractor as well as its employees, agents, subcontractors and suppliers may use only in connection of the performance of Services under this Agreement. The Contractor shall not, without the prior written consent of the County, use such documentation on any other project in which the Contractor or its employees, agents, subcontractors or suppliers are or may become engaged. Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the County's copyrights or other proprietary rights.

b) All rights, title and interest in and to certain inventions, ideas, designs and methods, specifications and other documentation related thereto developed by the Contractor and its subcontractors specifically for the County, hereinafter referred to as "Developed Works" shall become the property of the County.

c) Accordingly, neither the Contractor nor its employees, agents, subcontractors 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 the Contractor, or any employee, agent, subcontractor or supplier thereof, without the prior written consent of the County, except as required for the Contractor's performance hereunder.

d) Except as otherwise provided in subsections a, b, and c above, or elsewhere herein, the Contractor and its subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder, that have not been customized to satisfy the performance criteria set forth in the Scope of Services. Notwithstanding the foregoing, the Contractor hereby grants, and shall require that its subcontractors and suppliers grant, if the County so desires, a perpetual, irrevocable and unrestricted right and license to use, duplicate, disclose and/or permit any other person(s) or entity(ies) to use all such Licensed Software and the associated specifications, technical data and other Documentation for the operations of the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. Such license specifically includes, but is not limited to, the right of the County to use and/or disclose, in whole or in part, the technical documentation and Licensed Software, including source code provided hereunder, to any person or entity outside the County for such person's or entity's use in furnishing any and/or all of the Deliverables provided hereunder exclusively for the County or entities controlling, controlled by, under

common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. No such License Software, specifications, data, documentation or related information shall be deemed to have been given in confidence and any statement or legend to the contrary shall be void and of no effect.

## ARTICLE 31. VENDOR REGISTRATION AND FORMS/CONFLICT OF INTEREST

a) Vendor Registration

The Contractor shall be a registered vendor with the County – Internal Services Department, for the duration of this Agreement. In becoming a Registered Vendor with Miami-Dade County, the Contractor confirms its knowledge of and commitment to comply with the following:

1. ***Miami-Dade County Ownership Disclosure Affidavit***
   (Section 2-8.1 of the County Code)

2. ***Miami-Dade County Employment Disclosure Affidavit***
   *(Section 2.8-1(d)(2) of the County Code)*

3. ***Miami-Dade Employment Drug-free Workplace Certification***
   *(Section 2-8.1.2(b) of the County Code)*

4. ***Miami-Dade Disability and Nondiscrimination Affidavit***
   *(Section 2-8.1.5* of the County Code*)*

5. ***Miami-Dade County Debarment Disclosure Affidavit***
   *(Section 10.38 of the County Code)*

6. ***Miami-Dade County Vendor Obligation to County Affidavit***
   *(Section 2-8.1 of the County Code)*

7. ***Miami-Dade County Code of Business Ethics Affidavit***
   *(Section 2-8.1(i) and 2-11(b)(1) of the County Code through (6) and (9) of the County Code and Section 2-11.1(c) of the County Code)*

8. ***Miami-Dade County Family Leave Affidavit***
   *(Article V of Chapter 11 of the County Code)*

9. ***Miami-Dade County Living Wage Affidavit***
   *(Section 2-8.9 of the County Code)*

10. ***Miami-Dade County Domestic Leave and Reporting Affidavit***
    *(Article 8, Section 11A-60 11A-67 of the County Code)*

11. ***Subcontracting Practices***
    *(Ordinance 97-35)*

12. ***Subcontractor /Supplier Listing***
    *(Section 2-8.8 of the County Code)*

13. ***Environmentally Acceptable Packaging***
    *(Resolution R-738-92)*

14. ***W-9 and 8109 Forms***
    (as required by the Internal Revenue Service)

15. ***FEIN Number or Social Security Number***
    In order to establish a file, the Contractor's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. This number becomes Contractor's "County Vendor Number". To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:
    - Identification of individual account records
    - To make payments to individual/Contractor for goods and services provided to Miami-Dade County
    - Tax reporting purposes
    - To provide a unique identifier in the vendor database that may be used for searching and sorting departmental records

16. ***Office of the Inspector General***
    (Section 2-1076 of the County Code)

17. ***Small Business Enterprises***
    The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.2, 2-8.2.3 and 2-8.2.4 of the County Code and Title 49 of the Code of Federal Regulations.

18. ***Antitrust Laws***
    By acceptance of any contract, the Contractor agrees to comply with all antitrust laws of the United States and the State of Florida.

b) Conflict of Interest

Section 2-11.1(d) of Miami-Dade County Code requires that any County employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, competing or applying for a contract, must first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County. Any such contract or business engagement entered in violation of this subsection, as amended, shall be rendered voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

## ARTICLE 32. INSPECTOR GENERAL REVIEWS

***Independent Private Sector Inspector General Reviews***

Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Contractor shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Contractor, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Contractor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

***Miami-Dade County Inspector General Review***

According to Section 2-1076 of the Code of Miami-Dade County, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Contractor. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (I) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under $1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award.***

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General is empowered to retain the services of independent private sector inspectors general (IPSIG) to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Contractor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Contractor from the Inspector General or IPSIG retained by the Inspector General, the Contractor shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all

documents and records in the Contractor's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

## ARTICLE 33. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS

Contractor agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State and the County orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this Agreement, including but not limited to:

a) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.

b) Miami-Dade County Florida, Department of Small Business Development Participation Provisions, as applicable to this Contract.

c) Environmental Protection Agency (EPA), as applicable to this Contract.

d) Miami-Dade County Code, Chapter 11A, Article 3. All contractors and subcontractors performing work in connection with this Contract shall provide equal opportunity for employment because of race, religion, color, age, sex, national origin, sexual preference, disability or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.

e) "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.

f) Miami-Dade County Code Section 10-38 "Debarment".

g) Miami-Dade County Ordinance 99-5, codified at 11A-60 et. seq. of Miami-Dade Code pertaining to complying with the County's Domestic Leave Ordinance.

h) Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

i) "Sherman S. Winn Prompt Payment Ordinance" Section 2-8.14 of the County Code.

The Contractor shall hold all licenses and/or certifications, obtain and pay for all permits and/or inspections, and comply with all laws, ordinances, regulations and building code requirements applicable to the work required herein. Damages, penalties, and/or fines imposed on the County or Contractor for failure to obtain and maintain required licenses, certifications, permits and/or inspections shall be borne by the Contractor. The Project Manager shall verify the certification(s), license(s), permit(s), etc. for the Contractor prior to authorizing work and as needed.

Notwithstanding any other provision of this Agreement, Contractor shall not be required pursuant to this

Agreement to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the Contractor, constitute a violation of any law or regulation to which Contractor is subject, including but not limited to laws and regulations requiring that Contractor conduct its operations in a safe and sound manner.

## ARTICLE 34. NONDISCRIMINATION

During the performance of this Contract, Contractor agrees to not discriminate against any employee or applicant for employment because of race, religion, color, sex, handicap, marital status, age or national origin, and will take affirmative action to ensure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

By entering into this Contract, the Contractor attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If the Contractor or any owner, subsidiary or other firm affiliated with or related to the Contractor is found by the responsible enforcement agency or the County to be in violation of the Act or the Resolution, such violation shall render this Contract void. This Contract shall be void if the Contractor submits a false affidavit pursuant to this Resolution or the Contractor violates the Act or the Resolution during the term of this Contract, even if the Contractor was not in violation at the time it submitted its affidavit.

## ARTICLE 35. CONFLICT OF INTEREST

The Contractor represents that:

a) No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the grant of this Agreement.

b) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:

   i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or

   ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.

c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.

d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this

Agreement and those provided by statute, the stricter standard shall apply.

e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the County's Project Manager.

Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

## ARTICLE 36. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

Under no circumstances shall the Contractor without the express written consent of the County:

a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and

b) Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and

c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the County.

## ARTICLE 37. BANKRUPTCY

The County reserves the right to terminate this contract, if, during the term of any contract the Contractor has with the County, the Contractor becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Contractor under federal bankruptcy law or any state insolvency law.

## ARTICLE 38. GOVERNING LAW

This Contract, including appendices, and all matters relating to this Contract (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the State of Florida. Venue shall be Miami-Dade County.

## ARTICLE 39. INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION and/or PROTECTED HEALTH INFORMATION

Any person or entity that performs or assists Miami-Dade County with a function or activity involving the use or disclosure of "Individually Identifiable Health Information (IIHI) and/or Protected Health Information (PHI) shall comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the Miami-Dade County Privacy Standards Administrative Order. HIPAA mandates for privacy, security and electronic transfer standards, include but are not limited to:

1. Use of information only for performing services required by the contract or as required by law;

2. Use of appropriate safeguards to prevent non-permitted disclosures;
3. Reporting to Miami-Dade County of any non-permitted use or disclosure;
4. Assurances that any agents and subcontractors agree to the same restrictions and conditions that apply to the Contractor and reasonable assurances that IIHI/PHI will be held confidential;
5. Making Protected Health Information (PHI) available to the customer;
6. Making PHI available to the customer for review and amendment; and incorporating any amendments requested by the customer;
7. Making PHI available to Miami-Dade County for an accounting of disclosures; and
8. Making internal practices, books and records related to PHI available to Miami-Dade County for compliance audits.

PHI shall maintain its protected status regardless of the form and method of transmission (paper records, and/or electronic transfer of data). The Contractor must give its customers written notice of its privacy information practices including specifically, a description of the types of uses and disclosures that would be made with protected health information.

**ARTICLE 40. SURVIVAL**

The parties acknowledge that any of the obligations in this Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Contractor and the County under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the contract date herein above set forth.

| Contractor | Miami-Dade County |
|---|---|
| By: Debra Knox | By: _____ |
| Name: Debra Knox | Name: _____ |
| Title: Executive Director | Title: _____ |
| Date: 10/27/2011 | Date: _____ |
| Attest: _____ Corporate Secretary/Notary Public | Attest: _____ Clerk of the Board |
| Corporate Seal/Notary Seal | Approved as to form and legal sufficiency |
| JOHANNA A. MERINO MY COMMISSION # DD 92770/ EXPIRES: January 24, 2014 Bonded Thru Notary Public Underwriters | _____ Assistant County Attorney |

# Appendix A

## Scope of Services

### 1. Introduction

Miami-Dade County, hereinafter referred to as the "County," as represented by the Miami-Dade County Community Action and Human Services Department, is establishing a Head Start Program Diagnostic & Therapeutic Services Pool of pre-qualified providers with applicable expertise to provide 1) Speech, 2) Occupational, and 3) Physical, diagnostic and therapeutic services to approximately 450 children and their families served by the Head Start/Early Head Start's (HS/EHS) Programs.

### A. Objective

The County requires Contractor to render comprehensive diagnostic and therapeutic services, to HS/EHS Program children identified by the Program Disability Services Coordinator, through a coordinated system for developmental, sensory, motor, language and cognitive concerns.

### B. Designated Target Geographic Areas/Services

The following are the designated target geographic areas and services that Contractor has been pre-approved to serve.

**Areas:** Hialeah, Southwest and Central Miami-Dade County

**Services:** Speech and Occupational

The Contractor is initially pre-approved to serve **72** children. The County reserves the right to adjust the designated Target Geographic Areas assignment and/or Services provided including the number of children serviced by Contractor to ensure that the County's goals and Program needs are met.

### 2. Requirements

### A. Minimum Requirements

1. Contractor's therapists performing Services shall be licensed by the State of Florida Department of Health, Division of Medical Quality Assurance, for the particular services (e.g., speech, occupational and/or physical diagnostic and therapeutic services) provided, for the duration of the Contract; and

2. The Contractor shall be a Medicaid Provider for the duration of the Contract.

### B. Preferred Qualifications

The County has relied on the Contractor's Proposal to determine that Contractor has met the Preferred Qualifications.

1. Contractor possess at least three years of experience in providing similar diagnostic and therapeutic services with specific knowledge of child development milestones and assessment of children birth to five years of age.

2. Contractor maintains membership(s) with the American Speech-Language-Hearing Association (ASHA), American Occupational Therapy Association (AOTA) and/or American Physical Therapy Association (APTA), as applicable to the type of diagnostic and therapeutic services provided.

The County reserves the right to review any firm which Contractor requests contract assignment, pursuant to Article 19, to determine whether the assignee meets the Minimum and Preferred Qualifications.

**3. Requirements and Services to be Provided**

The Contractor shall provide the following services for the awarded Target Geographic Areas:

a. Adhere to all applicable Head Start Performance Standards, notices and instructions as promulgated by U.S. Department of Health and Human Services (DHHS) Administration for Children, Youths and Families (ACYF), including but not limited to, the Code of Federal Regulations (CFR), Title 45 Parts 74, 1304.20, 1304.21, 1304.52, 1308.4 and 1308.6, Florida Statutes (Section 402.301-402, 319; Section 120.60). Florida Administrative Code (Chapter 65C-22; Chapter 64E-11) and appropriate County requirements, all of which are incorporated herein by reference. The Performance Standards are available through the following link: http://eclkc.ohs.acf.hhs.gov/hslc/Program%20Design%20and%20Management/Head%20Start%20Requirements/Head%20Start%20Requirements.

b. Administer a coordinated system to screen, assess, evaluate and provide educationally relevant speech, occupational, and/or physical therapy services, as assigned by the HS/EHS Program' Disability Services Coordinator, to Program children, ages birth to five years. Contractor's services shall provide a consistent referral procedure for further evaluation by provider and treatment of Program children.

c. Ensure that Program children approved for diagnostic and therapeutic services with Medicaid or private insurance coverage receive all applicable benefits. Medicaid and insurance provider shall be billed for services rendered, when applicable. If Medicaid and/or insurance coverage does not include all services listed in the Scope of Services herein, services that are deemed necessary and approved by the HS/EHS Program's Disability Services Coordinator will be reimbursed by the County. The County will pay up to the rate that the individual Contractor has negotiated with the local Medicaid Administrator for reimbursement.

d. Ensure that all testing instruments and protocols utilized in the evaluation and assessment of Program children are supported by Miami-Dade County Public Schools (M-DCPS) Part B Transition Requirements for Pre-K Evaluations. The information is available through the following link: http://ese.dadeschools.net *(listed under Policies and Procedures).*

e. Perform speech/language, occupational and/or physical evaluation, assessment and therapeutic services of Program children consistent with professional standards and ethical requirements as imposed by the State of Florida Department of Health, Division of Medical Quality Assurance. The County reserves the right to interview all therapists prior to assignments and determine which therapists will be utilized for the Services. The County

may require Contractor to re-assign therapists in accordance with children's needs and remove therapists from rendering Services in accordance with Article 12 of the agreement.

f. Prepare and submit written analysis report to the County's HS/EHS Program's Disability Services Coordinator within two (2) weeks of completion of evaluation/assessment. The report shall include copies of the testing instruments and protocols utilized, individual treatment plan, report to physician and any other appropriate recommendations for each child assessed.

g. Recommend delivery model of therapy sessions for Program children. Therapy sessions are usually delivered in a group setting (4 children maximum per group) as a one-half hour session. However, some instances may require individual therapy sessions. Therapy delivery model to be administered shall be determined by the M-DCPS Special Education Division Staffing Team deliberating at the Individual Education Plan (IEP) Eligibility Meeting, and approved by the HS/EHS Program Disability Services Coordinator, prior to its delivery.

h. Maintain progress notes as established by the HS Program. Progress notes shall include: (1) description of therapy administered, (2) duration of session, (3) child's name and date of birth, (4) identification of Program center site where services were rendered, (5) date of service, (6) objective of session, and (7) measurable outcome achieved. All progress notes shall be signed by the therapist providing the service and a copy shall be submitted to the respective child's Program center at the end of each month for inclusion in the child's record. Additionally, a copy of progress notes shall be forwarded to the HS/EHS Program Disability Services Coordinator as part of the reporting requirements (see Section 6 for requirements).

i. Conduct classroom observations and formulate strategies to assist Program instructional staff and parents of children with suspected disabilities (e.g., strategies for promoting speech, techniques for adapting learning environment, etc.).

j. Attend meetings with Program staff, as deemed necessary and as scheduled by the HS/EHS Program Disability Services Coordinator.

k. Provide individual consultations and in-service trainings/workshops to Program instructional and administrative staff identified by the HS/EHS Program Disability Services Coordinator. Topics of training sessions may include, but are not limited to, strategies for promoting speech, occupational and physical development, and techniques and methods for adapting the learning environment to meet the needs of children with disabilities. Parents identified by the Disability Services Coordinator may also receive training that will allow for learning therapy techniques and how to carry them over into the child's daily routines, ultimately increasing the effectiveness of therapy. Contractor may be required to collaborate with other Pool members in the presentation of in-service trainings/workshops.

l. Provide required diagnostic and therapeutic services for Program children without compensation **if** Service is not covered by Medicaid, **and**, in the event that all funds budgeted for this Program are expended prior to the conclusion of the Program Year.

m. Gain approval from HS/EHS Program Disability Services Coordinator prior to performing any services that are not specifically identified in the Scope of Services herein. Not all diagnostic and therapeutic services that may be required are identified in the Scope of

Services. The County reserves the right to authorize any required services and reimburse said services at the current Medicaid rate.

n. Perform Medicaid relevant administrative support and consultative services on an as needed basis and at the request of the HS/EHS Program's Disability Services Coordinator which may include, but not limited to, the following:

   i. Invoicing and collection, including data entry and electronic submission of claims;
   ii. Medicaid/HMO Policy and Procedures, including documentation;
   iii. Quality assurance reviews of files and records;
   iv. Assistance in preparation for Medicaid audits;
   v. Other related consultative services as necessary and requested by HS Program Staff;
   vi. Review of current cases;
   vii. Assistance in formulation and review of individual treatment plans;
   viii. Individual evaluation, to include typed report as deemed necessary and as requested by HS/EHS Program Disability Services Coordinator;
   ix. Review and consultation with child's primary physician;
   x. Personal meeting or telephone consultation, as necessary, with parents of each child served;
   xi. Child developmental and behavioral assessment;
   xii. Telephone consultations with HS Program Staff;
   xiii. Other Medicaid relevant services not specifically identified; and
   xiv. Consultative advice, including in-service training.

o. Provide notification to the State of Florida Medicaid Program Area Office, ***in writing***, that an affiliation with Miami-Dade County, with reference to the appropriate County entity and Medicaid provider number, is in effect.

p. Perform other related Services as requested by the HS/EHS Program Disability Services Coordinator.

q. Comply with all laws, regulations, ordinances and resolutions applicable to the Heads Start and Early Head Start Services.

r. Contractor should provide therapists that are representative of the diversity of the populations in the community it serves and possess linguistic competency to effectively serve the targeted community.

**4. Location of Services**

The Services shall be provided by the Contractor at the respective HS/EHS Program centers located within the assigned Target Geographic Area(s). Services may also be provided at the Contractor's facility, if necessary and authorized by the HS/EHS Program Disability Services Coordinator.

**5. Hours of Service and Availability**

Services shall be provided while the HS/EHS Program centers are open *(Monday-Friday, 7:30 a.m. through 4:00 p.m.)*. The Program centers' operate in accordance with Miami-Dade County Public School's schedule. However, Services may also be rendered on planning days and school breaks at the Contractor's facility, as approved by the HS/EHS Program Disability Services Coordinator.

**6. Reporting Requirements**

The Contractor shall provide to the HS/EHS Program's Disability Services Coordinator a monthly report for the services provided.

The monthly report shall include the following information:

a. Listing of children evaluated with respective assessment reports completed, testing protocols utilized, date of evaluation, and therapist completing service;
b. Listing of children receiving therapeutic services to include the frequency of sessions and type of service provided per child with funding source identified; follow-up therapeutic services and current status of referrals;
c. Progress notes, observation and parent consultation reports;
d. Completed travel log per therapist for whom reimbursement of travel (i.e., mileage, tolls, parking) expenses is being submitted for;
e. Training design/agenda, attendance sign-in sheets, and a copy of the handout materials for all training of HS Program Staff and/or parents; and
f. An itemized listing of HS Program children referred to Medicaid or insurance provider for authorization of therapeutic services, status of referrals, and basis for any denials.

**7. Invoicing Requirements**

The Contractor shall invoice the HS/EHS Program for the approved Services not covered by Medicaid, private insurance provider or third party payer on a monthly basis, on or before the 15th day of each month following the month in which the Services were rendered, unless the County has granted the Contractor an extension in writing. Payment requests shall be accompanied by such documentation as requested by the HS/EHS Program's Disability Services Coordinator to include documentation identifying Contactor's non-federal resources, either in cash or in-kind, in an amount equivalent to 25% of the total invoice amount being submitted for reimbursement. For the purposes of the in-kind match, Contractor's administrative costs shall not account for more than 15% of the invoice submitted to the County for reimbursement.

It is anticipated that the County will reimburse each invoice within four (4) to six (6) weeks from receipt of complete and error free invoices; however, it is the responsibility of the Contractor to maintain sufficient cash flow pending receipt of reimbursement from the County.

All payments due to the Contractor may be withheld pending receipt and approval by the County of all reports and documents due from the Contractor.

**8. Other Reporting Requirements**

**A. State of Florida Certificate of Status**

The Contractor shall comply with all laws, ordinances and regulations applicable to the Services contemplated herein. Contractor is presumed to be familiar with all Federal, State and local laws, ordinances, codes, rules and regulations that may in any way affect the goods or services offered, especially, Executive Order No. 11246 entitled, "Equal Opportunity" and as amended by Executive Order No. 11375, as supplemented by the Department of Labor Relations (41 CFR, Part 60), the Americans with Disabilities Act of 1990 and implementing regulations, the Rehabilitation Act of 1973, as amended, Chapter 553 of the Florida Statutes and any and all

other local, State and Federal directives, ordinances, rules, orders and laws relating to people with disabilities.

The Contractor shall submit to the HS Program Disability Services Coordinator, within thirty (30) days from the date of execution of the contract, a Certificate of Status in the name of the Contractor, which certifies the following: Contractor is organized under the laws of the State of Florida; all fees and penalties have been paid; most recent annual report has been filed with an active status; and that an Article of Dissolution has not been filed.

**B. Audit Requirements**

Please be advised that the following sequence is provided for informational purposes only.

1. Audit Required. Non-Federal entities that expend $500,000 or more in a year in Federal Awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of OMB circular No. A-133 Revised.

2. Single Audit. Non-Federal entities that expend $500,000 or more in a year in Federal awards shall have a single audit conducted in accordance with OMB Circular A-133 Revised, except when they elect to have a program-specific audit conducted in accordance with Number 3 below.

4. Program-Specific Audit Selection. Non-Federal entities that expend Federal awards under only one Federal program (excluding Research & Development) and the Federal program's laws, regulations, or grant agreements do not require a financial statement audit. The entity may elect to have a program-specific audit conducted. A program-specific audit may not be elected for Research & Development unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency or pass-through entity in the case of a sub-recipient, approves in advance a program-specific audit.

5. Exemption when Federal Awards Expended is less than $500,000. Non-Federal entities that expend less than $500,000 a year in Federal awards are exempt from Federal audit requirements for that year, except as noted OMB Circular A-133 Revised, Subpart B, Section 215(a), but records must be available for review or audit by appropriate officials of the Federal Agency, pass-through entity, and General Accounting Office (GAO).

The Contractor shall submit to the HS/EHS Program Disability Services Coordinator a complete copy of its annual audit reports performed by an independent auditor covering each of the fiscal years for which HS Program funds were awarded. Audits of government entities must comply with OMB circular A-128. Audits of non-profit organizations, non-government entities, hospitals and institutions of higher learning must comply with OMB Circular A-133.

**9. Background Screening**

The Contractor shall comply with the following tasks in providing the Services:

1. An Affidavit of Good Moral Character shall be completed and notarized for each employee, volunteer and subcontracted personnel.

2. Ensure that employees, subcontracted personnel and volunteers who work with vulnerable persons, including children, satisfactorily complete and pass Level 2 background screening before working with vulnerable persons, including children. Contractor shall furnish the

County with proof that employees, subcontracted personnel and volunteers, who work with vulnerable persons, satisfactorily passed Level 2 background screening, pursuant to Chapter 435, Florida Statutes, as may be amended from time to time. Any person with positive response(s) to any of the enumerated charges as defined in Level 1 and Level 2 background checks shall not work with children or youths. All employee personnel files shall reflect the initiation and completion of the required background screening checks. If the Contractor fails to furnish to the County proof that an employee, subcontractor or volunteer's Level 2 background screening was satisfactorily passed and completed prior to that employee, subcontractor or volunteer working with vulnerable persons including children, the Contractor's contract may be subject to termination at the sole discretion of the County.

3. Retain all records demonstrating compliance with the background screening required herein for not less than three years beyond the last date that all applicable terms of the contract have been complied with and final payment has been received and appropriate audits have been submitted to and accepted by the appropriate entity.

## 10. Schedule

Program year operates for 160 to 175 school days for Head Start Services, consistent with the Miami-Dade County Public School District's Calendar, unless otherwise indicated, and for 210 to 226 school days for Early Head Start Services.

## 11. Budget Allocation

Subject to available funding, the maximum amount payable by the County's HS/EHS Program for Services rendered, which does include Medicaid paid services, including Speech, Occupational and Physical, to Pool members in the aggregate, is anticipated not-to-exceed **Three Hundred and Fifty Thousand Dollars ($350,000.00)**, for a full Program year. The initial Program year (if a partial Program year) shall be prorated.

In the event that services authorized by the HS/EHS Program Disability Services Coordinator are not covered under the Medicaid guidelines and when no other funding source is available, the HS/EHS Program shall pay for said Services as further defined herein, subject to appropriation of funds to the County from the DHHS, and funding availability. The HS/EHS Program however will not pay any difference between the Contractor customary charges and Medicaid reimbursements.

Itemized invoices for Services rendered will be approved in accordance with the following Medicaid approved rates, or as amended by Medicaid:

### A. Speech Services

i. Fifty dollars ($50.00) per child for each diagnostic speech/language evaluation completed and documented by a licensed Speech Language Pathologist;
ii. Forty dollars ($40.00) per child, per 30-minute session of group speech/language therapy provided by a licensed Speech Language Pathologist;
iii. Twenty-eight dollar ($28.00) per child, per 30-session of individual speech/language therapy provided by a licensed Speech Language Assistant; and
iv. Sixty dollars ($60.00) per hour, per child, for Sign Language interpretation for child and parent.

**B. Occupational Services**

i. Fifty dollars ($50.00) per child for each diagnostic occupational evaluation completed and documented by a licensed Occupational Therapist; and
ii. Forty dollars ($40.00) per child, per 30-minute session of individual occupational therapy provided by a licensed Occupational Therapist.

**C. Physical Services**

i. Fifty dollars ($50.00) per child for each diagnostic physical evaluation completed and documented by a licensed Physical Therapist; and
ii. Forty dollars ($40.00) per child, per 30-minute session of individual physical therapy provided by a licensed Physical Therapist.

Medicaid approved rates are subject to change, therefore, the applicable approved and established Medicaid rates shall be honored.

**Appendix B**

## HIPAA BUSINESS ASSOCIATE ADDENDUM

This HIPAA Business Associate Addendum ("Addendum") supplements and is made a part of the Agreement by and between the Miami-Dade County, Florida ("County"), and Hearing and Speech Center of FL, Inc., Business Associate ("Associate").

## RECITALS

A. As part of the Agreement, it is necessary for the County to disclose certain information ("Information") to Associate pursuant to the terms of the Agreement, some of which may constitute Protected Health Information ("PHI").

B. County and Associate intend to protect the privacy and provide for the security of PHI, including but not limited to, ePHI, disclosed to Associate pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.

C. The purpose of this Addendum is to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations, including, but not limited to, Title 45, Sections 164.308(b), 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations ("CFR"), as the same may be amended from time to time.

In consideration of the mutual promises below and the exchange of information pursuant to the Agreement, the parties agree as follows:

1. **Definitions.** Terms used, but not otherwise defined, shall have the same meaning as those terms in 45 CFR Sections 160.103, 164.304 and 164.501.

a. "Business Associate" shall have the meaning given to such term under the HIPAA Regulations, including, but not limited to, 45 CFR Section 160.103.

b. "Covered Entity" shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR Section 160.103.

c. "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual, the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including, but not limited to 45 CFR Section 160.103. [45 CFR Parts 160, 162 and 164]

d. "Electronic Protected Health Information" or "ePHI" means any information that is transmitted or maintained in electronic media: (i) that relates to the past, present or future physical or mental condition of an individual, the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual. and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including, but not limited to 45 CFR Section 160.103. [45 CFR Parts 160, 162 and 164]

e. "Electronic Media" shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including but not limited to, 45 CFR Section 160.103.

f. "Security incident" shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including but not limited to, 45 CFR Section 164.304.

**Appendix B**

2. **Obligations of Associate.**

a. Permitted Uses and Disclosures. Associate may use and/or disclose PHI received by Associate pursuant to the Agreement ("County's PHI") solely in accordance with the specifications set forth in the Scope of Services, Appendix A. In the event of any conflict between this Addendum and Appendix A, this Addendum shall control. [45 CFR § 164.504(e)(2)(i)]

b. Nondisclosure. Associate shall not use or further disclose County's PHI other than as permitted or required by law. [45 CFR § 164.504(e)(2)(ii)(A)]

c. Safeguards. Associate shall use appropriate safeguards to prevent use or disclosure of County's PHI in a manner other than as provided in this Addendum. [45 CFR § 164.504(e)(2)(ii)(B)] Associate shall maintain a comprehensive written information security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Associate's operations and the nature and scope of its activities. Appropriate safeguards used by Associate shall protect the confidentiality, integrity, and availability of the PHI and ePHI that is created, received, maintained, or transmitted on behalf of the County. [45 CFR § 164.314(a)(2)(i)(A)] County has at its sole discretion, the option to audit and inspect, the Associate's safeguards at any time during the life of the Agreement, upon reasonable notice being given to Associate for production of documents and coordination of inspection(s).

d. Reporting of Disclosures. Associate shall report to the County's Project Manager, any use or disclosure of the County's PHI in a manner other than as provided in this Addendum. [45 CFR § 164.504(e)(2)(ii)(c)] Associate shall report to the County through the County's Project Manager, any security incident of which it becomes aware within forty-eight (48) hours of discovery of the incident. [45 CFR § 164.314(a)(2)(i)(C)]

e. Associate's Agents. Associate agrees and shall ensure that any agents, including subcontractors, to whom it provides PHI received from (or created or received by Associate on behalf of) the County, agrees in writing to the same restrictions and conditions that apply to Associate with respect to such PHI and that such agents conduct their operations within the United States. Associate agrees and shall ensure that any agents, including subcontractors, to whom it provides ePHI received, created, maintained, or transmitted on behalf of the County, agrees in writing to implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of that ePHI. [45 CFR § 164.314(a)(2)(i)(B)] In no case may Associate's Agents reside and operate outside of the United States.

f. Documentation of Disclosures. Associate agrees to document disclosures of the County's PHI and information related to such disclosures as would be required for the County to respond to a request by an individual for an accounting of disclosures of PHI. Associate agrees to provide the County or an individual, in a time and manner designated by the County, information collected in accordance with the Agreement, to permit the County to respond to such a request for an accounting. [45 CFR § 164.528]

g. Availability of Information to County. Associate shall make available to the County such information as the County may require to fulfill the County's obligations to provide access to, provide a copy of, and account for, disclosures of PHI pursuant to HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR Sections 164.524 and 164.528. [45 CFR § 164.504(e)(2)(ii)(E) and (G)]

h. Amendment of PHI. Associate shall make the County's PHI available to the County as may be required to fulfill the County's obligations to amend PHI pursuant to HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR Section 164.526 and Associate shall, as directed by the County, incorporate any amendments to the County's PHI into copies of such PHI maintained by Associate, and in the time and manner designated by the County. [45 CFR § 164.504(e)(2)(ii)(F)]

i. Internal Practices. Associate shall make its internal practices, books and records relating to the use and disclosure of the County's PHI (or PHI created or received by Associate on behalf of the County) available to the County and to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by the

County or the Secretary for purposes of determining Associate's compliance with HIPAA and the HIPAA Regulations. [45 CFR § 164.504(e)(2)(ii)(H) and 45 CFR Part 64, Subpart C.]

j. Mitigation. Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Associate of a use or disclosure of the County's PHI by Associate in violation of the requirements of this Addendum.

k. Associate's Insurance. Associate agrees to maintain the insurance coverage provided in the Agreement.

l. Notification of Breach. Associate shall notify the County within twenty-four (24) hours, and shall provide written notice no later than forty-eight (48) hours of any suspected or actual breach of security, intrusion or unauthorized disclosure of PHI and/or any actual or suspected disclosure of data in violation of any applicable federal or state laws or regulations. Associate shall take (i) prompt corrective action to cure any such deficiencies, and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

m. Expenses. Any and all expenses incurred by Associate in compliance with the terms of this Addendum or in compliance with the HIPAA Regulations shall be borne by Associate.

n. No Third Party Beneficiary. The provisions and covenants set forth in this Agreement are expressly entered into only by and between Associate and the County and are intended only for their benefit. Neither Associate nor the County intends to create or establish any third party beneficiary status or right (or the equivalent thereof) in any other third party nor shall any other third party have any right to enforce or enjoy any benefit created or established by the provisions and covenants in this Agreement.

3. **Audits, Inspection and Enforcement.** From time to time, after reasonable notice, upon any breach of this Addendum by Associate, the County may inspect the facilities, systems, books and records of Associate to monitor compliance with this Addendum. Associate shall promptly remedy any violation of this Addendum and shall certify the same to the County in writing. The fact that the County inspects, or fails to utilize its right to inspect, Associate's facilities, systems, books, records, and procedures does not relieve Associate of its responsibility to comply with this Addendum, nor does the County's (i) failure to detect or (ii) detection, but failure to notify Associate or require Associate to remedy such breach, constitute acceptance of such practice or a waiver of the County's enforcement rights under this Addendum.

4. **Termination.**

a. Material Breach. A breach by Associate of any provision of this Addendum, shall constitute a material breach of the Agreement and shall provide grounds for immediate termination of the Agreement by the County. [45 CFR § 164.504(e)(3) and 45 CFR § 164.314(a)(2)(i)(D)]

b. Termination for Cause - Reasonable Steps to Cure Breach. If the County recognizes a pattern of activity or practice of Associate that constitutes a material breach or violation of the Associate's obligations under the provisions of this Addendum and does not terminate the Agreement pursuant to Section 4a, above, the County may provide an opportunity for Associate to end the violation or cure the breach within five (5) days, or other cure period as may be specified in the Agreement. If Associate does not cure the breach or end the violation within the time period provided, the County may immediately terminate the Agreement.

c. Judicial or Administrative Proceedings. The County may terminate the Agreement, effective immediately, if (i) Associate is named as a defendant in a criminal or administrative proceeding for a violation of HIPAA, or (ii) a finding or stipulation that Associate has violated any standard or requirement of the HIPAA Regulations (or other security or privacy law) is made in any administrative or civil proceeding.

d. Effect of Termination. Upon termination of the Agreement for any reason, Associate shall return or destroy as directed by the County all PHI, including but not limited to ePHI, received from the County (or created or received by Associate on behalf of the County) that Associate still maintains in any form. This provision shall also apply to County PHI that is in the possession of subcontractors or agents of Associate. Associate shall retain no copies of such

PHI or, if return or destruction is not feasible, Associate shall provide to the County notification of the conditions that make return or destruction infeasible, and shall continue to extend the protections of this Addendum to such information, and limit further use or disclosure of such PHI to those purposes that make the return or destruction of such PHI infeasible. [45 CFR § 164.504(e)(2)(ii)(I)]

5. **Indemnification.** Associate shall indemnify and hold harmless the County and its officers, employees, trustees, agents, and instrumentalities (the indemnified parties) from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, trustees, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to, or resulting from the performance of this Addendum by Associate or its employees, agents, servants, partners, principals, or subcontractors. Associate shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of any of the indemnified parties, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Associate expressly understands and agrees that any insurance protection required by this Addendum, or otherwise provided by Associate, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the indemnified parties as herein provided. This paragraph shall survive the termination of the Agreement.

6. **Limitation of Liability.** Nothing in this Addendum shall be construed to affect or limit the County's sovereign immunity as set forth in Florida Statutes, Section 768.28.

7. **Amendment.**

a. Amendment to Comply with Law. The parties acknowledge that state and federal laws relating to the security and privacy of PHI, including electronic data, are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HIPAA Regulations and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that the County must receive satisfactory written assurance from Associate that Associate will adequately safeguard all PHI that it receives or creates pursuant to this Agreement. Upon the County's request, Associate agrees to promptly enter into an amendment to the Agreement embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA Regulations or other applicable laws. The County, in addition to any other remedies including specific performance, may terminate the Agreement upon five [5] days' written notice in the event Associate does not enter into said amendment to the Agreement providing assurances regarding the safeguarding of PHI that the County, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA Regulations. Notwithstanding Associate's failure to enter into an amendment, Associate shall comply with all provisions of the HIPAA laws.

b. Amendment to Business Associate Addendum. In addition to amendments described in 7a above, this Addendum may be otherwise modified or amended by written mutual agreement of the parties without amendment of the remainder of this Agreement.

8. **Assistance in Litigation or Administrative Proceedings.** Associate shall make itself, and any subcontractors, employees or agents assisting Associate in the performance of its obligations under this Agreement, available to the County at the County's convenience upon reasonable notice, at no cost to the County, to testify as witnesses, for document production, or otherwise, in the event of litigation or administrative proceedings being commenced against the County, its trustees, officers, agents or employees based upon claimed violation of HIPAA, the HIPAA Regulations or other laws relating to security and privacy, except where Associate or its subcontractor, employee or agent is a named adverse party.

9. **Effect on Agreement.** Except as specifically required to implement the purposes of this Addendum, or to the extent inconsistent with this Addendum, all other terms of the Agreement shall remain in force and effect. In the event of any conflict between this Addendum and Agreement, this Addendum shall control.

10. **Interpretation.** This Addendum and the Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA Regulations and applicable Florida laws. The parties agree that any ambiguity in

this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA Regulations.

**11.** **Jurisdiction**. Any litigation between the parties regarding the terms of this Addendum shall take place in Miami-Dade County, Florida.

Head Start Program Diagnostic & Therapeutic Services Pool

Contract No. RFQ782b

Target Geographic Areas: Hialeah, Southwest, and Central Miami-Dade County

Service: Speech

THIS AGREEMENT made and entered into as of this _____ day of _____ by and between Speech Pathology and Educational Center, Inc., a corporation organized and existing under the laws of the State of Florida, having its principal office at 8510 S. W. 8th Street, Miami, FL 33144 (hereinafter referred to as the "Contractor"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County"),

WITNESSETH:

WHEREAS, the Contractor has offered to provide Services as part of the Speech, Occupational and Physical Diagnostic & Therapeutic Services Pool for the Head Start Program, on a non-exclusive basis, that shall conform to the Scope of Services (Appendix A); Miami-Dade County's Request for Qualifications (RFQ) No. 782 and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the Contractor has submitted a written proposal dated August 22, 2011, hereinafter referred to as the "Contractor's Proposal" which is incorporated herein by reference; and,

WHEREAS, the County desires to procure from the Contractor such Diagnostic and Therapeutic Services for the County, in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

## ARTICLE 1. DEFINITIONS

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:

a) The words "Contract" or "Contract Documents" or "Agreement" to mean collectively these terms and conditions, the Scope of Services (Appendix A), the Business Associate Addendum (Appendix B), RFQ No. 782 and all associated addenda and attachments, the Contractor's Proposal, and all other attachments hereto and all amendments issued hereto.

b) The words "Contract Date" to mean the date on which this Agreement is effective.

c) The words "Contract Manager" to mean Miami-Dade County's Director, Internal Services Department, or the duly authorized representative designated to manage the Contract.

d) The word "Contractor" to mean Speech Pathology and Educational Center, Inc. and its permitted successors and assigns.

e) The word "Days" to mean Calendar Days.

f) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the County's Project Manager for review and approval pursuant to the terms of this Agreement.

g) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the County's Project Manager; and similarly the words "approved", acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the County's Project Manager.

h) The words "Extra Work" or "Additional Work" resulting in additions or deletions or modifications to the amount, type or value of the Work and Services as required in this Contract, as directed and/or approved by the County.

i) The words "Project Manager" to mean the County Manager or the duly authorized representative designated to manage the Project.

j) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Contractor.

k) The word "subcontractor" or "subconsultant" to mean any person, entity, firm or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.

l) The words "Work", "Services" "Program", or "Project" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.

## ARTICLE 2. ORDER OF PRECEDENCE

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) these terms and conditions, 2) Appendices to these terms and conditions (the Scope of Services and Business Associate Addendum) 3) the Miami-Dade County's RFQ No. 782 and any associated addenda and attachments thereof, and 4) the Contractor's Proposal.

## ARTICLE 3. RULES OF INTERPRETATION

a) References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.

b) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.

c) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.

d) The titles, headings, captions and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor affect the meaning thereof.

## ARTICLE 4. NATURE OF THE AGREEMENT

a) This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto or their authorized representatives.

b) The Contractor shall provide the services set forth in the Scope of Services, and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.

c) The Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.

d) The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract.

All Work and Services shall be accomplished at the direction of and to the satisfaction of the County's Project Manager.

e) The Contractor acknowledges that the County shall be responsible for making all policy decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the County. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the County with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

## ARTICLE 5. CONTRACT TERM

The Contract shall become effective on date indicated on the front page and shall continue through July 31, 2017. The County reserves the right to exercise its option to extend this Contract for up to one hundred-eighty (180) calendar days beyond the current Contract period and will notify the Contractor in writing of the extension. This Contract may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners.

## ARTICLE 6. NOTICE REQUIREMENTS

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by Registered or Certified Mail, with return receipt requested; or delivered personally; or delivered via fax or e-mail (if provided below) and followed with delivery of hard copy; and in any case addressed as follows:

(1) **to the County**

a) to the Project Manager:

Miami-Dade County
Community Action and Human Services Department
701 N. W. 1st Court
OTV 9-102
Miami, FL 33136
Attention: Head Start Program Disability Services Coordinator
Phone: 786-469-4668
Fax: 786-469-4756
E-mail: LGRACE@miamidade.gov

and,

b) to the Contract Manager:

Miami-Dade County
Internal Services Department
111 N.W. 1st Street, Suite 1375
Miami, FL 33128-1974

Attention: Procurement Management
Phone: (305) 375-5548
Fax: (305) 375-2316

(2) **To the Contractor**

Speech Pathology and Educational Center, Inc.
8510 S. W. 8th Street
Miami, FL 33144
Attention: Mildred Suarez, M.S., CCC-SLP, Director
Phone: (305) 266-5353
Fax: (305) 266-6550
E-mail: speechatspec@aol.com

Either party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

## ARTICLE 7. PAYMENT FOR SERVICES/AMOUNT OBLIGATED

The Contractor warrants that it has reviewed the County's requirements and has asked such questions and conducted such other inquiries as the Contractor deemed necessary in order to determine the price the Contractor will charge to provide the Work and Services to be performed under this Contract. The compensation for all Work and Services performed under this Contract, including all costs associated with such Work and Services, shall be in accordance with the Medicaid approved rates as specified in the Scope of Services (Appendix A), unless otherwise approved by the County, subject to appropriation and availability of funds.

All Services undertaken by the Contractor before County's approval of this Contract shall be at the Contractor's risk and expense.

## ARTICLE 8. PRICING

The Contractor's Medicaid negotiated rates apply for all diagnostic and/or therapeutic services rendered for the term of the Contract, including any extension periods; however, the Contractor may offer incentive discounts to the County at any time during the Contract term, including any extension thereof.

With respect to travel costs and travel related expenses paid by the County, the Contractor agrees to adhere to Section 112.061 of the Florida Statutes as they pertain to out-of-pocket expenses including employee lodging, transportation, per diem, and all miscellaneous cost-and fees. The County shall not be liable for any such expenses that have not been approved in advance, in writing, by the County.

## ARTICLE 9. METHOD AND TIMES OF PAYMENT

The Contractor agrees that under the provisions of this Agreement, payment for the Services shall be processed in accordance with the invoicing requirements as specified in Appendix A, Scope of Services. All invoices shall be taken from the books of account kept by the Contractor, shall be supported by copies of payroll distribution, receipt bills or other documents reasonably required by the County, shall show the County's contract number, and shall have a unique

invoice number assigned by the Contractor. It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that interest payments be made on late payments. In accordance with Florida Statutes, Section 218.74 and Section 2-8.1.4 of the Miami-Dade County Code, the time at which payment shall be due from the County or the Public Health Trust shall be forty-five (45) days from receipt of a proper invoice. The time at which payment shall be due to small businesses shall be thirty (30) days from receipt of a proper invoice. All payments due from the County or the Public Health Trust, and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Manager, or his or her designee(s), not later that sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust.

Invoices and associated back-up documentation shall be submitted in duplicate by the Contractor to the County as follows:

Miami-Dade County
Community Action and Human Services Department
Head Start Program
701 N. W. 1st Court
OTV 10-177
Miami, FL 33136
Attention: Fiscal Coordinator
Phone: 786-469-4743

The County may at any time designate a different address and/or contact person by giving written notice to the other party.

## ARTICLE 10. INDEMNIFICATION AND INSURANCE

The Contractor shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners principals or subcontractors. The Contractor shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

Upon County's notification, the Contractor shall furnish to the Internal Services Department, Certificates of Insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

1. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440.

2. Commercial General Liability Insurance on a comprehensive basis in an amount not less

than $300,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage. The mailing address of Miami-Dade County 111 N.W. 1st Street, Suite 1300, Miami, Florida 33128-1974, as the certificate holder, must appear on the certificate of insurance.**

3. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, in an amount not less than $300,000 combined single limit per occurrence for bodily injury and property damage.

4. Malpractice Insurance in an amount not less than $250,000 per claim.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operation of the Contractor. All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

OR

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued by the State of Florida Department of Financial Services and are members of the Florida Guaranty Fund.

**Certificates of Insurance must indicate that for any cancellation of coverage before the expiration date, the issuing insurance carrier will endeavor to mail thirty (30) day written advance notice to the certificate holder. In addition, the Contractor hereby agrees not to modify the insurance coverage without thirty (30) days written advance notice to the County.**

NOTE: **MIAMI-DADE COUNTY CONTRACT NUMBER AND TITLE MUST APPEAR ON EACH CERTIFICATE OF INSURANCE.**

Compliance with the foregoing requirements shall not relieve the Contractor of this liability and obligation under this section or under any other section in this Agreement.

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within ten (10) business days after notification of recommendation to award. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Contractor shall have an additional five (5) business days to submit a corrected certificate to the County. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement within fifteen (15) business days, the Contractor shall be in default of the contractual terms and conditions and award of the Contract may be rescinded, unless such timeframe for submission has been extended by the County.

The Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the County. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the

County at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the County shall suspend the Contract until such time as the new or renewed certificates are received by the County in the manner prescribed herein; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the County may, at its sole discretion, terminate this contract.

## ARTICLE 11. MANNER OF PERFORMANCE

a) The Contractor shall provide the Services described herein in a competent and professional manner satisfactory to the County in accordance with the terms and conditions of this Agreement. The County shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services. At the request of the County the Contractor shall promptly remove from the project any Contractor's employee, subcontractor, or any other person performing Services hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.

b) The Contractor agrees to defend, hold harmless and indemnify the County and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the County, occurring on account of, arising from or in connection with the removal and replacement of any Contractor's personnel performing services hereunder at the behest of the County. Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and or demotion of such Contractor's personnel.

c) The Contractor agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to replace any its personnel if so directed upon reasonable request from the County, should the County make a determination, in its sole discretion, that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.

d) The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner.

e) The Contractor shall at all times cooperate with the County and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.

f) The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

## ARTICLE 12. EMPLOYEES ARE THE RESPONSIBILITY OF THE CONTRACTOR

All employees of the Contractor shall be considered to be, at all times, employees of the Contractor under its sole direction and not employees or agents of the County. The Contractor

shall supply competent employees. Miami-Dade County may require the Contractor to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on County property is not in the best interest of the County. Each employee shall have and wear proper identification.

## ARTICLE 13. INDEPENDENT CONTRACTOR RELATIONSHIP

The Contractor is, and shall be, in the performance of all work services and activities under this Agreement, an independent contractor, and not an employee, agent or servant of the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Contractor's sole direction, supervision and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Contractor's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees and agents of the County.

The Contractor does not have the power or authority to bind the County in any promise, agreement or representation other than specifically provided for in this Agreement.

## ARTICLE 14. AUTHORITY OF THE COUNTY'S PROJECT MANAGER

a) The Contractor hereby acknowledges that the County's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Contractor's Proposal; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.

b) The Contractor shall be bound by all determinations or orders and shall promptly obey and follow every order of the Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Contractor agrees with the Project Manager's determination or order. Where orders are given orally, they will be issued in writing by the Project Manager as soon thereafter as is practicable.

c) The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Contractor and the Project Manager are unable to resolve their difference, the Contractor may initiate a dispute in accordance with the procedures set forth in this Article. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.

d) In the event of such dispute, the parties to this Agreement authorize the County Manager or designee, who may not be the Project Manager or anyone associated with this Project, acting personally, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the County Manager's purview as set forth above shall be conclusive, final and binding on parties. Any such dispute shall be brought, if at all, before the County Manager within 10 days of the occurrence, event or act out of which the dispute arises.

e) The County Manager may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether Contractor's performance or any Deliverable meets the requirements of this Agreement and any specifications with respect thereto set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the County Manager participated therein, or by any prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the Agreement. All such disputes shall be submitted in writing by the Contractor to the County Manager for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. Whenever the County Manager is entitled to exercise discretion or judgement or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The County Manager, as appropriate, shall render a decision in writing and deliver a copy of the same to the Contractor. Except as such remedies may be limited or waived elsewhere in the Agreement, Contractor reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.

## ARTICLE 15. MUTUAL OBLIGATIONS

a) This Agreement, including attachments and appendixes to the Agreement, shall constitute the entire Agreement between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of both parties.

b) Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.

c) In those situations where this Agreement imposes an indemnity obligation on the Contractor, the County may, at its expense, elect to participate in the defense if the County should so choose. Furthermore, the County may at its own expense defend or settle any such claims if the Contractor fails to diligently defend such claims, and thereafter seek indemnity for costs from the Contractor.

## ARTICLE 16. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING

The Contractor shall maintain, and shall require that its subcontractors and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in the Scope of Services. The Contractor and its subcontractors and suppliers, shall retain such records, and all other documents relevant to the Services furnished under this Agreement for a period of three (3) years from the expiration date of this Agreement and any extension thereof.

## ARTICLE 17. AUDITS

The County, or its duly authorized representatives or governmental agencies shall, until the expiration of three (3) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Contractor's books, documents, papers and records and of its subcontractors and suppliers which apply to all

matters of the County. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, as applicable, and shall only address those transactions related to this Agreement.

Pursuant to County Ordinance No. 03-2, the Contractor will grant access to the Commission Auditor to all financial and performance related records, property, and equipment purchased in whole or in part with government funds. The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

## ARTICLE 18. SUBSTITUTION OF PERSONNEL

In the event the Contractor wishes to substitute personnel for the key personnel identified by the Contractor's Proposal, the Contractor must notify the County in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution.

## ARTICLE 19. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT

The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, including its rights, title or interest in or to the same or any part thereof without the prior written consent of the County.

## ARTICLE 20. SUBCONTRACTUAL RELATIONS

a) If the Contractor will cause any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.

b) The Contractor, before making any subcontract for any portion of the services, will state in writing to the County the name of the proposed Subcontractor, the portion of the Services which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the County may require. The County will have the right to require the Contractor not to award any subcontract to a person, firm or corporation disapproved by the County.

c) Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed. Such Services performed by such Subcontractor will strictly comply with the requirements of this Contract.

d) In order to qualify as a Subcontractor satisfactory to the County, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the satisfaction of the County that it has the necessary facilities, skill and experience, and ample financial resources to perform the Services in a satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the County that it has satisfactorily performed services of the same general type which

is required to be performed under this Agreement.

e) The County shall have the right to withdraw its consent to a subcontract if it appears to the County that the subcontract will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the County's and County's proprietary and confidential information. Contractor shall furnish to the County copies of all subcontracts between Contractor and Subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the County permitting the County to request completion of performance by the Subcontractor of its obligations under the subcontract, in the event the County finds the Contractor in breach of its obligations, the option to pay the Subcontractor directly for the performance by such subcontractor. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County to any subcontractor hereunder as more fully described herein.

## ARTICLE 21. ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS

The Contractor understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the County were provided to the Contractor for evaluation purposes only. However, since these assumptions, parameters, projections, estimates and explanations represent predictions of future events the County makes no representations or guarantees; and the County shall not be responsible for the accuracy of the assumptions presented; and the County shall not be responsible for conclusions to be drawn therefrom; and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Contractor. The Contractor accepts all risk associated with using this information.

## ARTICLE 22. SEVERABILITY

If this Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

## ARTICLE 23. TERMINATION AND SUSPENSION OF WORK

a) The County may terminate this Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the County through fraud, misrepresentation or material misstatement.

b) The County may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the County and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.

c) The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be debarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.

d) In addition to cancellation or termination as otherwise provided in this Agreement, the County may at any time, in its sole discretion, with or without cause, terminate this Agreement by written notice to the Contractor.

e) In the event that the County exercises its right to terminate this Agreement, the Contractor shall, upon receipt of such notice, unless otherwise directed by the County:

i. stop work on the date specified in the notice ("the Effective Termination Date");

ii. take such action as may be necessary for the protection and preservation of the County's materials and property;

iii. cancel orders;

iv. assign to the County and deliver to any location designated by the County any noncancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services:

v. take no action which will increase the amounts payable by the County under this Agreement; and

f) In the event that the County exercises its right to terminate this Agreement, the Contractor will be compensated as stated in the payment Articles herein for the:

i. portion of the Services completed in accordance with the Agreement up to the Effective Termination Date; and

ii. noncancelable Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement but not incorporated in the Services.

g) All compensation pursuant to this Article are subject to audit.

## ARTICLE 24. EVENT OF DEFAULT

a) An Event of Default shall mean a breach of this Agreement by the Contractor. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an Event of Default, shall include the following:

i. the Contractor has not delivered Deliverables on a timely basis.

ii. the Contractor has refused or failed, except in case for which an extension of time is provided, to supply enough properly skilled Staff Personnel;

iii. the Contractor has failed to make prompt payment to subcontractors or suppliers for any Services;

iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a

receiver;

v. the Contractor has failed to obtain the approval of the County where required by this Agreement;

vi. the Contractor has failed to provide "adequate assurances" as required under subsection "b" below;

vii. the Contractor has failed in the representation of any warranties stated herein.

b) When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the County may request that the Contractor, within the timeframe set forth in the County's request, provide adequate assurances to the County, in writing, of the Contractor's ability to perform in accordance with terms of this Agreement. Until the County receives such assurances the County may request an adjustment to the compensation received by the Contractor for portions of the Services which the Contractor has not performed. In the event that the Contractor fails to provide to the County the requested assurances within the prescribed time frame, the County may:

i. treat such failure as a repudiation of this Agreement;

ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.

c) In the event the County shall terminate this Agreement for default, the County or its designated representatives, may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.

## ARTICLE 25. NOTICE OF DEFAULT - OPPORTUNITY TO CURE

If an Event of Default occurs, in the determination of the County, the County may so notify the Contractor ("Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured immediately or this Agreement with the County may be terminated. Notwithstanding, the County may, in its sole discretion, allow the Contractor to rectify the default to the County's reasonable satisfaction within a thirty (30) day period. The County may grant an additional period of such duration as the County shall deem appropriate without waiver of any of the County's rights hereunder, so long as the Contractor has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the County prescribes. The default notice shall specify the date the Contractor shall discontinue the Services upon the Termination Date.

## ARTICLE 26. REMEDIES IN THE EVENT OF DEFAULT

If an Event of Default occurs, the Contractor shall be liable for all damages resulting from the default, including but not limited to:

a) lost revenues;

b) the difference between the cost associated with procuring Services hereunder and the amount actually expended by the County for reprocurement of Services, including procurement and administrative costs; and,

c) such other direct damages.

The Contractor shall also remain liable for any liabilities and claims related to the Contractor's default. The County may also bring any suit or proceeding for specific performance or for an injunction.

## ARTICLE 27. PATENT AND COPYRIGHT INDEMNIFICATION

a) The Contractor warrants that all Deliverables furnished hereunder, including but not limited to: equipment programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any patent, copyrights, service marks, trade secret, or any other third party proprietary rights.

b) The Contractor shall be liable and responsible for any and all claims made against the County for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the Work, or the County's continued use of the Deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the County and defend any action brought against the County with respect to any claim, demand, cause of action, debt, or liability.

c) In the event any Deliverable or anything provided to the County hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation to, at the County's option to (i) modify, or require that the applicable subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the County, at the Contractor's expense, the rights provided under this Agreement to use the item(s).

d) The Contractor shall be solely responsible for determining and informing the County whether a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Deliverable hereunder. The Contractor shall enter into agreements with all suppliers and subcontractors at the Contractor's own risk. The County may reject any Deliverable that it believes to be the subject of any such litigation or injunction, or if, in the County's judgment, use thereof would delay the Work or be unlawful.

e) The Contractor shall not infringe any copyright, trademark, service mark, trade secrets, patent rights, or other intellectual property rights in the performance of the Work.

## ARTICLE 28. CONFIDENTIALITY

a) All Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County in connection with the Services performed under this Agreement, made or developed by the Contractor or its subcontractors in the course of the performance of such Services, or the results of such Services, or which the County holds the proprietary rights,

constitute Confidential Information and may not, without the prior written consent of the County, be used by the Contractor or its employees, agents, subcontractors or suppliers for any purpose other than for the benefit of the County, unless required by law. In addition to the foregoing, all County employee information and County financial information shall be considered confidential information and shall be subject to all the requirements stated herein. Neither the Contractor nor its employees, agents, subcontractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the County. Additionally, the Contractor expressly agrees to be bound by and to defend, indemnify and hold harmless the County, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.

b) The Contractor shall advise each of its employees, agents, subcontractors and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the County in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.

c) It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the County shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Services performed hereunder, the Contractor shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors or suppliers without the prior written consent of the County. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall accompany such materials.

## ARTICLE 29. PROPRIETARY INFORMATION

As a political subdivision of the State of Florida, Miami-Dade County is subject to the stipulations of Florida's Public Records Law.

The Contractor acknowledges that all computer software in the County's possession may constitute or contain information or materials which the County has agreed to protect as proprietary information from disclosure or unauthorized use and may also constitute or contain information or materials which the County has developed at its own expense, the disclosure of which could harm the County's proprietary interest therein.

During the term of the contract, the Contractor will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the County's property, any computer programs, data compilations, or other software which the County has developed, has used or is using, is holding for use, or which are otherwise in the possession of the County (hereinafter "Computer Software"). All third-party license agreements must also be honored by the contractors and their employees, except as authorized by the County and, if the Computer Software has been leased or purchased by the County, all hired party license agreements must also be honored by the contractors' employees with the approval of the lessor or Contractors thereof. This includes mainframe, minis, telecommunications, personal computers and any and all information technology software.

The Contractor will report to the County any information discovered or which is disclosed to the Contractor which may relate to the improper use, publication, disclosure or removal from the County's property of any information technology software and hardware and will take such steps as are within the Contractor's authority to prevent improper use, disclosure or removal.

## ARTICLE 30. PROPRIETARY RIGHTS

a) The Contractor hereby acknowledges and agrees that the County retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the County to the Contractor hereunder or furnished by the Contractor to the County and/or created by the Contractor for delivery to the County, even if unfinished or in process, as a result of the Services the Contractor performs in connection with this Agreement, including all copyright and other proprietary rights therein, which the Contractor as well as its employees, agents, subcontractors and suppliers may use only in connection of the performance of Services under this Agreement. The Contractor shall not, without the prior written consent of the County, use such documentation on any other project in which the Contractor or its employees, agents, subcontractors or suppliers are or may become engaged. Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the County's copyrights or other proprietary rights.

b) All rights, title and interest in and to certain inventions, ideas, designs and methods, specifications and other documentation related thereto developed by the Contractor and its subcontractors specifically for the County, hereinafter referred to as "Developed Works" shall become the property of the County.

c) Accordingly, neither the Contractor nor its employees, agents, subcontractors 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 the Contractor, or any employee, agent, subcontractor or supplier thereof, without the prior written consent of the County, except as required for the Contractor's performance hereunder.

d) Except as otherwise provided in subsections a, b, and c above, or elsewhere herein, the Contractor and its subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder, that have not been customized to satisfy the performance criteria set forth in the Scope of Services. Notwithstanding the foregoing, the Contractor hereby grants, and shall require that its subcontractors and suppliers grant, if the County so desires, a perpetual, irrevocable and unrestricted right and license to use, duplicate, disclose and/or permit any other person(s) or entity(ies) to use all such Licensed Software and the associated specifications, technical data and other Documentation for the operations of the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. Such license specifically includes, but is not limited to, the right of the County to use and/or disclose, in whole or in part, the technical documentation and Licensed Software, including source code provided hereunder, to any person or entity outside the County for such person's or entity's use in furnishing any and/or all of the Deliverables provided hereunder exclusively for the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. No such License Software,

specifications, data, documentation or related information shall be deemed to have been given in confidence and any statement or legend to the contrary shall be void and of no effect.

## ARTICLE 31. VENDOR REGISTRATION AND FORMS/CONFLICT OF INTEREST

a) Vendor Registration

The Contractor shall be a registered vendor with the County – Internal Services Department, for the duration of this Agreement. In becoming a Registered Vendor with Miami-Dade County, the Contractor confirms its knowledge of and commitment to comply with the following:

1. ***Miami-Dade County Ownership Disclosure Affidavit***
   (Section 2-8.1 of the County Code)

2. ***Miami-Dade County Employment Disclosure Affidavit***
   *(Section 2.8-1(d)(2) of the County Code)*

3. ***Miami-Dade Employment Drug-free Workplace Certification***
   *(Section 2-8.1.2(b) of the County Code)*

4. ***Miami-Dade Disability and Nondiscrimination Affidavit***
   *(Section 2-8.1.5* of the County Code*)*

5. ***Miami-Dade County Debarment Disclosure Affidavit***
   *(Section 10.38 of the County Code)*

6. ***Miami-Dade County Vendor Obligation to County Affidavit***
   *(Section 2-8.1 of the County Code)*

7. ***Miami-Dade County Code of Business Ethics Affidavit***
   *(Section 2-8.1(i) and 2-11(b)(1) of the County Code through (6) and (9) of the County Code and Section 2-11.1(c) of the County Code)*

8. ***Miami-Dade County Family Leave Affidavit***
   *(Article V of Chapter 11 of the County Code)*

9. ***Miami-Dade County Living Wage Affidavit***
   *(Section 2-8.9 of the County Code)*

10. ***Miami-Dade County Domestic Leave and Reporting Affidavit***
    *(Article 8, Section 11A-60 11A-67 of the County Code)*

11. ***Subcontracting Practices***
    *(Ordinance 97-35)*

12. ***Subcontractor /Supplier Listing***
    *(Section 2-8.8 of the County Code)*

13. ***Environmentally Acceptable Packaging***
    *(Resolution R-738-92)*

14. ***W-9 and 8109 Forms***
    (as required by the Internal Revenue Service)

15. ***FEIN Number or Social Security Number***
    In order to establish a file, the Contractor's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. This number becomes Contractor's "County Vendor Number". To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:
    - Identification of individual account records
    - To make payments to individual/Contractor for goods and services provided to Miami-Dade County
    - Tax reporting purposes
    - To provide a unique identifier in the vendor database that may be used for searching and sorting departmental records

16. ***Office of the Inspector General***
    (Section 2-1076 of the County Code)

17. ***Small Business Enterprises***
    The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.2, 2-8.2.3 and 2-8.2.4 of the County Code and Title 49 of the Code of Federal Regulations.

18. ***Antitrust Laws***
    By acceptance of any contract, the Contractor agrees to comply with all antitrust laws of the United States and the State of Florida.

b) Conflict of Interest

Section 2-11.1(d) of Miami-Dade County Code requires that any County employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, competing or applying for a contract, must first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County. Any such contract or business engagement entered in violation of this subsection, as amended, shall be rendered voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

## ARTICLE 32. INSPECTOR GENERAL REVIEWS

***Independent Private Sector Inspector General Reviews***

Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Contractor shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Contractor, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Contractor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

***Miami-Dade County Inspector General Review***

According to Section 2-1076 of the Code of Miami-Dade County, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Contractor. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (I) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under $1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award.***

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General is empowered to retain the services of independent private sector inspectors general (IPSIG) to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Contractor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Contractor from the Inspector General or IPSIG retained by the Inspector General, the Contractor shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Contractor's possession, custody or control which, in the Inspector General's or

IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

## ARTICLE 33. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS

Contractor agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State and the County orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this Agreement, including but not limited to:

a) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.

b) Miami-Dade County Florida, Department of Small Business Development Participation Provisions, as applicable to this Contract.

c) Environmental Protection Agency (EPA), as applicable to this Contract.

d) Miami-Dade County Code, Chapter 11A, Article 3. All contractors and subcontractors performing work in connection with this Contract shall provide equal opportunity for employment because of race, religion, color, age, sex, national origin, sexual preference, disability or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.

e) "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.

f) Miami-Dade County Code Section 10-38 "Debarment".

g) Miami-Dade County Ordinance 99-5, codified at 11A-60 et. seq. of Miami-Dade Code pertaining to complying with the County's Domestic Leave Ordinance.

h) Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

i) "Sherman S. Winn Prompt Payment Ordinance" Section 2-8.14 of the County Code.

The Contractor shall hold all licenses and/or certifications, obtain and pay for all permits and/or inspections, and comply with all laws, ordinances, regulations and building code requirements applicable to the work required herein. Damages, penalties, and/or fines imposed on the County or Contractor for failure to obtain and maintain required licenses, certifications, permits and/or inspections shall be borne by the Contractor. The Project Manager shall verify the certification(s), license(s), permit(s), etc. for the Contractor prior to authorizing work and as needed.

Notwithstanding any other provision of this Agreement, Contractor shall not be required pursuant to this Agreement to take any action or abstain from taking any action if such action or abstention would, in the good

faith determination of the Contractor, constitute a violation of any law or regulation to which Contractor is subject, including but not limited to laws and regulations requiring that Contractor conduct its operations in a safe and sound manner.

## ARTICLE 34. NONDISCRIMINATION

During the performance of this Contract, Contractor agrees to not discriminate against any employee or applicant for employment because of race, religion, color, sex, handicap, marital status, age or national origin, and will take affirmative action to ensure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

By entering into this Contract, the Contractor attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If the Contractor or any owner, subsidiary or other firm affiliated with or related to the Contractor is found by the responsible enforcement agency or the County to be in violation of the Act or the Resolution, such violation shall render this Contract void. This Contract shall be void if the Contractor submits a false affidavit pursuant to this Resolution or the Contractor violates the Act or the Resolution during the term of this Contract, even if the Contractor was not in violation at the time it submitted its affidavit.

## ARTICLE 35. CONFLICT OF INTEREST

The Contractor represents that:

a) No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the grant of this Agreement.

b) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:

   i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or

   ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.

c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.

d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.

e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the County's Project Manager.

Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

## ARTICLE 36. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

Under no circumstances shall the Contractor without the express written consent of the County:

a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and

b) Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and

c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the County.

## ARTICLE 37. BANKRUPTCY

The County reserves the right to terminate this contract, if, during the term of any contract the Contractor has with the County, the Contractor becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Contractor under federal bankruptcy law or any state insolvency law.

## ARTICLE 38. GOVERNING LAW

This Contract, including appendices, and all matters relating to this Contract (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the State of Florida. Venue shall be Miami-Dade County.

## ARTICLE 39. INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION and/or PROTECTED HEALTH INFORMATION

Any person or entity that performs or assists Miami-Dade County with a function or activity involving the use or disclosure of "Individually Identifiable Health Information (IIHI) and/or Protected Health Information (PHI) shall comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the Miami-Dade County Privacy Standards Administrative Order. HIPAA mandates for privacy, security and electronic transfer standards, include but are not limited to:

1. Use of information only for performing services required by the contract or as required by law;
2. Use of appropriate safeguards to prevent non-permitted disclosures;

3. Reporting to Miami-Dade County of any non-permitted use or disclosure;
4. Assurances that any agents and subcontractors agree to the same restrictions and conditions that apply to the Contractor and reasonable assurances that IIHI/PHI will be held confidential;
5. Making Protected Health Information (PHI) available to the customer;
6. Making PHI available to the customer for review and amendment; and incorporating any amendments requested by the customer;
7. Making PHI available to Miami-Dade County for an accounting of disclosures; and
8. Making internal practices, books and records related to PHI available to Miami-Dade County for compliance audits.

PHI shall maintain its protected status regardless of the form and method of transmission (paper records, and/or electronic transfer of data). The Contractor must give its customers written notice of its privacy information practices including specifically, a description of the types of uses and disclosures that would be made with protected health information.

**ARTICLE 40. SURVIVAL**

The parties acknowledge that any of the obligations in this Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Contractor and the County under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the contract date herein above set forth.

| Contractor | Miami-Dade County |
|---|---|
| By: Mildred Suarez | By: _____ |
| Name: Mildred Suarez | Name: _____ |
| Title: President | Title: _____ |
| Date: 10/24/2011 | Date: _____ |
| Attest: _____ Corporate Secretary/Notary Public | Attest: _____ Clerk of the Board |
| MARIA E. CEBALLOS | |
| Corporate Secretary Seal | Approved as to form and legal sufficiency |
| MARIA E. CEBALLOS MY COMMISSION EXPIRES May 2, 2014 #DD 975022 Bonded thru Notary Public Underwriters NOTARY PUBLIC, STATE OF FLORIDA | _____ Assistant County Attorney |

# Appendix A

## Scope of Services

### 1. Introduction

Miami-Dade County, hereinafter referred to as the "County," as represented by the Miami-Dade County Community Action and Human Services Department, is establishing a Head Start Program Diagnostic & Therapeutic Services Pool of pre-qualified providers with applicable expertise to provide 1) Speech, 2) Occupational, and 3) Physical, diagnostic and therapeutic services to approximately 450 children and their families served by the Head Start/Early Head Start's (HS/EHS) Programs.

### A. Objective

The County requires Contractor to render comprehensive diagnostic and therapeutic services, to HS/EHS Program children identified by the Program Disability Services Coordinator, through a coordinated system for developmental, sensory, motor, language and cognitive concerns.

### B. Designated Target Geographic Areas/Services

The following are the designated target geographic areas and services that Contractor has been pre-approved to serve.

**Areas:** Hialeah, Southwest, Central and West Central Miami-Dade County

**Service:** Speech

The Contractor is initially pre-approved to serve **100** children. The County reserves the right to adjust the designated Target Geographic Areas assignment and/or Services provided including the number of children serviced by Contractor to ensure that the County's goals and Program needs are met.

### 2. Requirements

### A. Minimum Requirements

1. Contractor's therapists performing Services shall be licensed by the State of Florida Department of Health, Division of Medical Quality Assurance, for the particular services (e.g., speech, occupational and/or physical therapy) provided, for the duration of the Contract; and

2. The Contractor shall be a Medicaid Provider for the duration of the Contract.

### B. Preferred Qualifications

The County has relied on the Contractor's Proposal to determine that Contractor has met the Preferred Qualifications.

1. Contractor possess at least three years of experience in providing similar diagnostic and therapeutic services with specific knowledge of child development milestones and assessment of children birth to five years of age.

2. Contractor maintains membership(s) with the American Speech-Language-Hearing Association (ASHA), American Occupational Therapy Association (AOTA) and/or American Physical Therapy Association (APTA), as applicable to the type of diagnostic and therapeutic services provided.

The County reserves the right to review any firm which Contractor requests contract assignment, pursuant to Article 19, to determine whether the assignee meets the Minimum and Preferred Qualifications.

**3. Requirements and Services to be Provided**

The Contractor shall provide the following services for the awarded Target Geographic Areas:

a. Adhere to all applicable Head Start Performance Standards, notices and instructions as promulgated by U.S. Department of Health and Human Services (DHHS) Administration for Children, Youths and Families (ACYF), including but not limited to, the Code of Federal Regulations (CFR), Title 45 Parts 74, 1304.20, 1304.21, 1304.52, 1308.4 and 1308.6, Florida Statutes (Section 402.301-402, 319; Section 120.60). Florida Administrative Code (Chapter 65C-22; Chapter 64E-11) and appropriate County requirements, all of which are incorporated herein by reference. The Performance Standards are available through the following link: http://eclkc.ohs.acf.hhs.gov/hslc/Program%20Design%20and%20Management/Head%20Start%20Requirements/Head%20Start%20Requirements.

b. Administer a coordinated system to screen, assess, evaluate and provide educationally relevant speech, occupational, and/or physical therapy services, as assigned by the HS/EHS Program' Disability Services Coordinator, to Program children, ages birth to five years. Contractor's services shall provide a consistent referral procedure for further evaluation by provider and treatment of Program children.

c. Ensure that Program children approved for diagnostic and therapeutic services with Medicaid or private insurance coverage receive all applicable benefits. Medicaid and insurance provider shall be billed for Services rendered, when applicable. If Medicaid and/or insurance coverage does not include all Services listed in the Scope of Services herein, services that are deemed necessary and approved by the HS/EHS Program's Disability Services Coordinator will be reimbursed by the County. The County will pay up to the rate that the individual Contractor has negotiated with the local Medicaid Administrator for reimbursement.

d. Ensure that all testing instruments and protocols utilized in the evaluation and assessment of Program children are supported by Miami-Dade County Public Schools (M-DCPS) Part B Transition Requirements for Pre-K Evaluations. The information is available through the following link: http://ese.dadeschools.net *(listed under Policies and Procedures).*

e. Perform speech/language, occupational and/or physical evaluation, assessment and therapeutic services of Program children consistent with professional standards and ethical requirements as imposed by the State of Florida Department of Health, Division of Medical Quality Assurance. The County reserves the right to interview all therapists prior to assignments and determine which therapists will be utilized for the Services. The County

may require Contractor to re-assign therapists in accordance with children's needs and remove therapists from rendering Services in accordance with Article 12 of the agreement.

f. Prepare and submit written analysis report to the County's HS/EHS Program's Disability Services Coordinator within two (2) weeks of completion of evaluation/assessment. The report shall include copies of the testing instruments and protocols utilized, individual treatment plan, report to physician and any other appropriate recommendations for each child assessed.

g. Recommend delivery model of therapy sessions for Program children. Therapy sessions are usually delivered in a group setting (4 children maximum per group) as a one-half hour session. However, some instances may require individual therapy sessions. Therapy delivery model to be administered shall be determined by the M-DCPS Special Education Division Staffing Team deliberating at the Individual Education Plan (IEP) Eligibility Meeting, and approved by the HS/EHS Program Disability Services Coordinator, prior to its delivery.

h. Maintain progress notes as established by the HS Program. Progress notes shall include: (1) description of therapy administered, (2) duration of session, (3) child's name and date of birth, (4) identification of Program center site where services were rendered, (5) date of service, (6) objective of session, and (7) measurable outcome achieved. All progress notes shall be signed by the therapist providing the service and a copy shall be submitted to the respective child's Program center at the end of each month for inclusion in the child's record. Additionally, a copy of progress notes shall be forwarded to the HS/EHS Program Disability Services Coordinator as part of the reporting requirements (see Section 6 for requirements).

i. Conduct classroom observations and formulate strategies to assist Program instructional staff and parents of children with suspected disabilities (e.g., strategies for promoting speech, techniques for adapting learning environment, etc.).

j. Attend meetings with Program staff, as deemed necessary and as scheduled by the HS/EHS Program Disability Services Coordinator.

k. Provide individual consultations and in-service trainings/workshops to Program instructional and administrative staff identified by the HS/EHS Program Disability Services Coordinator. Topics of training sessions may include, but are not limited to, strategies for promoting speech, occupational and physical development, and techniques and methods for adapting the learning environment to meet the needs of children with disabilities. Parents identified by the Disability Services Coordinator may also receive training that will allow for learning therapy techniques and how to carry them over into the child's daily routines, ultimately increasing the effectiveness of therapy. Contractor may be required to collaborate with other Pool members in the presentation of in-service trainings/workshops.

l. Provide required diagnostic and therapeutic services for Program children without compensation **if** Service is not covered by Medicaid, **and**, in the event that all funds budgeted for this Program are expended prior to the conclusion of the Program Year.

m. Gain approval from HS/EHS Program Disability Services Coordinator prior to performing any services that are not specifically identified in the Scope of Services herein. Not all diagnostic and therapeutic services that may be required are identified in the Scope of

Services. The County reserves the right to authorize any required services and reimburse said services at the current Medicaid rate.

n. Perform Medicaid relevant administrative support and consultative services on an as needed basis and at the request of the HS/EHS Program's Disability Services Coordinator which may include, but not limited to, the following:

   i. Invoicing and collection, including data entry and electronic submission of claims;
   ii. Medicaid/HMO Policy and Procedures, including documentation;
   iii. Quality assurance reviews of files and records;
   iv. Assistance in preparation for Medicaid audits;
   v. Other related consultative services as necessary and requested by HS Program Staff;
   vi. Review of current cases;
   vii. Assistance in formulation and review of individual treatment plans;
   viii. Individual evaluation, to include typed report as deemed necessary and as requested by HS/EHS Program Disability Services Coordinator;
   ix. Review and consultation with child's primary physician;
   x. Personal meeting or telephone consultation, as necessary, with parents of each child served;
   xi. Child developmental and behavioral assessment;
   xii. Telephone consultations with HS Program Staff;
   xiii. Other Medicaid relevant services not specifically identified; and
   xiv. Consultative advice, including in-service training.

o. Provide notification to the State of Florida Medicaid Program Area Office, ***in writing***, that an affiliation with Miami-Dade County, with reference to the appropriate County entity and Medicaid provider number, is in effect.

p. Perform other related Services as requested by the HS/EHS Program Disability Services Coordinator.

q. Comply with all laws, regulations, ordinances and resolutions applicable to the Heads Start and Early Head Start Services.

r. Contractor should provide therapists that are representative of the diversity of the populations in the community it serves and possess linguistic competency to effectively serve the targeted community.

**4. Location of Services**

The Services shall be provided by the Contractor at the respective HS/EHS Program centers located within the assigned Target Geographic Area(s). Services may also be provided at the Contractor's facility, if necessary and authorized by the HS/EHS Program Disability Services Coordinator.

**5. Hours of Service and Availability**

Services shall be provided while the HS/EHS Program centers are open *(Monday-Friday, 7:30 a.m. through 4:00 p.m.)*. The Program centers' operate in accordance with Miami-Dade County Public School's schedule. However, Services may also be rendered on planning days and school breaks at the Contractor's facility, as approved by the HS/EHS Program Disability Services Coordinator.

**6. Reporting Requirements**

The Contractor shall provide to the HS/EHS Program's Disability Services Coordinator a monthly report for the services provided.

The monthly report shall include the following information:

a. Listing of children evaluated with respective assessment reports completed, testing protocols utilized, date of evaluation, and therapist completing service;
b. Listing of children receiving therapeutic services to include the frequency of sessions and type of service provided per child with funding source identified; follow-up therapeutic services and current status of referrals;
c. Progress notes, observation and parent consultation reports;
d. Completed travel log per therapist for whom reimbursement of travel (i.e., mileage, tolls, parking) expenses is being submitted for;
e. Training design/agenda, attendance sign-in sheets, and a copy of the handout materials for all training of HS Program Staff and/or parents; and
f. An itemized listing of HS Program children referred to Medicaid or insurance provider for authorization of therapeutic services, status of referrals, and basis for any denials.

**7. Invoicing Requirements**

The Contractor shall invoice the HS/EHS Program for the approved Services not covered by Medicaid, private insurance provider or third party payer on a monthly basis, on or before the 15th day of each month following the month in which the Services were rendered, unless the County has granted the Contractor an extension in writing. Payment requests shall be accompanied by such documentation as requested by the HS/EHS Program's Disability Services Coordinator to include documentation identifying Contactor's non-federal resources, either in cash or in-kind, in an amount equivalent to 25% of the total invoice amount being submitted for reimbursement. For the purposes of the in-kind match, Contractor's administrative costs shall not account for more than 15% of the invoice submitted to the County for reimbursement.

It is anticipated that the County will reimburse each invoice within four (4) to six (6) weeks from receipt of complete and error free invoices; however, it is the responsibility of the Contractor to maintain sufficient cash flow pending receipt of reimbursement from the County.

All payments due to the Contractor may be withheld pending receipt and approval by the County of all reports and documents due from the Contractor.

**8. Other Reporting Requirements**

**A. State of Florida Certificate of Status**

The Contractor shall comply with all laws, ordinances and regulations applicable to the Services contemplated herein. Contractor is presumed to be familiar with all Federal, State and local laws, ordinances, codes, rules and regulations that may in any way affect the goods or services offered, especially, Executive Order No. 11246 entitled, "Equal Opportunity" and as amended by Executive Order No. 11375, as supplemented by the Department of Labor Relations (41 CFR, Part 60), the Americans with Disabilities Act of 1990 and implementing regulations, the Rehabilitation Act of 1973, as amended, Chapter 553 of the Florida Statutes and any and all

other local, State and Federal directives, ordinances, rules, orders and laws relating to people with disabilities.

The Contractor shall submit to the HS Program Disability Services Coordinator, within thirty (30) days from the date of execution of the contract, a Certificate of Status in the name of the Contractor, which certifies the following: Contractor is organized under the laws of the State of Florida; all fees and penalties have been paid; most recent annual report has been filed with an active status; and that an Article of Dissolution has not been filed.

**B. Audit Requirements**

Please be advised that the following sequence is provided for informational purposes only.

1. Audit Required. Non-Federal entities that expend $500,000 or more in a year in Federal Awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of OMB circular No. A-133 Revised.

2. Single Audit. Non-Federal entities that expend $500,000 or more in a year in Federal awards shall have a single audit conducted in accordance with OMB Circular A-133 Revised, except when they elect to have a program-specific audit conducted in accordance with Number 3 below.

4. Program-Specific Audit Selection. Non-Federal entities that expend Federal awards under only one Federal program (excluding Research & Development) and the Federal program's laws, regulations, or grant agreements do not require a financial statement audit. The entity may elect to have a program-specific audit conducted. A program-specific audit may not be elected for Research & Development unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency or pass-through entity in the case of a sub-recipient, approves in advance a program-specific audit.

5. Exemption when Federal Awards Expended is less than $500,000. Non-Federal entities that expend less than $500,000 a year in Federal awards are exempt from Federal audit requirements for that year, except as noted OMB Circular A-133 Revised, Subpart B, Section 215(a), but records must be available for review or audit by appropriate officials of the Federal Agency, pass-through entity, and General Accounting Office (GAO).

The Contractor shall submit to the HS/EHS Program Disability Services Coordinator a complete copy of its annual audit reports performed by an independent auditor covering each of the fiscal years for which HS Program funds were awarded. Audits of government entities must comply with OMB circular A-128. Audits of non-profit organizations, non-government entities, hospitals and institutions of higher learning must comply with OMB Circular A-133.

**9. Background Screening**

The Contractor shall comply with the following tasks in providing the Services:

1. An Affidavit of Good Moral Character shall be completed and notarized for each employee, volunteer and subcontracted personnel.

2. Ensure that employees, subcontracted personnel and volunteers who work with vulnerable persons, including children, satisfactorily complete and pass Level 2 background screening before working with vulnerable persons, including children. Contractor shall furnish the

County with proof that employees, subcontracted personnel and volunteers, who work with vulnerable persons, satisfactorily passed Level 2 background screening, pursuant to Chapter 435, Florida Statutes, as may be amended from time to time. Any person with positive response(s) to any of the enumerated charges as defined in Level 1 and Level 2 background checks shall not work with children or youths. All employee personnel files shall reflect the initiation and completion of the required background screening checks. If the Contractor fails to furnish to the County proof that an employee, subcontractor or volunteer's Level 2 background screening was satisfactorily passed and completed prior to that employee, subcontractor or volunteer working with vulnerable persons including children, the Contractor's contract may be subject to termination at the sole discretion of the County.

3. Retain all records demonstrating compliance with the background screening required herein for not less than three years beyond the last date that all applicable terms of the contract have been complied with and final payment has been received and appropriate audits have been submitted to and accepted by the appropriate entity.

## 10. Schedule

Program year operates for 160 to 175 school days for Head Start Services, consistent with the Miami-Dade County Public School District's Calendar, unless otherwise indicated, and for 210 to 226 school days for Early Head Start Services.

## 11. Budget Allocation

Subject to available funding, the maximum amount payable by the County's HS/EHS Program for Services rendered, which does include Medicaid paid services, including Speech, Occupational and Physical, to Pool members in the aggregate, is anticipated not-to-exceed **Three Hundred and Fifty Thousand Dollars ($350,000.00)**, for a full Program year. The initial Program year (if a partial Program year) shall be prorated.

In the event that services authorized by the HS/EHS Program Disability Services Coordinator are not covered under the Medicaid guidelines and when no other funding source is available, the HS/EHS Program shall pay for said services as further defined herein, subject to appropriation of funds to the County from DHHS, and funding availability. The HS/EHS Program however will not pay any difference between the Contractor customary charges and Medicaid reimbursements.

Itemized invoices for Services rendered will be approved in accordance with the following Medicaid approved rates, or as amended by Medicaid:

### A. Speech Services

i. Fifty dollars ($50.00) per child for each diagnostic speech/language evaluation completed and documented by a licensed Speech Language Pathologist;
ii. Forty dollars ($40.00) per child, per 30-minute session of group speech/language therapy provided by a licensed Speech Language Pathologist;
iii. Twenty-eight dollar ($28.00) per child, per 30-session of individual speech/language therapy provided by a licensed Speech Language Assistant; and
iv. Sixty dollars ($60.00) per hour, per child, for Sign Language interpretation for child and parent.

**B. Occupational Services**

i. Fifty dollars ($50.00) per child for each diagnostic occupational evaluation completed and documented by a licensed Occupational Therapist; and
ii. Forty dollars ($40.00) per child, per 30-minute session of individual occupational therapy provided by a licensed Occupational Therapist.

**C. Physical Services**

i. Fifty dollars ($50.00) per child for each diagnostic physical evaluation completed and documented by a licensed Physical Therapist; and
ii. Forty dollars ($40.00) per child, per 30-minute session of individual physical therapy provided by a licensed Physical Therapist.

Medicaid approved rates are subject to change, therefore, the applicable approved and established Medicaid rates shall be honored.

**Appendix B**

## HIPAA BUSINESS ASSOCIATE ADDENDUM

This HIPAA Business Associate Addendum ("Addendum") supplements and is made a part of the Agreement by and between the Miami-Dade County, Florida ("County"), and Speech Pathology and Educational Center, Inc., Business Associate ("Associate").

## RECITALS

A. As part of the Agreement, it is necessary for the County to disclose certain information ("Information") to Associate pursuant to the terms of the Agreement, some of which may constitute Protected Health Information ("PHI").

B. County and Associate intend to protect the privacy and provide for the security of PHI, including but not limited to, ePHI, disclosed to Associate pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.

C. The purpose of this Addendum is to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations, including, but not limited to, Title 45, Sections 164.308(b), 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations ("CFR'"), as the same may be amended from time to time.

In consideration of the mutual promises below and the exchange of information pursuant to the Agreement, the parties agree as follows:

**1. Definitions.** Terms used, but not otherwise defined, shall have the same meaning as those terms in 45 CFR Sections 160.103, 164.304 and 164.501.

a. "Business Associate" shall have the meaning given to such term under the HIPAA Regulations, including, but not limited to, 45 CFR Section 160.103.

b. "Covered Entity" shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR Section 160.103.

c. "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual, the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including, but not limited to 45 CFR Section 160.103. [45 CFR Parts 160, 162 and 164]

d. "Electronic Protected Health Information" or "ePHI" means any information that is transmitted or maintained in electronic media: (i) that relates to the past, present or future physical or mental condition of an individual, the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual. and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including, but not limited to 45 CFR Section 160.103. [45 CFR Parts 160, 162 and 164]

e. "Electronic Media" shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including but not limited to, 45 CFR Section 160.103.

f. "Security incident" shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including but not limited to, 45 CFR Section 164.304.

**Appendix B**

**2. Obligations of Associate.**

a. Permitted Uses and Disclosures. Associate may use and/or disclose PHI received by Associate pursuant to the Agreement ("County's PHI") solely in accordance with the specifications set forth in the Scope of Services, Appendix A. In the event of any conflict between this Addendum and Appendix A, this Addendum shall control. [45 CFR § 164.504(e)(2)(i)]

b. Nondisclosure. Associate shall not use or further disclose County's PHI other than as permitted or required by law. [45 CFR § 164.504(e)(2)(ii)(A)]

c. Safeguards. Associate shall use appropriate safeguards to prevent use or disclosure of County's PHI in a manner other than as provided in this Addendum. [45 CFR § 164.504(e)(2)(ii)(B)] Associate shall maintain a comprehensive written information security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Associate's operations and the nature and scope of its activities. Appropriate safeguards used by Associate shall protect the confidentiality, integrity, and availability of the PHI and ePHI that is created, received, maintained, or transmitted on behalf of the County. [45 CFR § 164.314(a)(2)(i)(A)] County has at its sole discretion, the option to audit and inspect, the Associate's safeguards at any time during the life of the Agreement, upon reasonable notice being given to Associate for production of documents and coordination of inspection(s).

d. Reporting of Disclosures. Associate shall report to the County's Project Manager, any use or disclosure of the County's PHI in a manner other than as provided in this Addendum. [45 CFR § 164.504(e)(2)(ii)(c)] Associate shall report to the County through the County's Project Manager, any security incident of which it becomes aware within forty-eight (48) hours of discovery of the incident. [45 CFR § 164.314(a)(2)(i)(C)]

e. Associate's Agents. Associate agrees and shall ensure that any agents, including subcontractors, to whom it provides PHI received from (or created or received by Associate on behalf of) the County, agrees in writing to the same restrictions and conditions that apply to Associate with respect to such PHI and that such agents conduct their operations within the United States. Associate agrees and shall ensure that any agents, including subcontractors, to whom it provides ePHI received, created, maintained, or transmitted on behalf of the County, agrees in writing to implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of that ePHI. [45 CFR § 164.314(a)(2)(i)(B)] In no case may Associate's Agents reside and operate outside of the United States.

f. Documentation of Disclosures. Associate agrees to document disclosures of the County's PHI and information related to such disclosures as would be required for the County to respond to a request by an individual for an accounting of disclosures of PHI. Associate agrees to provide the County or an individual, in a time and manner designated by the County, information collected in accordance with the Agreement, to permit the County to respond to such a request for an accounting. [45 CFR § 164.528]

g. Availability of Information to County. Associate shall make available to the County such information as the County may require to fulfill the County's obligations to provide access to, provide a copy of, and account for, disclosures of PHI pursuant to HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR Sections 164.524 and 164.528. [45 CFR § 164.504(e)(2)(ii)(E) and (G)]

h. Amendment of PHI. Associate shall make the County's PHI available to the County as may be required to fulfill the County's obligations to amend PHI pursuant to HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR Section 164.526 and Associate shall, as directed by the County, incorporate any amendments to the County's PHI into copies of such PHI maintained by Associate, and in the time and manner designated by the County. [45 CFR § 164.504(e)(2)(ii)(F)]

i. Internal Practices. Associate shall make its internal practices, books and records relating to the use and disclosure of the County's PHI (or PHI created or received by Associate on behalf of the County) available to the County and to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by the

County or the Secretary for purposes of determining Associate's compliance with HIPAA and the HIPAA Regulations. [45 CFR § 164.504(e)(2)(ii)(H) and 45 CFR Part 64, Subpart C.]

j. Mitigation. Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Associate of a use or disclosure of the County's PHI by Associate in violation of the requirements of this Addendum.

k. Associate's Insurance. Associate agrees to maintain the insurance coverage provided in the Agreement.

l. Notification of Breach. Associate shall notify the County within twenty-four (24) hours, and shall provide written notice no later than forty-eight (48) hours of any suspected or actual breach of security, intrusion or unauthorized disclosure of PHI and/or any actual or suspected disclosure of data in violation of any applicable federal or state laws or regulations. Associate shall take (i) prompt corrective action to cure any such deficiencies, and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

m. Expenses. Any and all expenses incurred by Associate in compliance with the terms of this Addendum or in compliance with the HIPAA Regulations shall be borne by Associate.

n. No Third Party Beneficiary. The provisions and covenants set forth in this Agreement are expressly entered into only by and between Associate and the County and are intended only for their benefit. Neither Associate nor the County intends to create or establish any third party beneficiary status or right (or the equivalent thereof) in any other third party nor shall any other third party have any right to enforce or enjoy any benefit created or established by the provisions and covenants in this Agreement.

3. **Audits, Inspection and Enforcement.** From time to time, after reasonable notice, upon any breach of this Addendum by Associate, the County may inspect the facilities, systems, books and records of Associate to monitor compliance with this Addendum. Associate shall promptly remedy any violation of this Addendum and shall certify the same to the County in writing. The fact that the County inspects, or fails to utilize its right to inspect, Associate's facilities, systems, books, records, and procedures does not relieve Associate of its responsibility to comply with this Addendum, nor does the County's (i) failure to detect or (ii) detection, but failure to notify Associate or require Associate to remedy such breach, constitute acceptance of such practice or a waiver of the County's enforcement rights under this Addendum.

4. **Termination.**

a. Material Breach. A breach by Associate of any provision of this Addendum, shall constitute a material breach of the Agreement and shall provide grounds for immediate termination of the Agreement by the County. [45 CFR § 164.504(e)(3) and 45 CFR § 164.314(a)(2)(i)(D)]

b. Termination for Cause - Reasonable Steps to Cure Breach. If the County recognizes a pattern of activity or practice of Associate that constitutes a material breach or violation of the Associate's obligations under the provisions of this Addendum and does not terminate the Agreement pursuant to Section 4a, above, the County may provide an opportunity for Associate to end the violation or cure the breach within five (5) days, or other cure period as may be specified in the Agreement. If Associate does not cure the breach or end the violation within the time period provided, the County may immediately terminate the Agreement.

c. Judicial or Administrative Proceedings. The County may terminate the Agreement, effective immediately, if (i) Associate is named as a defendant in a criminal or administrative proceeding for a violation of HIPAA, or (ii) a finding or stipulation that Associate has violated any standard or requirement of the HIPAA Regulations (or other security or privacy law) is made in any administrative or civil proceeding.

d. Effect of Termination. Upon termination of the Agreement for any reason, Associate shall return or destroy as directed by the County all PHI, including but not limited to ePHI, received from the County (or created or received by Associate on behalf of the County) that Associate still maintains in any form. This provision shall also apply to County PHI that is in the possession of subcontractors or agents of Associate. Associate shall retain no copies of such

PHI or, if return or destruction is not feasible, Associate shall provide to the County notification of the conditions that make return or destruction infeasible, and shall continue to extend the protections of this Addendum to such information, and limit further use or disclosure of such PHI to those purposes that make the return or destruction of such PHI infeasible. [45 CFR § 164.504(e)(2)(ii)(I)]

5. **Indemnification.** Associate shall indemnify and hold harmless the County and its officers, employees, trustees, agents, and instrumentalities (the indemnified parties) from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, trustees, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to, or resulting from the performance of this Addendum by Associate or its employees, agents, servants, partners, principals, or subcontractors. Associate shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of any of the indemnified parties, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Associate expressly understands and agrees that any insurance protection required by this Addendum, or otherwise provided by Associate, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the indemnified parties as herein provided. This paragraph shall survive the termination of the Agreement.

6. **Limitation of Liability.** Nothing in this Addendum shall be construed to affect or limit the County's sovereign immunity as set forth in Florida Statutes, Section 768.28.

7. **Amendment.**

a. Amendment to Comply with Law. The parties acknowledge that state and federal laws relating to the security and privacy of PHI, including electronic data, are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HIPAA Regulations and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that the County must receive satisfactory written assurance from Associate that Associate will adequately safeguard all PHI that it receives or creates pursuant to this Agreement. Upon the County's request, Associate agrees to promptly enter into an amendment to the Agreement embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA Regulations or other applicable laws. The County, in addition to any other remedies including specific performance, may terminate the Agreement upon five [5] days' written notice in the event Associate does not enter into said amendment to the Agreement providing assurances regarding the safeguarding of PHI that the County, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA Regulations. Notwithstanding Associate's failure to enter into an amendment, Associate shall comply with all provisions of the HIPAA laws.

b. Amendment to Business Associate Addendum. In addition to amendments described in 7a above, this Addendum may be otherwise modified or amended by written mutual agreement of the parties without amendment of the remainder of this Agreement.

8. **Assistance in Litigation or Administrative Proceedings.** Associate shall make itself, and any subcontractors, employees or agents assisting Associate in the performance of its obligations under this Agreement, available to the County at the County's convenience upon reasonable notice, at no cost to the County, to testify as witnesses, for document production, or otherwise, in the event of litigation or administrative proceedings being commenced against the County, its trustees, officers, agents or employees based upon claimed violation of HIPAA, the HIPAA Regulations or other laws relating to security and privacy, except where Associate or its subcontractor, employee or agent is a named adverse party.

9. **Effect on Agreement.** Except as specifically required to implement the purposes of this Addendum, or to the extent inconsistent with this Addendum, all other terms of the Agreement shall remain in force and effect. In the event of any conflict between this Addendum and Agreement, this Addendum shall control.

10. **Interpretation.** This Addendum and the Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA Regulations and applicable Florida laws. The parties agree that any ambiguity in

this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA Regulations.

**11.** **Jurisdiction**. Any litigation between the parties regarding the terms of this Addendum shall take place in Miami-Dade County, Florida.

Head Start Program Diagnostic & Therapeutic Services Pool

Contract No. RFQ782c

Target Geographic Areas: Southwest, Central and Northeast Miami-Dade County

Services: Speech, Occupational and Physical

THIS AGREEMENT made and entered into as of this _____ day of _____ by and between Easter Seals South Florida, Inc., a corporation organized and existing under the laws of the State of Florida, having its principal office at 1475 N. W. 14th Avenue, Miami, FL 33125 (hereinafter referred to as the "Contractor"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County"),

WITNESSETH:

WHEREAS, the Contractor has offered to provide Services as part of the Speech, Occupational and Physical Diagnostic & Therapeutic Services Pool for the Head Start Program, on a non-exclusive basis, that shall conform to the Scope of Services (Appendix A); Miami-Dade County's Request for Qualifications (RFQ) No. 782 and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the Contractor has submitted a written proposal dated August 19, 2011, hereinafter referred to as the "Contractor's Proposal" which is incorporated herein by reference; and,

WHEREAS, the County desires to procure from the Contractor such Diagnostic and Therapeutic Services for the County, in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

## ARTICLE 1. DEFINITIONS

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:

a) The words "Contract" or "Contract Documents" or "Agreement" to mean collectively these terms and conditions, the Scope of Services (Appendix A), the Business Associate Addendum (Appendix B), RFQ No. 782 and all associated addenda and attachments, the Contractor's Proposal, and all other attachments hereto and all amendments issued hereto.

b) The words "Contract Date" to mean the date on which this Agreement is effective.

c) The words "Contract Manager" to mean Miami-Dade County's Director, Internal Services Department, or the duly authorized representative designated to manage the Contract.

d) The word "Contractor" to mean Easter Seals South Florida, Inc. and its permitted successors and assigns.

e) The word "Days" to mean Calendar Days.

f) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the County's Project Manager for review and approval pursuant to the terms of this Agreement.

g) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the County's Project Manager; and similarly the words "approved", acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the County's Project Manager.

h) The words "Extra Work" or "Additional Work" resulting in additions or deletions or modifications to the amount, type or value of the Work and Services as required in this Contract, as directed and/or approved by the County.

i) The words "Project Manager" to mean the County Manager or the duly authorized representative designated to manage the Project.

j) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Contractor.

k) The word "subcontractor" or "subconsultant" to mean any person, entity, firm or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.

l) The words "Work", "Services" "Program", or "Project" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.

## ARTICLE 2. ORDER OF PRECEDENCE

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) these terms and conditions, 2) Appendices to these terms and conditions (the Scope of Services and Business Associate Addendum) 3) the Miami-Dade County's RFQ No. 782 and any associated addenda and attachments thereof, and 4) the Contractor's Proposal.

## ARTICLE 3. RULES OF INTERPRETATION

a) References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.

b) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.

c) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.

d) The titles, headings, captions and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor affect the meaning thereof.

## ARTICLE 4. NATURE OF THE AGREEMENT

a) This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto or their authorized representatives.

b) The Contractor shall provide the services set forth in the Scope of Services, and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.

c) The Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.

d) The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract. All Work and Services shall be accomplished at the direction of and to the satisfaction of

the County's Project Manager.

e) The Contractor acknowledges that the County shall be responsible for making all policy decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the County. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the County with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

## ARTICLE 5. CONTRACT TERM

The Contract shall become effective on date indicated on the front page and shall continue through July 31, 2017. The County reserves the right to exercise its option to extend this Contract for up to one hundred-eighty (180) calendar days beyond the current Contract period and will notify the Contractor in writing of the extension. This Contract may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners.

## ARTICLE 6. NOTICE REQUIREMENTS

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by Registered or Certified Mail, with return receipt requested; or delivered personally; or delivered via fax or e-mail (if provided below) and followed with delivery of hard copy; and in any case addressed as follows:

**(1) to the County**

a) to the Project Manager:

Miami-Dade County
Community Action and Human Services Department
701 N. W. 1st Court
OTV 9-102
Miami, FL 33136
Attention: Head Start Program Disability Services Coordinator
Phone: 786-469-4668
Fax: 786-469-4756
E-mail: LGRACE@miamidade.gov

and,
b) to the Contract Manager:

Miami-Dade County
Internal Services Department
111 N.W. 1st Street, Suite 1375
Miami, FL 33128-1974
Attention: Procurement Management
Phone: (305) 375-5548
Fax: (305) 375-2316

(2) **To the Contractor**

Easter Seals South Florida, Inc.
1475 N. W. 14th Avenue
Miami, FL 33125
Attention: Louise K. Welch, President/Chief Executive Officer
Phone: (305) 325-0470
Fax: (305) 325-0578
E-mail: Lwelch@sfl.easterseals.com

Either party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

## ARTICLE 7. PAYMENT FOR SERVICES/AMOUNT OBLIGATED

The Contractor warrants that it has reviewed the County's requirements and has asked such questions and conducted such other inquiries as the Contractor deemed necessary in order to determine the price the Contractor will charge to provide the Work and Services to be performed under this Contract. The compensation for all Work and Services performed under this Contract, including all costs associated with such Work and Services, shall be in accordance with the Medicaid approved rates as specified in the Scope of Services (Appendix A), unless otherwise approved by the County, subject to appropriation and availability of funds.

All Services undertaken by the Contractor before County's approval of this Contract shall be at the Contractor's risk and expense.

## ARTICLE 8. PRICING

The Contractor's Medicaid negotiated rates apply for all diagnostic and/or therapeutic services rendered for the term of the Contract, including any extension periods; however, the Contractor may offer incentive discounts to the County at any time during the Contract term, including any extension thereof.

With respect to travel costs and travel related expenses paid by the County, the Contractor agrees to adhere to Section 112.061 of the Florida Statutes as they pertain to out-of-pocket expenses including employee lodging, transportation, per diem, and all miscellaneous cost-and fees. The County shall not be liable for any such expenses that have not been approved in advance, in writing, by the County.

## ARTICLE 9. METHOD AND TIMES OF PAYMENT

The Contractor agrees that under the provisions of this Agreement, payment for the Services shall be processed in accordance with the invoicing requirements as specified in Appendix A, Scope of Services. All invoices shall be taken from the books of account kept by the Contractor, shall be supported by copies of payroll distribution, receipt bills or other documents reasonably required by the County, shall show the County's contract number, and shall have a unique invoice number assigned by the Contractor. It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that interest payments be made on late payments. In accordance with Florida Statutes, Section 218.74 and Section 2-8.1.4 of the Miami-Dade County Code, the time at which

payment shall be due from the County or the Public Health Trust shall be forty-five (45) days from receipt of a proper invoice. The time at which payment shall be due to small businesses shall be thirty (30) days from receipt of a proper invoice. All payments due from the County or the Public Health Trust, and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Manager, or his or her designee(s), not later that sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust.

Invoices and associated back-up documentation shall be submitted in duplicate by the Contractor to the County as follows:

Miami-Dade County
Community Action and Human Services Department
Head Start Program
701 N. W. 1st Court
OTV 10-177
Miami, FL 33136
Attention: Fiscal Coordinator
Phone: 786-469-4743

The County may at any time designate a different address and/or contact person by giving written notice to the other party.

## ARTICLE 10. INDEMNIFICATION AND INSURANCE

The Contractor shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners principals or subcontractors. The Contractor shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

Upon County's notification, the Contractor shall furnish to the Internal Services Department, Certificates of Insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

1. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440.

2. Commercial General Liability Insurance on a comprehensive basis in an amount not less than $300,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage. The mailing address of Miami-Dade County 111 N.W. 1st Street, Suite 1300, Miami, Florida 33128-1974, as the certificate holder, must appear on**

**the certificate of insurance.**

3. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, in an amount not less than $300,000 combined single limit per occurrence for bodily injury and property damage.

4. Malpractice Insurance in an amount not less than $250,000 per claim.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operation of the Contractor. All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

OR

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued by the State of Florida Department of Financial Services and are members of the Florida Guaranty Fund.

**Certificates of Insurance must indicate that for any cancellation of coverage before the expiration date, the issuing insurance carrier will endeavor to mail thirty (30) day written advance notice to the certificate holder. In addition, the Contractor hereby agrees not to modify the insurance coverage without thirty (30) days written advance notice to the County.**

**NOTE: MIAMI-DADE COUNTY CONTRACT NUMBER AND TITLE MUST APPEAR ON EACH CERTIFICATE OF INSURANCE.**

Compliance with the foregoing requirements shall not relieve the Contractor of this liability and obligation under this section or under any other section in this Agreement.

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within ten (10) business days after notification of recommendation to award. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Contractor shall have an additional five (5) business days to submit a corrected certificate to the County. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement within fifteen (15) business days, the Contractor shall be in default of the contractual terms and conditions and award of the Contract may be rescinded, unless such timeframe for submission has been extended by the County.

The Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the County. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the County at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the County shall suspend the Contract until such time as the new or renewed certificates are received by the County in the manner prescribed herein; provided, however, that

this suspended period does not exceed thirty (30) calendar days. Thereafter, the County may, at its sole discretion, terminate this contract.

## ARTICLE 11. MANNER OF PERFORMANCE

a) The Contractor shall provide the Services described herein in a competent and professional manner satisfactory to the County in accordance with the terms and conditions of this Agreement. The County shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services. At the request of the County the Contractor shall promptly remove from the project any Contractor's employee, subcontractor, or any other person performing Services hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.

b) The Contractor agrees to defend, hold harmless and indemnify the County and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the County, occurring on account of, arising from or in connection with the removal and replacement of any Contractor's personnel performing services hereunder at the behest of the County. Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and or demotion of such Contractor's personnel.

c) The Contractor agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to replace any its personnel if so directed upon reasonable request from the County, should the County make a determination, in its sole discretion, that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.

d) The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner.

e) The Contractor shall at all times cooperate with the County and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.

f) The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

## ARTICLE 12. EMPLOYEES ARE THE RESPONSIBILITY OF THE CONTRACTOR

All employees of the Contractor shall be considered to be, at all times, employees of the Contractor under its sole direction and not employees or agents of the County. The Contractor shall supply competent employees. Miami-Dade County may require the Contractor to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on County property is not in the best interest of the County. Each employee shall have and wear proper identification.

## ARTICLE 13. INDEPENDENT CONTRACTOR RELATIONSHIP

The Contractor is, and shall be, in the performance of all work services and activities under this Agreement, an independent contractor, and not an employee, agent or servant of the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Contractor's sole direction, supervision and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Contractor's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees and agents of the County.

The Contractor does not have the power or authority to bind the County in any promise, agreement or representation other than specifically provided for in this Agreement.

## ARTICLE 14. AUTHORITY OF THE COUNTY'S PROJECT MANAGER

a) The Contractor hereby acknowledges that the County's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Contractor's Proposal; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.

b) The Contractor shall be bound by all determinations or orders and shall promptly obey and follow every order of the Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Contractor agrees with the Project Manager's determination or order. Where orders are given orally, they will be issued in writing by the Project Manager as soon thereafter as is practicable.

c) The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Contractor and the Project Manager are unable to resolve their difference, the Contractor may initiate a dispute in accordance with the procedures set forth in this Article. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.

d) In the event of such dispute, the parties to this Agreement authorize the County Manager or designee, who may not be the Project Manager or anyone associated with this Project, acting personally, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the County Manager's purview as set forth above shall be conclusive, final and binding on parties. Any such dispute shall be brought, if at all, before the County Manager within 10 days of the occurrence, event or act out of which the dispute arises.

e) The County Manager may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether Contractor's performance or any Deliverable meets the requirements of this Agreement and any specifications with respect thereto

set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the County Manager participated therein, or by any prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the Agreement. All such disputes shall be submitted in writing by the Contractor to the County Manager for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. Whenever the County Manager is entitled to exercise discretion or judgement or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The County Manager, as appropriate, shall render a decision in writing and deliver a copy of the same to the Contractor. Except as such remedies may be limited or waived elsewhere in the Agreement, Contractor reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.

## ARTICLE 15. MUTUAL OBLIGATIONS

a) This Agreement, including attachments and appendixes to the Agreement, shall constitute the entire Agreement between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of both parties.

b) Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.

c) In those situations where this Agreement imposes an indemnity obligation on the Contractor, the County may, at its expense, elect to participate in the defense if the County should so choose. Furthermore, the County may at its own expense defend or settle any such claims if the Contractor fails to diligently defend such claims, and thereafter seek indemnity for costs from the Contractor.

## ARTICLE 16. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING

The Contractor shall maintain, and shall require that its subcontractors and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in the Scope of Services. The Contractor and its subcontractors and suppliers, shall retain such records, and all other documents relevant to the Services furnished under this Agreement for a period of three (3) years from the expiration date of this Agreement and any extension thereof.

## ARTICLE 17. AUDITS

The County, or its duly authorized representatives or governmental agencies shall, until the expiration of three (3) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Contractor's books, documents, papers and records and of its subcontractors and suppliers which apply to all matters of the County. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, as applicable, and shall only address those transactions related to this Agreement.

Pursuant to County Ordinance No. 03-2, the Contractor will grant access to the Commission

Auditor to all financial and performance related records, property, and equipment purchased in whole or in part with government funds. The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

## ARTICLE 18. SUBSTITUTION OF PERSONNEL

In the event the Contractor wishes to substitute personnel for the key personnel identified by the Contractor's Proposal, the Contractor must notify the County in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution.

## ARTICLE 19. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT

The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, including its rights, title or interest in or to the same or any part thereof without the prior written consent of the County.

## ARTICLE 20. SUBCONTRACTUAL RELATIONS

a) If the Contractor will cause any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.

b) The Contractor, before making any subcontract for any portion of the services, will state in writing to the County the name of the proposed Subcontractor, the portion of the Services which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the County may require. The County will have the right to require the Contractor not to award any subcontract to a person, firm or corporation disapproved by the County.

c) Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed. Such Services performed by such Subcontractor will strictly comply with the requirements of this Contract.

d) In order to qualify as a Subcontractor satisfactory to the County, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the satisfaction of the County that it has the necessary facilities, skill and experience, and ample financial resources to perform the Services in a satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the County that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.

e) The County shall have the right to withdraw its consent to a subcontract if it appears to the County that the subcontract will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All Subcontractors

are required to protect the confidentiality of the County's and County's proprietary and confidential information. Contractor shall furnish to the County copies of all subcontracts between Contractor and Subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the County permitting the County to request completion of performance by the Subcontractor of its obligations under the subcontract, in the event the County finds the Contractor in breach of its obligations, the option to pay the Subcontractor directly for the performance by such subcontractor. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County to any subcontractor hereunder as more fully described herein.

## ARTICLE 21. ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS

The Contractor understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the County were provided to the Contractor for evaluation purposes only. However, since these assumptions, parameters, projections, estimates and explanations represent predictions of future events the County makes no representations or guarantees; and the County shall not be responsible for the accuracy of the assumptions presented; and the County shall not be responsible for conclusions to be drawn therefrom; and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Contractor. The Contractor accepts all risk associated with using this information.

## ARTICLE 22. SEVERABILITY

If this Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

## ARTICLE 23. TERMINATION AND SUSPENSION OF WORK

a) The County may terminate this Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the County through fraud, misrepresentation or material misstatement.

b) The County may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the County and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.

c) The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be debarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.

d) In addition to cancellation or termination as otherwise provided in this Agreement, the County may at any time, in its sole discretion, with or without cause, terminate this Agreement by written notice to the Contractor.

e) In the event that the County exercises its right to terminate this Agreement, the Contractor shall, upon receipt of such notice, unless otherwise directed by the County:

i. stop work on the date specified in the notice ("the Effective Termination Date");

ii. take such action as may be necessary for the protection and preservation of the County's materials and property;

iii. cancel orders;

iv. assign to the County and deliver to any location designated by the County any noncancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services:

v. take no action which will increase the amounts payable by the County under this Agreement; and

f) In the event that the County exercises its right to terminate this Agreement, the Contractor will be compensated as stated in the payment Articles herein for the:

i. portion of the Services completed in accordance with the Agreement up to the Effective Termination Date; and

ii. noncancelable Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement but not incorporated in the Services.

g) All compensation pursuant to this Article are subject to audit.

## ARTICLE 24. EVENT OF DEFAULT

a) An Event of Default shall mean a breach of this Agreement by the Contractor. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an Event of Default, shall include the following:

i. the Contractor has not delivered Deliverables on a timely basis.

ii. the Contractor has refused or failed, except in case for which an extension of time is provided, to supply enough properly skilled Staff Personnel;

iii. the Contractor has failed to make prompt payment to subcontractors or suppliers for any Services;

iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;

v. the Contractor has failed to obtain the approval of the County where required by this Agreement;

vi. the Contractor has failed to provide "adequate assurances" as required under subsection "b" below;

vii. the Contractor has failed in the representation of any warranties stated herein.

b) When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the County may request that the Contractor, within the timeframe set forth in the County's request, provide adequate assurances to the County, in writing, of the Contractor's ability to perform in accordance with terms of this Agreement. Until the County receives such assurances the County may request an adjustment to the compensation received by the Contractor for portions of the Services which the Contractor has not performed. In the event that the Contractor fails to provide to the County the requested assurances within the prescribed time frame, the County may:

i. treat such failure as a repudiation of this Agreement;

ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.

c) In the event the County shall terminate this Agreement for default, the County or its designated representatives, may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.

## ARTICLE 25. NOTICE OF DEFAULT - OPPORTUNITY TO CURE

If an Event of Default occurs, in the determination of the County, the County may so notify the Contractor ("Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured immediately or this Agreement with the County may be terminated. Notwithstanding, the County may, in its sole discretion, allow the Contractor to rectify the default to the County's reasonable satisfaction within a thirty (30) day period. The County may grant an additional period of such duration as the County shall deem appropriate without waiver of any of the County's rights hereunder, so long as the Contractor has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the County prescribes. The default notice shall specify the date the Contractor shall discontinue the Services upon the Termination Date.

## ARTICLE 26. REMEDIES IN THE EVENT OF DEFAULT

If an Event of Default occurs, the Contractor shall be liable for all damages resulting from the default, including but not limited to:

a) lost revenues;

b) the difference between the cost associated with procuring Services hereunder and the amount actually expended by the County for reprocurement of Services, including procurement and administrative costs; and,

c) such other direct damages.

The Contractor shall also remain liable for any liabilities and claims related to the Contractor's default. The County may also bring any suit or proceeding for specific performance or for an

injunction.

## ARTICLE 27. PATENT AND COPYRIGHT INDEMNIFICATION

a) The Contractor warrants that all Deliverables furnished hereunder, including but not limited to: equipment programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any patent, copyrights, service marks, trade secret, or any other third party proprietary rights.

b) The Contractor shall be liable and responsible for any and all claims made against the County for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the Work, or the County's continued use of the Deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the County and defend any action brought against the County with respect to any claim, demand, cause of action, debt, or liability.

c) In the event any Deliverable or anything provided to the County hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation to, at the County's option to (i) modify, or require that the applicable subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the County, at the Contractor's expense, the rights provided under this Agreement to use the item(s).

d) The Contractor shall be solely responsible for determining and informing the County whether a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Deliverable hereunder. The Contractor shall enter into agreements with all suppliers and subcontractors at the Contractor's own risk. The County may reject any Deliverable that it believes to be the subject of any such litigation or injunction, or if, in the County's judgment, use thereof would delay the Work or be unlawful.

e) The Contractor shall not infringe any copyright, trademark, service mark, trade secrets, patent rights, or other intellectual property rights in the performance of the Work.

## ARTICLE 28. CONFIDENTIALITY

a) All Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County in connection with the Services performed under this Agreement, made or developed by the Contractor or its subcontractors in the course of the performance of such Services, or the results of such Services, or which the County holds the proprietary rights, constitute Confidential Information and may not, without the prior written consent of the County, be used by the Contractor or its employees, agents, subcontractors or suppliers for any purpose other than for the benefit of the County, unless required by law. In addition to the foregoing, all County employee information and County financial information shall be considered confidential information and shall be subject to all the

requirements stated herein. Neither the Contractor nor its employees, agents, subcontractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the County. Additionally, the Contractor expressly agrees to be bound by and to defend, indemnify and hold harmless the County, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.

b) The Contractor shall advise each of its employees, agents, subcontractors and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the County in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.

c) It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the County shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Services performed hereunder, the Contractor shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors or suppliers without the prior written consent of the County. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall accompany such materials.

## ARTICLE 29. PROPRIETARY INFORMATION

As a political subdivision of the State of Florida, Miami-Dade County is subject to the stipulations of Florida's Public Records Law.

The Contractor acknowledges that all computer software in the County's possession may constitute or contain information or materials which the County has agreed to protect as proprietary information from disclosure or unauthorized use and may also constitute or contain information or materials which the County has developed at its own expense, the disclosure of which could harm the County's proprietary interest therein.

During the term of the contract, the Contractor will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the County's property, any computer programs, data compilations, or other software which the County has developed, has used or is using, is holding for use, or which are otherwise in the possession of the County (hereinafter "Computer Software"). All third-party license agreements must also be honored by the contractors and their employees, except as authorized by the County and, if the Computer Software has been leased or purchased by the County, all hired party license agreements must also be honored by the contractors' employees with the approval of the lessor or Contractors thereof. This includes mainframe, minis, telecommunications, personal computers and any and all information technology software.

The Contractor will report to the County any information discovered or which is disclosed to the Contractor which may relate to the improper use, publication, disclosure or removal from the County's property of any information technology software and hardware and will take such steps as are within the Contractor's authority to prevent improper use, disclosure or removal.

## ARTICLE 30. PROPRIETARY RIGHTS

a) The Contractor hereby acknowledges and agrees that the County retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the County to the Contractor hereunder or furnished by the Contractor to the County and/or created by the Contractor for delivery to the County, even if unfinished or in process, as a result of the Services the Contractor performs in connection with this Agreement, including all copyright and other proprietary rights therein, which the Contractor as well as its employees, agents, subcontractors and suppliers may use only in connection of the performance of Services under this Agreement. The Contractor shall not, without the prior written consent of the County, use such documentation on any other project in which the Contractor or its employees, agents, subcontractors or suppliers are or may become engaged. Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the County's copyrights or other proprietary rights.

b) All rights, title and interest in and to certain inventions, ideas, designs and methods, specifications and other documentation related thereto developed by the Contractor and its subcontractors specifically for the County, hereinafter referred to as "Developed Works" shall become the property of the County.

c) Accordingly, neither the Contractor nor its employees, agents, subcontractors 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 the Contractor, or any employee, agent, subcontractor or supplier thereof, without the prior written consent of the County, except as required for the Contractor's performance hereunder.

d) Except as otherwise provided in subsections a, b, and c above, or elsewhere herein, the Contractor and its subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder, that have not been customized to satisfy the performance criteria set forth in the Scope of Services. Notwithstanding the foregoing, the Contractor hereby grants, and shall require that its subcontractors and suppliers grant, if the County so desires, a perpetual, irrevocable and unrestricted right and license to use, duplicate, disclose and/or permit any other person(s) or entity(ies) to use all such Licensed Software and the associated specifications, technical data and other Documentation for the operations of the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. Such license specifically includes, but is not limited to, the right of the County to use and/or disclose, in whole or in part, the technical documentation and Licensed Software, including source code provided hereunder, to any person or entity outside the County for such person's or entity's use in furnishing any and/or all of the Deliverables provided hereunder exclusively for the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. No such License Software, specifications, data, documentation or related information shall be deemed to have been given in confidence and any statement or legend to the contrary shall be void and of no effect.

## ARTICLE 31. VENDOR REGISTRATION AND FORMS/CONFLICT OF INTEREST

a) Vendor Registration

The Contractor shall be a registered vendor with the County – Internal Services Department, for the duration of this Agreement. In becoming a Registered Vendor with Miami-Dade County, the Contractor confirms its knowledge of and commitment to comply with the following:

1. ***Miami-Dade County Ownership Disclosure Affidavit***
   (Section 2-8.1 of the County Code)

2. ***Miami-Dade County Employment Disclosure Affidavit***
   *(Section 2.8-1(d)(2) of the County Code)*

3. ***Miami-Dade Employment Drug-free Workplace Certification***
   *(Section 2-8.1.2(b) of the County Code)*

4. ***Miami-Dade Disability and Nondiscrimination Affidavit***
   *(Section 2-8.1.5* of the County Code*)*

5. ***Miami-Dade County Debarment Disclosure Affidavit***
   *(Section 10.38 of the County Code)*

6. ***Miami-Dade County Vendor Obligation to County Affidavit***
   *(Section 2-8.1 of the County Code)*

7. ***Miami-Dade County Code of Business Ethics Affidavit***
   *(Section 2-8.1(i) and 2-11(b)(1) of the County Code through (6) and (9) of the County Code and Section 2-11.1(c) of the County Code)*

8. ***Miami-Dade County Family Leave Affidavit***
   *(Article V of Chapter 11 of the County Code)*

9. ***Miami-Dade County Living Wage Affidavit***
   *(Section 2-8.9 of the County Code)*

10. ***Miami-Dade County Domestic Leave and Reporting Affidavit***
    *(Article 8, Section 11A-60 11A-67 of the County Code)*

11. ***Subcontracting Practices***
    *(Ordinance 97-35)*

12. ***Subcontractor /Supplier Listing***
    *(Section 2-8.8 of the County Code)*

13. ***Environmentally Acceptable Packaging***
    *(Resolution R-738-92)*

14. ***W-9 and 8109 Forms***
    (as required by the Internal Revenue Service)

15. ***FEIN Number or Social Security Number***
    In order to establish a file, the Contractor's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. This number becomes Contractor's "County Vendor Number". To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:
    - Identification of individual account records
    - To make payments to individual/Contractor for goods and services provided to Miami-Dade County
    - Tax reporting purposes
    - To provide a unique identifier in the vendor database that may be used for searching and sorting departmental records

16. ***Office of the Inspector General***
    (Section 2-1076 of the County Code)

17. ***Small Business Enterprises***
    The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.2, 2-8.2.3 and 2-8.2.4 of the County Code and Title 49 of the Code of Federal Regulations.

18. ***Antitrust Laws***
    By acceptance of any contract, the Contractor agrees to comply with all antitrust laws of the United States and the State of Florida.

b) Conflict of Interest

Section 2-11.1(d) of Miami-Dade County Code requires that any County employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, competing or applying for a contract, must first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County. Any such contract or business engagement entered in violation of this subsection, as amended, shall be rendered voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

## ARTICLE 32. INSPECTOR GENERAL REVIEWS

***Independent Private Sector Inspector General Reviews***

Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Contractor shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Contractor, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Contractor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

***Miami-Dade County Inspector General Review***

According to Section 2-1076 of the Code of Miami-Dade County, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Contractor. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (I) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under $1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award.***

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General is empowered to retain the services of independent private sector inspectors general (IPSIG) to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Contractor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Contractor from the Inspector General or IPSIG retained by the Inspector General, the Contractor shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Contractor's possession, custody or control which, in the Inspector General's or

IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

## ARTICLE 33. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS

Contractor agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State and the County orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this Agreement, including but not limited to:

a) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.

b) Miami-Dade County Florida, Department of Small Business Development Participation Provisions, as applicable to this Contract.

c) Environmental Protection Agency (EPA), as applicable to this Contract.

d) Miami-Dade County Code, Chapter 11A, Article 3. All contractors and subcontractors performing work in connection with this Contract shall provide equal opportunity for employment because of race, religion, color, age, sex, national origin, sexual preference, disability or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.

e) "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.

f) Miami-Dade County Code Section 10-38 "Debarment".

g) Miami-Dade County Ordinance 99-5, codified at 11A-60 et. seq. of Miami-Dade Code pertaining to complying with the County's Domestic Leave Ordinance.

h) Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

i) "Sherman S. Winn Prompt Payment Ordinance" Section 2-8.14 of the County Code.

The Contractor shall hold all licenses and/or certifications, obtain and pay for all permits and/or inspections, and comply with all laws, ordinances, regulations and building code requirements applicable to the work required herein. Damages, penalties, and/or fines imposed on the County or Contractor for failure to obtain and maintain required licenses, certifications, permits and/or inspections shall be borne by the Contractor. The Project Manager shall verify the certification(s), license(s), permit(s), etc. for the Contractor prior to authorizing work and as needed.

Notwithstanding any other provision of this Agreement, Contractor shall not be required pursuant to this Agreement to take any action or abstain from taking any action if such action or abstention would, in the good

faith determination of the Contractor, constitute a violation of any law or regulation to which Contractor is subject, including but not limited to laws and regulations requiring that Contractor conduct its operations in a safe and sound manner.

## ARTICLE 34. NONDISCRIMINATION

During the performance of this Contract, Contractor agrees to not discriminate against any employee or applicant for employment because of race, religion, color, sex, handicap, marital status, age or national origin, and will take affirmative action to ensure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

By entering into this Contract, the Contractor attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If the Contractor or any owner, subsidiary or other firm affiliated with or related to the Contractor is found by the responsible enforcement agency or the County to be in violation of the Act or the Resolution, such violation shall render this Contract void. This Contract shall be void if the Contractor submits a false affidavit pursuant to this Resolution or the Contractor violates the Act or the Resolution during the term of this Contract, even if the Contractor was not in violation at the time it submitted its affidavit.

## ARTICLE 35. CONFLICT OF INTEREST

The Contractor represents that:

a) No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the grant of this Agreement.

b) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:

   i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or

   ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.

c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.

d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.

e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the County's Project Manager.

Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

## ARTICLE 36. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

Under no circumstances shall the Contractor without the express written consent of the County:

a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and

b) Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and

c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the County.

## ARTICLE 37. BANKRUPTCY

The County reserves the right to terminate this contract, if, during the term of any contract the Contractor has with the County, the Contractor becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Contractor under federal bankruptcy law or any state insolvency law.

## ARTICLE 38. GOVERNING LAW

This Contract, including appendices, and all matters relating to this Contract (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the State of Florida. Venue shall be Miami-Dade County.

## ARTICLE 39. INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION and/or PROTECTED HEALTH INFORMATION

Any person or entity that performs or assists Miami-Dade County with a function or activity involving the use or disclosure of "Individually Identifiable Health Information (IIHI) and/or Protected Health Information (PHI) shall comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the Miami-Dade County Privacy Standards Administrative Order. HIPAA mandates for privacy, security and electronic transfer standards, include but are not limited to:

1. Use of information only for performing services required by the contract or as required by law;
2. Use of appropriate safeguards to prevent non-permitted disclosures;

3. Reporting to Miami-Dade County of any non-permitted use or disclosure;
4. Assurances that any agents and subcontractors agree to the same restrictions and conditions that apply to the Contractor and reasonable assurances that IIHI/PHI will be held confidential;
5. Making Protected Health Information (PHI) available to the customer;
6. Making PHI available to the customer for review and amendment; and incorporating any amendments requested by the customer;
7. Making PHI available to Miami-Dade County for an accounting of disclosures; and
8. Making internal practices, books and records related to PHI available to Miami-Dade County for compliance audits.

PHI shall maintain its protected status regardless of the form and method of transmission (paper records, and/or electronic transfer of data). The Contractor must give its customers written notice of its privacy information practices including specifically, a description of the types of uses and disclosures that would be made with protected health information.

**ARTICLE 40. SURVIVAL**

The parties acknowledge that any of the obligations in this Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Contractor and the County under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the contract date herein above set forth.

| Contractor | Miami-Dade County |
|---|---|
| By: Louise K. Welch | By: |
| Name: Louise K. Welch | Name: |
| Title: President/CEO | Title: |
| Date: 10.24.2011 | Date: |
| Attest: Claudio Valle<br>Corporate Secretary/Notary Public | Attest:<br>Clerk of the Board |
| Corporate Seal/Notary Seal | Approved as to form<br>and legal sufficiency |
| Patricia Sandino Valle<br>COMMISSION # EE 115829<br>EXPIRES: MAR. 11, 2012<br>WWW.AARONNOTARY.com | Assistant County Attorney |

# Appendix A

## Scope of Services

### 1. Introduction

Miami-Dade County, hereinafter referred to as the "County," as represented by the Miami-Dade County Community Action and Human Services Department, is establishing a Head Start Program Diagnostic & Therapeutic Services Pool of pre-qualified providers with applicable expertise to provide 1) Speech, 2) Occupational, and 3) Physical, diagnostic and therapeutic services to approximately 450 children and their families served by the Head Start/Early Head Start's (HS/EHS) Programs.

### A. Objective

The County requires Contractor to render comprehensive diagnostic and therapeutic services, to HS/EHS Program children identified by the Program Disability Services Coordinator, through a coordinated system for developmental, sensory, motor, language and cognitive concerns.

### B. Designated Target Geographic Areas/Services

The following are the designated target geographic areas and services that Contractor has been pre-approved to serve.

**Areas:** Southwest, Central and Northeast Miami-Dade County

**Services:** Speech, Occupational and Physical

The Contractor is initially pre-approved to serve **65** children. The County reserves the right to adjust the designated Target Geographic Areas assignment and/or Services provided including the number of children serviced by Contractor to ensure that the County's goals and Program needs are met.

### 2. Requirements

### A. Minimum Requirements

1. Contractor's therapists performing Services shall be licensed by the State of Florida Department of Health, Division of Medical Quality Assurance, for the particular services (e.g., speech, occupational and/or physical therapy) provided, for the duration of the Contract; and

2. The Contractor shall be a Medicaid Provider for the duration of the Contract.

### B. Preferred Qualifications

The County has relied on the Contractor's Proposal to determine that Contractor has met the Preferred Qualifications.

1. Contractor possess at least three years of experience in providing similar diagnostic and therapeutic services with specific knowledge of child development milestones and assessment of children birth to five years of age.

2. Contractor maintains membership(s) with the American Speech-Language-Hearing Association (ASHA), American Occupational Therapy Association (AOTA) and/or American Physical Therapy Association (APTA), as applicable to the type of diagnostic and therapeutic services provided.

The County reserves the right to review any firm which Contractor requests contract assignment, pursuant to Article 19, to determine whether the assignee meets the Minimum and Preferred Qualifications.

**3. Requirements and Services to be Provided**

The Contractor shall provide the following services for the awarded Target Geographic Areas:

a. Adhere to all applicable Head Start Performance Standards, notices and instructions as promulgated by U.S. Department of Health and Human Services (DHHS) Administration for Children, Youths and Families (ACYF), including but not limited to, the Code of Federal Regulations (CFR), Title 45 Parts 74, 1304.20, 1304.21, 1304.52, 1308.4 and 1308.6, Florida Statutes (Section 402.301-402, 319; Section 120.60). Florida Administrative Code (Chapter 65C-22; Chapter 64E-11) and appropriate County requirements, all of which are incorporated herein by reference. The Performance Standards are available through the following link: http://eclkc.ohs.acf.hhs.gov/hslc/Program%20Design%20and%20Management/Head%20Start%20Requirements/Head%20Start%20Requirements.

b. Administer a coordinated system to screen, assess, evaluate and provide educationally relevant speech, occupational, and/or physical therapy services, as assigned by the HS/EHS Program' Disability Services Coordinator, to Program children, ages birth to five years. Contractor's services shall provide a consistent referral procedure for further evaluation by provider and treatment of Program children.

c. Ensure that Program children approved for diagnostic and therapeutic services with Medicaid or private insurance coverage receive all applicable benefits. Medicaid and insurance provider shall be billed for services rendered, when applicable. If Medicaid and/or insurance coverage does not include all services listed in the Scope of Services herein, services that are deemed necessary and approved by the HS/EHS Program's Disability Services Coordinator will be reimbursed by the County. The County will pay up to the rate that the individual Contractor has negotiated with the local Medicaid Administrator for reimbursement.

d. Ensure that all testing instruments and protocols utilized in the evaluation and assessment of Program children are supported by Miami-Dade County Public Schools (M-DCPS) Part B Transition Requirements for Pre-K Evaluations. The information is available through the following link: http://ese.dadeschools.net *(listed under Policies and Procedures).*

e. Perform speech/language, occupational and/or physical evaluation, assessment and therapeutic services of Program children consistent with professional standards and ethical requirements as imposed by the State of Florida Department of Health, Division of Medical Quality Assurance. The County reserves the right to interview all therapists prior to assignments and determine which therapists will be utilized for the Services. The County

may require Contractor to re-assign therapists in accordance with children's needs and remove therapists from rendering Services in accordance with Article 12 of the agreement.

f. Prepare and submit written analysis report to the County's HS/EHS Program's Disability Services Coordinator within two (2) weeks of completion of evaluation/assessment. The report shall include copies of the testing instruments and protocols utilized, individual treatment plan, report to physician and any other appropriate recommendations for each child assessed.

g. Recommend delivery model of therapy sessions for Program children. Therapy sessions are usually delivered in a group setting (4 children maximum per group) as a one-half hour session. However, some instances may require individual therapy sessions. Therapy delivery model to be administered shall be determined by the M-DCPS Special Education Division Staffing Team deliberating at the Individual Education Plan (IEP) Eligibility Meeting, and approved by the HS/EHS Program Disability Services Coordinator, prior to its delivery.

h. Maintain progress notes as established by the HS Program. Progress notes shall include: (1) description of therapy administered, (2) duration of session, (3) child's name and date of birth, (4) identification of Program center site where services were rendered, (5) date of service, (6) objective of session, and (7) measurable outcome achieved. All progress notes shall be signed by the therapist providing the service and a copy shall be submitted to the respective child's Program center at the end of each month for inclusion in the child's record. Additionally, a copy of progress notes shall be forwarded to the HS/EHS Program Disability Services Coordinator as part of the reporting requirements (see Section 6 for requirements).

i. Conduct classroom observations and formulate strategies to assist Program instructional staff and parents of children with suspected disabilities (e.g., strategies for promoting speech, techniques for adapting learning environment, etc.).

j. Attend meetings with Program staff, as deemed necessary and as scheduled by the HS/EHS Program Disability Services Coordinator.

k. Provide individual consultations and in-service trainings/workshops to Program instructional and administrative staff identified by the HS/EHS Program Disability Services Coordinator. Topics of training sessions may include, but are not limited to, strategies for promoting speech, occupational and physical development, and techniques and methods for adapting the learning environment to meet the needs of children with disabilities. Parents identified by the Disability Services Coordinator may also receive training that will allow for learning therapy techniques and how to carry them over into the child's daily routines, ultimately increasing the effectiveness of therapy. Contractor may be required to collaborate with other Pool members in the presentation of in-service trainings/workshops.

l. Provide required diagnostic and therapeutic services for Program children without compensation **if** Service is not covered by Medicaid, **and**, in the event that all funds budgeted for this Program are expended prior to the conclusion of the Program Year.

m. Gain approval from HS/EHS Program Disability Services Coordinator prior to performing any services that are not specifically identified in the Scope of Services herein. Not all diagnostic and therapeutic services that may be required are identified in the Scope of

Services. The County reserves the right to authorize any required services and reimburse said services at the current Medicaid rate.

n. Perform Medicaid relevant administrative support and consultative services on an as needed basis and at the request of the HS/EHS Program's Disability Services Coordinator which may include, but not limited to, the following:

   i. Invoicing and collection, including data entry and electronic submission of claims;
   ii. Medicaid/HMO Policy and Procedures, including documentation;
   iii. Quality assurance reviews of files and records;
   iv. Assistance in preparation for Medicaid audits;
   v. Other related consultative services as necessary and requested by HS Program Staff;
   vi. Review of current cases;
   vii. Assistance in formulation and review of individual treatment plans;
   viii. Individual evaluation, to include typed report as deemed necessary and as requested by HS/EHS Program Disability Services Coordinator;
   ix. Review and consultation with child's primary physician;
   x. Personal meeting or telephone consultation, as necessary, with parents of each child served;
   xi. Child developmental and behavioral assessment;
   xii. Telephone consultations with HS Program Staff;
   xiii. Other Medicaid relevant services not specifically identified; and
   xiv. Consultative advice, including in-service training.

o. Provide notification to the State of Florida Medicaid Program Area Office, ***in writing***, that an affiliation with Miami-Dade County, with reference to the appropriate County entity and Medicaid provider number, is in effect.

p. Perform other related Services as requested by the HS/EHS Program Disability Services Coordinator.

q. Comply with all laws, regulations, ordinances and resolutions applicable to the Heads Start and Early Head Start Services.

r. Contractor should provide therapists that are representative of the diversity of the populations in the community it serves and possess linguistic competency to effectively serve the targeted community.

**4. Location of Services**

The Services shall be provided by the Contractor at the respective HS/EHS Program centers located within the assigned Target Geographic Area(s). Services may also be provided at the Contractor's facility, if necessary and authorized by the HS/EHS Program Disability Services Coordinator.

**5. Hours of Service and Availability**

Services shall be provided while the HS/EHS Program centers are open *(Monday-Friday, 7:30 a.m. through 4:00 p.m.)*. The Program centers' operate in accordance with Miami-Dade County Public School's schedule. However, Services may also be rendered on planning days and school breaks at the Contractor's facility, as approved by the HS/EHS Program Disability Services Coordinator.

**6. Reporting Requirements**

The Contractor shall provide to the HS/EHS Program's Disability Services Coordinator a monthly report for the services provided.

The monthly report shall include the following information:

a. Listing of children evaluated with respective assessment reports completed, testing protocols utilized, date of evaluation, and therapist completing service;
b. Listing of children receiving therapeutic services to include the frequency of sessions and type of service provided per child with funding source identified; follow-up therapeutic services and current status of referrals;
c. Progress notes, observation and parent consultation reports;
d. Completed travel log per therapist for whom reimbursement of travel (i.e., mileage, tolls, parking) expenses is being submitted for;
e. Training design/agenda, attendance sign-in sheets, and a copy of the handout materials for all training of HS Program Staff and/or parents; and
f. An itemized listing of HS Program children referred to Medicaid or insurance provider for authorization of therapeutic services, status of referrals, and basis for any denials.

**7. Invoicing Requirements**

The Contractor shall invoice the HS/EHS Program for the approved Services not covered by Medicaid, private insurance provider or third party payer on a monthly basis, on or before the 15th day of each month following the month in which the Services were rendered, unless the County has granted the Contractor an extension in writing. Payment requests shall be accompanied by such documentation as requested by the HS/EHS Program's Disability Services Coordinator to include documentation identifying Contactor's non-federal resources, either in cash or in-kind, in an amount equivalent to 25% of the total invoice amount being submitted for reimbursement. For the purposes of the in-kind match, Contractor's administrative costs shall not account for more than 15% of the invoice submitted to the County for reimbursement.

It is anticipated that the County will reimburse each invoice within four (4) to six (6) weeks from receipt of complete and error free invoices; however, it is the responsibility of the Contractor to maintain sufficient cash flow pending receipt of reimbursement from the County.

All payments due to the Contractor may be withheld pending receipt and approval by the County of all reports and documents due from the Contractor.

**8. Other Reporting Requirements**

**A. State of Florida Certificate of Status**

The Contractor shall comply with all laws, ordinances and regulations applicable to the Services contemplated herein. Contractor is presumed to be familiar with all Federal, State and local laws, ordinances, codes, rules and regulations that may in any way affect the goods or services offered, especially, Executive Order No. 11246 entitled, "Equal Opportunity" and as amended by Executive Order No. 11375, as supplemented by the Department of Labor Relations (41 CFR, Part 60), the Americans with Disabilities Act of 1990 and implementing regulations, the Rehabilitation Act of 1973, as amended, Chapter 553 of the Florida Statutes and any and all

other local, State and Federal directives, ordinances, rules, orders and laws relating to people with disabilities.

The Contractor shall submit to the HS Program Disability Services Coordinator, within thirty (30) days from the date of execution of the contract, a Certificate of Status in the name of the Contractor, which certifies the following: Contractor is organized under the laws of the State of Florida; all fees and penalties have been paid; most recent annual report has been filed with an active status; and that an Article of Dissolution has not been filed.

**B. Audit Requirements**

Please be advised that the following sequence is provided for informational purposes only.

1. Audit Required. Non-Federal entities that expend $500,000 or more in a year in Federal Awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of OMB circular No. A-133 Revised.

2. Single Audit. Non-Federal entities that expend $500,000 or more in a year in Federal awards shall have a single audit conducted in accordance with OMB Circular A-133 Revised, except when they elect to have a program-specific audit conducted in accordance with Number 3 below.

4. Program-Specific Audit Selection. Non-Federal entities that expend Federal awards under only one Federal program (excluding Research & Development) and the Federal program's laws, regulations, or grant agreements do not require a financial statement audit. The entity may elect to have a program-specific audit conducted. A program-specific audit may not be elected for Research & Development unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency or pass-through entity in the case of a sub-recipient, approves in advance a program-specific audit.

5. Exemption when Federal Awards Expended is less than $500,000. Non-Federal entities that expend less than $500,000 a year in Federal awards are exempt from Federal audit requirements for that year, except as noted OMB Circular A-133 Revised, Subpart B, Section 215(a), but records must be available for review or audit by appropriate officials of the Federal Agency, pass-through entity, and General Accounting Office (GAO).

The Contractor shall submit to the HS/EHS Program Disability Services Coordinator a complete copy of its annual audit reports performed by an independent auditor covering each of the fiscal years for which HS Program funds were awarded. Audits of government entities must comply with OMB circular A-128. Audits of non-profit organizations, non-government entities, hospitals and institutions of higher learning must comply with OMB Circular A-133.

**9. Background Screening**

The Contractor shall comply with the following tasks in providing the Services:

1. An Affidavit of Good Moral Character shall be completed and notarized for each employee, volunteer and subcontracted personnel.

2. Ensure that employees, subcontracted personnel and volunteers who work with vulnerable persons, including children, satisfactorily complete and pass Level 2 background screening before working with vulnerable persons, including children. Contractor shall furnish the

County with proof that employees, subcontracted personnel and volunteers, who work with vulnerable persons, satisfactorily passed Level 2 background screening, pursuant to Chapter 435, Florida Statutes, as may be amended from time to time. Any person with positive response(s) to any of the enumerated charges as defined in Level 1 and Level 2 background checks shall not work with children or youths. All employee personnel files shall reflect the initiation and completion of the required background screening checks. If the Contractor fails to furnish to the County proof that an employee, subcontractor or volunteer's Level 2 background screening was satisfactorily passed and completed prior to that employee, subcontractor or volunteer working with vulnerable persons including children, the Contractor's contract may be subject to termination at the sole discretion of the County.

3. Retain all records demonstrating compliance with the background screening required herein for not less than three years beyond the last date that all applicable terms of the contract have been complied with and final payment has been received and appropriate audits have been submitted to and accepted by the appropriate entity.

## 10. Schedule

Program year operates for 160 to 175 school days for Head Start Services, consistent with the Miami-Dade County Public School District's Calendar, unless otherwise indicated, and for 210 to 226 school days for Early Head Start Services.

## 11. Budget Allocation

Subject to available funding, the maximum amount payable by the County's HS/EHS Program for Services rendered, which does include Medicaid paid services, including Speech, Occupational and Physical, to Pool members in the aggregate, is anticipated not-to-exceed **Three Hundred and Fifty Thousand Dollars ($350,000.00)**, for a full Program year. The initial Program year (if a partial Program year) shall be prorated.

In the event that services authorized by the HS/EHS Program Disability Services Coordinator are not covered under the Medicaid guidelines and when no other funding source is available, the HS/EHS Program shall pay for said services, as further defined herein, subject to appropriation of funds to the County from DHHS, and funding availability. The HS/EHS Program however will not pay any difference between the Contractor customary charges and Medicaid reimbursements.

Itemized invoices for Services rendered will be approved in accordance with the following Medicaid approved rates, or as amended by Medicaid:

### A. Speech Services

i. Fifty dollars ($50.00) per child for each diagnostic speech/language evaluation completed and documented by a licensed Speech Language Pathologist;
ii. Forty dollars ($40.00) per child, per 30-minute session of group speech/language therapy provided by a licensed Speech Language Pathologist; and
iii. Twenty-eight dollar ($28.00) per child, per 30-session of individual speech/language therapy provided by a licensed Speech Language Assistant.

iv. Sixty dollars ($60.00) per hour, per child, for Sign Language interpretation for child and parent.

**B. Occupational Services**

i. Fifty dollars ($50.00) per child for each diagnostic occupational evaluation completed and documented by a licensed Occupational Therapist; and
ii. Forty dollars ($40.00) per child, per 30-minute session of individual occupational therapy provided by a licensed Occupational Therapist.

**C. Physical Services**

i. Fifty dollars ($50.00) per child for each diagnostic physical evaluation completed and documented by a licensed Physical Therapist; and
ii. Forty dollars ($40.00) per child, per 30-minute session of individual physical therapy provided by a licensed Physical Therapist.

Medicaid approved rates are subject to change, therefore, the applicable approved and established Medicaid rates shall be honored.

**Appendix B**

## HIPAA BUSINESS ASSOCIATE ADDENDUM

This HIPAA Business Associate Addendum ("Addendum") supplements and is made a part of the Agreement by and between the Miami-Dade County, Florida ("County"), and Easter Seals South Florida, Inc., Business Associate ("Associate").

## RECITALS

A. As part of the Agreement, it is necessary for the County to disclose certain information ("Information") to Associate pursuant to the terms of the Agreement, some of which may constitute Protected Health Information ("PHI").

B. County and Associate intend to protect the privacy and provide for the security of PHI, including but not limited to, ePHI, disclosed to Associate pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.

C. The purpose of this Addendum is to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations, including, but not limited to, Title 45, Sections 164.308(b), 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations ("CFR"), as the same may be amended from time to time.

In consideration of the mutual promises below and the exchange of information pursuant to the Agreement, the parties agree as follows:

**1. Definitions.** Terms used, but not otherwise defined, shall have the same meaning as those terms in 45 CFR Sections 160.103, 164.304 and 164.501.

a. "Business Associate" shall have the meaning given to such term under the HIPAA Regulations, including, but not limited to, 45 CFR Section 160.103.

b. "Covered Entity" shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR Section 160.103.

c. "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual, the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including, but not limited to 45 CFR Section 160.103. [45 CFR Parts 160, 162 and 164]

d. "Electronic Protected Health Information" or "ePHI" means any information that is transmitted or maintained in electronic media: (i) that relates to the past, present or future physical or mental condition of an individual, the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual. and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including, but not limited to 45 CFR Section 160.103. [45 CFR Parts 160, 162 and 164]

e. "Electronic Media" shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including but not limited to, 45 CFR Section 160.103.

f. "Security incident" shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including but not limited to, 45 CFR Section 164.304.

**Appendix B**

**2. Obligations of Associate.**

a. Permitted Uses and Disclosures. Associate may use and/or disclose PHI received by Associate pursuant to the Agreement ("County's PHI") solely in accordance with the specifications set forth in the Scope of Services, Appendix A. In the event of any conflict between this Addendum and Appendix A, this Addendum shall control. [45 CFR § 164.504(e)(2)(i)]

b. Nondisclosure. Associate shall not use or further disclose County's PHI other than as permitted or required by law. [45 CFR § 164.504(e)(2)(ii)(A)]

c. Safeguards. Associate shall use appropriate safeguards to prevent use or disclosure of County's PHI in a manner other than as provided in this Addendum. [45 CFR § 164.504(e)(2)(ii)(B)] Associate shall maintain a comprehensive written information security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Associate's operations and the nature and scope of its activities. Appropriate safeguards used by Associate shall protect the confidentiality, integrity, and availability of the PHI and ePHI that is created, received, maintained, or transmitted on behalf of the County. [45 CFR § 164.314(a)(2)(i)(A)] County has at its sole discretion, the option to audit and inspect, the Associate's safeguards at any time during the life of the Agreement, upon reasonable notice being given to Associate for production of documents and coordination of inspection(s).

d. Reporting of Disclosures. Associate shall report to the County's Project Manager, any use or disclosure of the County's PHI in a manner other than as provided in this Addendum. [45 CFR § 164.504(e)(2)(ii)(c)] Associate shall report to the County through the County's Project Manager, any security incident of which it becomes aware within forty-eight (48) hours of discovery of the incident. [45 CFR § 164.314(a)(2)(i)(C)]

e. Associate's Agents. Associate agrees and shall ensure that any agents, including subcontractors, to whom it provides PHI received from (or created or received by Associate on behalf of) the County, agrees in writing to the same restrictions and conditions that apply to Associate with respect to such PHI and that such agents conduct their operations within the United States. Associate agrees and shall ensure that any agents, including subcontractors, to whom it provides ePHI received, created, maintained, or transmitted on behalf of the County, agrees in writing to implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of that ePHI. [45 CFR § 164.314(a)(2)(i)(B)] In no case may Associate's Agents reside and operate outside of the United States.

f. Documentation of Disclosures. Associate agrees to document disclosures of the County's PHI and information related to such disclosures as would be required for the County to respond to a request by an individual for an accounting of disclosures of PHI. Associate agrees to provide the County or an individual, in a time and manner designated by the County, information collected in accordance with the Agreement, to permit the County to respond to such a request for an accounting. [45 CFR § 164.528]

g. Availability of Information to County. Associate shall make available to the County such information as the County may require to fulfill the County's obligations to provide access to, provide a copy of, and account for, disclosures of PHI pursuant to HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR Sections 164.524 and 164.528. [45 CFR § 164.504(e)(2)(ii)(E) and (G)]

h. Amendment of PHI. Associate shall make the County's PHI available to the County as may be required to fulfill the County's obligations to amend PHI pursuant to HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR Section 164.526 and Associate shall, as directed by the County, incorporate any amendments to the County's PHI into copies of such PHI maintained by Associate, and in the time and manner designated by the County. [45 CFR § 164.504(e)(2)(ii)(F)]

i. Internal Practices. Associate shall make its internal practices, books and records relating to the use and disclosure of the County's PHI (or PHI created or received by Associate on behalf of the County) available to the County and to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by the

County or the Secretary for purposes of determining Associate's compliance with HIPAA and the HIPAA Regulations. [45 CFR § 164.504(e)(2)(ii)(H) and 45 CFR Part 64, Subpart C.]

j. Mitigation. Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Associate of a use or disclosure of the County's PHI by Associate in violation of the requirements of this Addendum.

k. Associate's Insurance. Associate agrees to maintain the insurance coverage provided in the Agreement.

l. Notification of Breach. Associate shall notify the County within twenty-four (24) hours, and shall provide written notice no later than forty-eight (48) hours of any suspected or actual breach of security, intrusion or unauthorized disclosure of PHI and/or any actual or suspected disclosure of data in violation of any applicable federal or state laws or regulations. Associate shall take (i) prompt corrective action to cure any such deficiencies, and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

m. Expenses. Any and all expenses incurred by Associate in compliance with the terms of this Addendum or in compliance with the HIPAA Regulations shall be borne by Associate.

n. No Third Party Beneficiary. The provisions and covenants set forth in this Agreement are expressly entered into only by and between Associate and the County and are intended only for their benefit. Neither Associate nor the County intends to create or establish any third party beneficiary status or right (or the equivalent thereof) in any other third party nor shall any other third party have any right to enforce or enjoy any benefit created or established by the provisions and covenants in this Agreement.

**3. Audits, Inspection and Enforcement.** From time to time, after reasonable notice, upon any breach of this Addendum by Associate, the County may inspect the facilities, systems, books and records of Associate to monitor compliance with this Addendum. Associate shall promptly remedy any violation of this Addendum and shall certify the same to the County in writing. The fact that the County inspects, or fails to utilize its right to inspect, Associate's facilities, systems, books, records, and procedures does not relieve Associate of its responsibility to comply with this Addendum, nor does the County's (i) failure to detect or (ii) detection, but failure to notify Associate or require Associate to remedy such breach, constitute acceptance of such practice or a waiver of the County's enforcement rights under this Addendum.

**4. Termination.**

a. Material Breach. A breach by Associate of any provision of this Addendum, shall constitute a material breach of the Agreement and shall provide grounds for immediate termination of the Agreement by the County. [45 CFR § 164.504(e)(3) and 45 CFR § 164.314(a)(2)(i)(D)]

b. Termination for Cause - Reasonable Steps to Cure Breach. If the County recognizes a pattern of activity or practice of Associate that constitutes a material breach or violation of the Associate's obligations under the provisions of this Addendum and does not terminate the Agreement pursuant to Section 4a, above, the County may provide an opportunity for Associate to end the violation or cure the breach within five (5) days, or other cure period as may be specified in the Agreement. If Associate does not cure the breach or end the violation within the time period provided, the County may immediately terminate the Agreement.

c. Judicial or Administrative Proceedings. The County may terminate the Agreement, effective immediately, if (i) Associate is named as a defendant in a criminal or administrative proceeding for a violation of HIPAA, or (ii) a finding or stipulation that Associate has violated any standard or requirement of the HIPAA Regulations (or other security or privacy law) is made in any administrative or civil proceeding.

d. Effect of Termination. Upon termination of the Agreement for any reason, Associate shall return or destroy as directed by the County all PHI, including but not limited to ePHI, received from the County (or created or received by Associate on behalf of the County) that Associate still maintains in any form. This provision shall also apply to County PHI that is in the possession of subcontractors or agents of Associate. Associate shall retain no copies of such

PHI or, if return or destruction is not feasible, Associate shall provide to the County notification of the conditions that make return or destruction infeasible, and shall continue to extend the protections of this Addendum to such information, and limit further use or disclosure of such PHI to those purposes that make the return or destruction of such PHI infeasible. [45 CFR § 164.504(e)(2)(ii)(I)]

**5. Indemnification.** Associate shall indemnify and hold harmless the County and its officers, employees, trustees, agents, and instrumentalities (the indemnified parties) from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, trustees, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to, or resulting from the performance of this Addendum by Associate or its employees, agents, servants, partners, principals, or subcontractors. Associate shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of any of the indemnified parties, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Associate expressly understands and agrees that any insurance protection required by this Addendum, or otherwise provided by Associate, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the indemnified parties as herein provided. This paragraph shall survive the termination of the Agreement.

**6. Limitation of Liability.** Nothing in this Addendum shall be construed to affect or limit the County's sovereign immunity as set forth in Florida Statutes, Section 768.28.

**7. Amendment.**

a. Amendment to Comply with Law. The parties acknowledge that state and federal laws relating to the security and privacy of PHI, including electronic data, are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HIPAA Regulations and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that the County must receive satisfactory written assurance from Associate that Associate will adequately safeguard all PHI that it receives or creates pursuant to this Agreement. Upon the County's request, Associate agrees to promptly enter into an amendment to the Agreement embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA Regulations or other applicable laws. The County, in addition to any other remedies including specific performance, may terminate the Agreement upon five [5] days' written notice in the event Associate does not enter into said amendment to the Agreement providing assurances regarding the safeguarding of PHI that the County, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA Regulations. Notwithstanding Associate's failure to enter into an amendment, Associate shall comply with all provisions of the HIPAA laws.

b. Amendment to Business Associate Addendum. In addition to amendments described in 7a above, this Addendum may be otherwise modified or amended by written mutual agreement of the parties without amendment of the remainder of this Agreement.

**8. Assistance in Litigation or Administrative Proceedings.** Associate shall make itself, and any subcontractors, employees or agents assisting Associate in the performance of its obligations under this Agreement, available to the County at the County's convenience upon reasonable notice, at no cost to the County, to testify as witnesses, for document production, or otherwise, in the event of litigation or administrative proceedings being commenced against the County, its trustees, officers, agents or employees based upon claimed violation of HIPAA, the HIPAA Regulations or other laws relating to security and privacy, except where Associate or its subcontractor, employee or agent is a named adverse party.

**9. Effect on Agreement.** Except as specifically required to implement the purposes of this Addendum, or to the extent inconsistent with this Addendum, all other terms of the Agreement shall remain in force and effect. In the event of any conflict between this Addendum and Agreement, this Addendum shall control.

**10. Interpretation.** This Addendum and the Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA Regulations and applicable Florida laws. The parties agree that any ambiguity in

this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA Regulations.

**11.** **Jurisdiction**. Any litigation between the parties regarding the terms of this Addendum shall take place in Miami-Dade County, Florida.

Head Start Program Diagnostic & Therapeutic Services Pool

Contract No. RFQ782d

Target Geographic Areas: Southwest, Northwest, Northeast and Central Miami-Dade County

Services: Speech and Occupational

THIS AGREEMENT made and entered into as of this _____ day of _____ by and between BioNetworks, Inc., a corporation organized and existing under the laws of the State of Florida, having its principal office at 1441 S. W. 1st Street, Miami, FL 33135 (hereinafter referred to as the "Contractor"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County"),

WITNESSETH:

WHEREAS, the Contractor has offered to provide Services as part of the Speech, Occupational and Physical Diagnostic & Therapeutic Services Pool for the Head Start Program, on a non-exclusive basis, that shall conform to the Scope of Services (Appendix A); Miami-Dade County's Request for Qualifications (RFQ) No. 782 and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the Contractor has submitted a written proposal dated August 12, 2011, hereinafter referred to as the "Contractor's Proposal" which is incorporated herein by reference; and,

WHEREAS, the County desires to procure from the Contractor such Diagnostic and Therapeutic Services for the County, in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

## ARTICLE 1. DEFINITIONS

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:

a) The words "Contract" or "Contract Documents" or "Agreement" to mean collectively these terms and conditions, the Scope of Services (Appendix A), the Business Associate Addendum (Appendix B), RFQ No. 782 and all associated addenda and attachments, the Contractor's Proposal, and all other attachments hereto and all amendments issued hereto.

b) The words "Contract Date" to mean the date on which this Agreement is effective.

c) The words "Contract Manager" to mean Miami-Dade County's Director, Internal Services Department, or the duly authorized representative designated to manage the Contract.

d) The word "Contractor" to mean BioNetworks, Inc. and its permitted successors and assigns.

e) The word "Days" to mean Calendar Days.

f) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the County's Project Manager for review and approval pursuant to the terms of this Agreement.

g) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the County's Project Manager; and similarly the words "approved", acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the County's Project Manager.

h) The words "Extra Work" or "Additional Work" resulting in additions or deletions or modifications to the amount, type or value of the Work and Services as required in this Contract, as directed and/or approved by the County.

i) The words "Project Manager" to mean the County Manager or the duly authorized representative designated to manage the Project.

j) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Contractor.

k) The word "subcontractor" or "subconsultant" to mean any person, entity, firm or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.

l) The words "Work", "Services" "Program", or "Project" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.

## ARTICLE 2. ORDER OF PRECEDENCE

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) these terms and conditions, 2) Appendices to these terms and conditions (the Scope of Services and Business Associate Addendum) 3) the Miami-Dade County's RFQ No. 782 and any associated addenda and attachments thereof, and 4) the Contractor's Proposal.

## ARTICLE 3. RULES OF INTERPRETATION

a) References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.

b) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.

c) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.

d) The titles, headings, captions and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor affect the meaning thereof.

## ARTICLE 4. NATURE OF THE AGREEMENT

a) This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto or their authorized representatives.

b) The Contractor shall provide the services set forth in the Scope of Services, and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.

c) The Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.

d) The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract. All Work and Services shall be accomplished at the direction of and to the satisfaction of

the County's Project Manager.

e) The Contractor acknowledges that the County shall be responsible for making all policy decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the County. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the County with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

## ARTICLE 5. CONTRACT TERM

The Contract shall become effective on date indicated on the front page and shall continue through July 31, 2017. The County reserves the right to exercise its option to extend this Contract for up to one hundred-eighty (180) calendar days beyond the current Contract period and will notify the Contractor in writing of the extension. This Contract may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners.

## ARTICLE 6. NOTICE REQUIREMENTS

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by Registered or Certified Mail, with return receipt requested; or delivered personally; or delivered via fax or e-mail (if provided below) and followed with delivery of hard copy; and in any case addressed as follows:

**(1) to the County**

a) to the Project Manager:

Miami-Dade County
Community Action and Human Services Department
701 N. W. 1st Court
OTV 9-102
Miami, FL 33136
Attention: Head Start Program Disability Services Coordinator
Phone: 786-469-4668
Fax: 786-469-4756
E-mail: LGRACE@miamidade.gov

and,
b) to the Contract Manager:

Miami-Dade County
Internal Services Department
111 N.W. 1st Street, Suite 1375
Miami, FL 33128-1974
Attention: Procurement Management
Phone: (305) 375-5548
Fax: (305) 375-2316

**(2) To the Contractor**

BioNetworks, Inc.
1441 S. W. 1st Street
Miami, FL 33135
Attention: Joaly Tojeiro, President
Phone: (305) 541-3400
Fax: (305) 541-3344
E-mail: joaly@bionetworkstherapy.com

Either party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

## ARTICLE 7. PAYMENT FOR SERVICES/AMOUNT OBLIGATED

The Contractor warrants that it has reviewed the County's requirements and has asked such questions and conducted such other inquiries as the Contractor deemed necessary in order to determine the price the Contractor will charge to provide the Work and Services to be performed under this Contract. The compensation for all Work and Services performed under this Contract, including all costs associated with such Work and Services, shall be in accordance with the Medicaid approved rates as specified in the Scope of Services (Appendix A), unless otherwise approved by the County, subject to appropriation and availability of funds.

All Services undertaken by the Contractor before County's approval of this Contract shall be at the Contractor's risk and expense.

## ARTICLE 8. PRICING

The Contractor's Medicaid negotiated rates apply for all diagnostic and/or therapeutic services rendered for the term of the Contract, including any extension periods; however, the Contractor may offer incentive discounts to the County at any time during the Contract term, including any extension thereof.

With respect to travel costs and travel related expenses paid by the County, the Contractor agrees to adhere to Section 112.061 of the Florida Statutes as they pertain to out-of-pocket expenses including employee lodging, transportation, per diem, and all miscellaneous cost-and fees. The County shall not be liable for any such expenses that have not been approved in advance, in writing, by the County.

## ARTICLE 9. METHOD AND TIMES OF PAYMENT

The Contractor agrees that under the provisions of this Agreement, payment for the Services shall be processed in accordance with the invoicing requirements as specified in Appendix A, Scope of Services. All invoices shall be taken from the books of account kept by the Contractor, shall be supported by copies of payroll distribution, receipt bills or other documents reasonably required by the County, shall show the County's contract number, and shall have a unique invoice number assigned by the Contractor. It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that interest payments be made on late payments. In accordance with Florida Statutes, Section 218.74 and Section 2-8.1.4 of the Miami-Dade County Code, the time at which

payment shall be due from the County or the Public Health Trust shall be forty-five (45) days from receipt of a proper invoice. The time at which payment shall be due to small businesses shall be thirty (30) days from receipt of a proper invoice. All payments due from the County or the Public Health Trust, and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Manager, or his or her designee(s), not later that sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust.

Invoices and associated back-up documentation shall be submitted in duplicate by the Contractor to the County as follows:

Miami-Dade County
Community Action and Human Services Department
Head Start Program
701 N. W. 1st Court
OTV 10-177
Miami, FL 33136
Attention: Fiscal Coordinator
Phone: 786-469-4743

The County may at any time designate a different address and/or contact person by giving written notice to the other party.

## ARTICLE 10. INDEMNIFICATION AND INSURANCE

The Contractor shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners principals or subcontractors. The Contractor shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

Upon County's notification, the Contractor shall furnish to the Internal Services Department, Certificates of Insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

1. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440.

2. Commercial General Liability Insurance on a comprehensive basis in an amount not less than $300,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage. The mailing address of Miami-Dade County 111 N.W. 1st Street, Suite 1300, Miami, Florida 33128-1974, as the certificate holder, must appear on**

**the certificate of insurance.**

3. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, in an amount not less than $300,000 combined single limit per occurrence for bodily injury and property damage.

4. Malpractice Insurance in an amount not less than $250,000 per claim.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operation of the Contractor. All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

OR

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued by the State of Florida Department of Financial Services and are members of the Florida Guaranty Fund.

**Certificates of Insurance must indicate that for any cancellation of coverage before the expiration date, the issuing insurance carrier will endeavor to mail thirty (30) day written advance notice to the certificate holder. In addition, the Contractor hereby agrees not to modify the insurance coverage without thirty (30) days written advance notice to the County.**

**NOTE: MIAMI-DADE COUNTY CONTRACT NUMBER AND TITLE MUST APPEAR ON EACH CERTIFICATE OF INSURANCE.**

Compliance with the foregoing requirements shall not relieve the Contractor of this liability and obligation under this section or under any other section in this Agreement.

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within ten (10) business days after notification of recommendation to award. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Contractor shall have an additional five (5) business days to submit a corrected certificate to the County. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement within fifteen (15) business days, the Contractor shall be in default of the contractual terms and conditions and award of the Contract may be rescinded, unless such timeframe for submission has been extended by the County.

The Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the County. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the County at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the County shall suspend the Contract until such time as the new or renewed certificates are received by the County in the manner prescribed herein; provided, however, that

this suspended period does not exceed thirty (30) calendar days. Thereafter, the County may, at its sole discretion, terminate this contract.

## ARTICLE 11. MANNER OF PERFORMANCE

a) The Contractor shall provide the Services described herein in a competent and professional manner satisfactory to the County in accordance with the terms and conditions of this Agreement. The County shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services. At the request of the County the Contractor shall promptly remove from the project any Contractor's employee, subcontractor, or any other person performing Services hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.

b) The Contractor agrees to defend, hold harmless and indemnify the County and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the County, occurring on account of, arising from or in connection with the removal and replacement of any Contractor's personnel performing services hereunder at the behest of the County. Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and or demotion of such Contractor's personnel.

c) The Contractor agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to replace any its personnel if so directed upon reasonable request from the County, should the County make a determination, in its sole discretion, that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.

d) The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner.

e) The Contractor shall at all times cooperate with the County and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.

f) The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

## ARTICLE 12. EMPLOYEES ARE THE RESPONSIBILITY OF THE CONTRACTOR

All employees of the Contractor shall be considered to be, at all times, employees of the Contractor under its sole direction and not employees or agents of the County. The Contractor shall supply competent employees. Miami-Dade County may require the Contractor to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on County property is not in the best interest of the County. Each employee shall have and wear proper identification.

## ARTICLE 13. INDEPENDENT CONTRACTOR RELATIONSHIP

The Contractor is, and shall be, in the performance of all work services and activities under this Agreement, an independent contractor, and not an employee, agent or servant of the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Contractor's sole direction, supervision and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Contractor's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees and agents of the County.

The Contractor does not have the power or authority to bind the County in any promise, agreement or representation other than specifically provided for in this Agreement.

## ARTICLE 14. AUTHORITY OF THE COUNTY'S PROJECT MANAGER

a) The Contractor hereby acknowledges that the County's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Contractor's Proposal; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.

b) The Contractor shall be bound by all determinations or orders and shall promptly obey and follow every order of the Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Contractor agrees with the Project Manager's determination or order. Where orders are given orally, they will be issued in writing by the Project Manager as soon thereafter as is practicable.

c) The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Contractor and the Project Manager are unable to resolve their difference, the Contractor may initiate a dispute in accordance with the procedures set forth in this Article. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.

d) In the event of such dispute, the parties to this Agreement authorize the County Manager or designee, who may not be the Project Manager or anyone associated with this Project, acting personally, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the County Manager's purview as set forth above shall be conclusive, final and binding on parties. Any such dispute shall be brought, if at all, before the County Manager within 10 days of the occurrence, event or act out of which the dispute arises.

e) The County Manager may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether Contractor's performance or any Deliverable meets the requirements of this Agreement and any specifications with respect thereto

set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the County Manager participated therein, or by any prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the Agreement. All such disputes shall be submitted in writing by the Contractor to the County Manager for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. Whenever the County Manager is entitled to exercise discretion or judgement or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The County Manager, as appropriate, shall render a decision in writing and deliver a copy of the same to the Contractor. Except as such remedies may be limited or waived elsewhere in the Agreement, Contractor reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.

## ARTICLE 15. MUTUAL OBLIGATIONS

a) This Agreement, including attachments and appendixes to the Agreement, shall constitute the entire Agreement between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of both parties.

b) Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.

c) In those situations where this Agreement imposes an indemnity obligation on the Contractor, the County may, at its expense, elect to participate in the defense if the County should so choose. Furthermore, the County may at its own expense defend or settle any such claims if the Contractor fails to diligently defend such claims, and thereafter seek indemnity for costs from the Contractor.

## ARTICLE 16. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING

The Contractor shall maintain, and shall require that its subcontractors and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in the Scope of Services. The Contractor and its subcontractors and suppliers, shall retain such records, and all other documents relevant to the Services furnished under this Agreement for a period of three (3) years from the expiration date of this Agreement and any extension thereof.

## ARTICLE 17. AUDITS

The County, or its duly authorized representatives or governmental agencies shall, until the expiration of three (3) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Contractor's books, documents, papers and records and of its subcontractors and suppliers which apply to all matters of the County. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, as applicable, and shall only address those transactions related to this Agreement.

Pursuant to County Ordinance No. 03-2, the Contractor will grant access to the Commission

Auditor to all financial and performance related records, property, and equipment purchased in whole or in part with government funds. The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

## ARTICLE 18. SUBSTITUTION OF PERSONNEL

In the event the Contractor wishes to substitute personnel for the key personnel identified by the Contractor's Proposal, the Contractor must notify the County in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution.

## ARTICLE 19. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT

The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, including its rights, title or interest in or to the same or any part thereof without the prior written consent of the County.

## ARTICLE 20. SUBCONTRACTUAL RELATIONS

a) If the Contractor will cause any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.

b) The Contractor, before making any subcontract for any portion of the services, will state in writing to the County the name of the proposed Subcontractor, the portion of the Services which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the County may require. The County will have the right to require the Contractor not to award any subcontract to a person, firm or corporation disapproved by the County.

c) Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed. Such Services performed by such Subcontractor will strictly comply with the requirements of this Contract.

d) In order to qualify as a Subcontractor satisfactory to the County, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the satisfaction of the County that it has the necessary facilities, skill and experience, and ample financial resources to perform the Services in a satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the County that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.

e) The County shall have the right to withdraw its consent to a subcontract if it appears to the County that the subcontract will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All Subcontractors

are required to protect the confidentiality of the County's and County's proprietary and confidential information. Contractor shall furnish to the County copies of all subcontracts between Contractor and Subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the County permitting the County to request completion of performance by the Subcontractor of its obligations under the subcontract, in the event the County finds the Contractor in breach of its obligations, the option to pay the Subcontractor directly for the performance by such subcontractor. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County to any subcontractor hereunder as more fully described herein.

## ARTICLE 21. ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS

The Contractor understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the County were provided to the Contractor for evaluation purposes only. However, since these assumptions, parameters, projections, estimates and explanations represent predictions of future events the County makes no representations or guarantees; and the County shall not be responsible for the accuracy of the assumptions presented; and the County shall not be responsible for conclusions to be drawn therefrom; and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Contractor. The Contractor accepts all risk associated with using this information.

## ARTICLE 22. SEVERABILITY

If this Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

## ARTICLE 23. TERMINATION AND SUSPENSION OF WORK

a) The County may terminate this Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the County through fraud, misrepresentation or material misstatement.

b) The County may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the County and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.

c) The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be debarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.

d) In addition to cancellation or termination as otherwise provided in this Agreement, the County may at any time, in its sole discretion, with or without cause, terminate this Agreement by written notice to the Contractor.

e) In the event that the County exercises its right to terminate this Agreement, the Contractor shall, upon receipt of such notice, unless otherwise directed by the County:

i. stop work on the date specified in the notice ("the Effective Termination Date");

ii. take such action as may be necessary for the protection and preservation of the County's materials and property;

iii. cancel orders;

iv. assign to the County and deliver to any location designated by the County any noncancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services:

v. take no action which will increase the amounts payable by the County under this Agreement; and

f) In the event that the County exercises its right to terminate this Agreement, the Contractor will be compensated as stated in the payment Articles herein for the:

i. portion of the Services completed in accordance with the Agreement up to the Effective Termination Date; and

ii. noncancelable Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement but not incorporated in the Services.

g) All compensation pursuant to this Article are subject to audit.

## ARTICLE 24. EVENT OF DEFAULT

a) An Event of Default shall mean a breach of this Agreement by the Contractor. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an Event of Default, shall include the following:

i. the Contractor has not delivered Deliverables on a timely basis.

ii. the Contractor has refused or failed, except in case for which an extension of time is provided, to supply enough properly skilled Staff Personnel;

iii. the Contractor has failed to make prompt payment to subcontractors or suppliers for any Services;

iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;

v. the Contractor has failed to obtain the approval of the County where required by this Agreement;

vi. the Contractor has failed to provide "adequate assurances" as required under subsection "b" below;

vii. the Contractor has failed in the representation of any warranties stated herein.

b) When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the County may request that the Contractor, within the timeframe set forth in the County's request, provide adequate assurances to the County, in writing, of the Contractor's ability to perform in accordance with terms of this Agreement. Until the County receives such assurances the County may request an adjustment to the compensation received by the Contractor for portions of the Services which the Contractor has not performed. In the event that the Contractor fails to provide to the County the requested assurances within the prescribed time frame, the County may:

i. treat such failure as a repudiation of this Agreement;

ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.

c) In the event the County shall terminate this Agreement for default, the County or its designated representatives, may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.

## ARTICLE 25. NOTICE OF DEFAULT - OPPORTUNITY TO CURE

If an Event of Default occurs, in the determination of the County, the County may so notify the Contractor ("Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured immediately or this Agreement with the County may be terminated. Notwithstanding, the County may, in its sole discretion, allow the Contractor to rectify the default to the County's reasonable satisfaction within a thirty (30) day period. The County may grant an additional period of such duration as the County shall deem appropriate without waiver of any of the County's rights hereunder, so long as the Contractor has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the County prescribes. The default notice shall specify the date the Contractor shall discontinue the Services upon the Termination Date.

## ARTICLE 26. REMEDIES IN THE EVENT OF DEFAULT

If an Event of Default occurs, the Contractor shall be liable for all damages resulting from the default, including but not limited to:

a) lost revenues;

b) the difference between the cost associated with procuring Services hereunder and the amount actually expended by the County for reprocurement of Services, including procurement and administrative costs; and,

c) such other direct damages.

The Contractor shall also remain liable for any liabilities and claims related to the Contractor's default. The County may also bring any suit or proceeding for specific performance or for an

injunction.

## ARTICLE 27. PATENT AND COPYRIGHT INDEMNIFICATION

a) The Contractor warrants that all Deliverables furnished hereunder, including but not limited to: equipment programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any patent, copyrights, service marks, trade secret, or any other third party proprietary rights.

b) The Contractor shall be liable and responsible for any and all claims made against the County for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the Work, or the County's continued use of the Deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the County and defend any action brought against the County with respect to any claim, demand, cause of action, debt, or liability.

c) In the event any Deliverable or anything provided to the County hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation to, at the County's option to (i) modify, or require that the applicable subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the County, at the Contractor's expense, the rights provided under this Agreement to use the item(s).

d) The Contractor shall be solely responsible for determining and informing the County whether a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Deliverable hereunder. The Contractor shall enter into agreements with all suppliers and subcontractors at the Contractor's own risk. The County may reject any Deliverable that it believes to be the subject of any such litigation or injunction, or if, in the County's judgment, use thereof would delay the Work or be unlawful.

e) The Contractor shall not infringe any copyright, trademark, service mark, trade secrets, patent rights, or other intellectual property rights in the performance of the Work.

## ARTICLE 28. CONFIDENTIALITY

a) All Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County in connection with the Services performed under this Agreement, made or developed by the Contractor or its subcontractors in the course of the performance of such Services, or the results of such Services, or which the County holds the proprietary rights, constitute Confidential Information and may not, without the prior written consent of the County, be used by the Contractor or its employees, agents, subcontractors or suppliers for any purpose other than for the benefit of the County, unless required by law. In addition to the foregoing, all County employee information and County financial information shall be considered confidential information and shall be subject to all the

requirements stated herein. Neither the Contractor nor its employees, agents, subcontractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the County. Additionally, the Contractor expressly agrees to be bound by and to defend, indemnify and hold harmless the County, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.

b) The Contractor shall advise each of its employees, agents, subcontractors and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the County in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.

c) It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the County shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Services performed hereunder, the Contractor shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors or suppliers without the prior written consent of the County. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall accompany such materials.

## ARTICLE 29. PROPRIETARY INFORMATION

As a political subdivision of the State of Florida, Miami-Dade County is subject to the stipulations of Florida's Public Records Law.

The Contractor acknowledges that all computer software in the County's possession may constitute or contain information or materials which the County has agreed to protect as proprietary information from disclosure or unauthorized use and may also constitute or contain information or materials which the County has developed at its own expense, the disclosure of which could harm the County's proprietary interest therein.

During the term of the contract, the Contractor will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the County's property, any computer programs, data compilations, or other software which the County has developed, has used or is using, is holding for use, or which are otherwise in the possession of the County (hereinafter "Computer Software"). All third-party license agreements must also be honored by the contractors and their employees, except as authorized by the County and, if the Computer Software has been leased or purchased by the County, all hired party license agreements must also be honored by the contractors' employees with the approval of the lessor or Contractors thereof. This includes mainframe, minis, telecommunications, personal computers and any and all information technology software.

The Contractor will report to the County any information discovered or which is disclosed to the Contractor which may relate to the improper use, publication, disclosure or removal from the County's property of any information technology software and hardware and will take such steps as are within the Contractor's authority to prevent improper use, disclosure or removal.

## ARTICLE 30. PROPRIETARY RIGHTS

a) The Contractor hereby acknowledges and agrees that the County retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the County to the Contractor hereunder or furnished by the Contractor to the County and/or created by the Contractor for delivery to the County, even if unfinished or in process, as a result of the Services the Contractor performs in connection with this Agreement, including all copyright and other proprietary rights therein, which the Contractor as well as its employees, agents, subcontractors and suppliers may use only in connection of the performance of Services under this Agreement. The Contractor shall not, without the prior written consent of the County, use such documentation on any other project in which the Contractor or its employees, agents, subcontractors or suppliers are or may become engaged. Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the County's copyrights or other proprietary rights.

b) All rights, title and interest in and to certain inventions, ideas, designs and methods, specifications and other documentation related thereto developed by the Contractor and its subcontractors specifically for the County, hereinafter referred to as "Developed Works" shall become the property of the County.

c) Accordingly, neither the Contractor nor its employees, agents, subcontractors 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 the Contractor, or any employee, agent, subcontractor or supplier thereof, without the prior written consent of the County, except as required for the Contractor's performance hereunder.

d) Except as otherwise provided in subsections a, b, and c above, or elsewhere herein, the Contractor and its subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder, that have not been customized to satisfy the performance criteria set forth in the Scope of Services. Notwithstanding the foregoing, the Contractor hereby grants, and shall require that its subcontractors and suppliers grant, if the County so desires, a perpetual, irrevocable and unrestricted right and license to use, duplicate, disclose and/or permit any other person(s) or entity(ies) to use all such Licensed Software and the associated specifications, technical data and other Documentation for the operations of the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. Such license specifically includes, but is not limited to, the right of the County to use and/or disclose, in whole or in part, the technical documentation and Licensed Software, including source code provided hereunder, to any person or entity outside the County for such person's or entity's use in furnishing any and/or all of the Deliverables provided hereunder exclusively for the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. No such License Software, specifications, data, documentation or related information shall be deemed to have been given in confidence and any statement or legend to the contrary shall be void and of no effect.

## ARTICLE 31. VENDOR REGISTRATION AND FORMS/CONFLICT OF INTEREST

a) Vendor Registration

The Contractor shall be a registered vendor with the County – Internal Services Department, for the duration of this Agreement. In becoming a Registered Vendor with Miami-Dade County, the Contractor confirms its knowledge of and commitment to comply with the following:

1. ***Miami-Dade County Ownership Disclosure Affidavit***
   (Section 2-8.1 of the County Code)

2. ***Miami-Dade County Employment Disclosure Affidavit***
   *(Section 2.8-1(d)(2) of the County Code)*

3. ***Miami-Dade Employment Drug-free Workplace Certification***
   *(Section 2-8.1.2(b) of the County Code)*

4. ***Miami-Dade Disability and Nondiscrimination Affidavit***
   *(Section 2-8.1.5* of the County Code*)*

5. ***Miami-Dade County Debarment Disclosure Affidavit***
   *(Section 10.38 of the County Code)*

6. ***Miami-Dade County Vendor Obligation to County Affidavit***
   *(Section 2-8.1 of the County Code)*

7. ***Miami-Dade County Code of Business Ethics Affidavit***
   *(Section 2-8.1(i) and 2-11(b)(1) of the County Code through (6) and (9) of the County Code and Section 2-11.1(c) of the County Code)*

8. ***Miami-Dade County Family Leave Affidavit***
   *(Article V of Chapter 11 of the County Code)*

9. ***Miami-Dade County Living Wage Affidavit***
   *(Section 2-8.9 of the County Code)*

10. ***Miami-Dade County Domestic Leave and Reporting Affidavit***
    *(Article 8, Section 11A-60 11A-67 of the County Code)*

11. ***Subcontracting Practices***
    *(Ordinance 97-35)*

12. ***Subcontractor /Supplier Listing***
    *(Section 2-8.8 of the County Code)*

13. ***Environmentally Acceptable Packaging***
    *(Resolution R-738-92)*

14. ***W-9 and 8109 Forms***
    (as required by the Internal Revenue Service)

15. ***FEIN Number or Social Security Number***
    In order to establish a file, the Contractor's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. This number becomes Contractor's "County Vendor Number". To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:
    - Identification of individual account records
    - To make payments to individual/Contractor for goods and services provided to Miami-Dade County
    - Tax reporting purposes
    - To provide a unique identifier in the vendor database that may be used for searching and sorting departmental records

16. ***Office of the Inspector General***
    (Section 2-1076 of the County Code)

17. ***Small Business Enterprises***
    The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.2, 2-8.2.3 and 2-8.2.4 of the County Code and Title 49 of the Code of Federal Regulations.

18. ***Antitrust Laws***
    By acceptance of any contract, the Contractor agrees to comply with all antitrust laws of the United States and the State of Florida.

b) Conflict of Interest

Section 2-11.1(d) of Miami-Dade County Code requires that any County employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, competing or applying for a contract, must first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County. Any such contract or business engagement entered in violation of this subsection, as amended, shall be rendered voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

## ARTICLE 32. INSPECTOR GENERAL REVIEWS

***Independent Private Sector Inspector General Reviews***

Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Contractor shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Contractor, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Contractor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

***Miami-Dade County Inspector General Review***

According to Section 2-1076 of the Code of Miami-Dade County, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Contractor. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (I) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under $1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award.***

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General is empowered to retain the services of independent private sector inspectors general (IPSIG) to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Contractor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Contractor from the Inspector General or IPSIG retained by the Inspector General, the Contractor shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Contractor's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate

files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

## ARTICLE 33. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS

Contractor agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State and the County orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this Agreement, including but not limited to:

a) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.

b) Miami-Dade County Florida, Department of Small Business Development Participation Provisions, as applicable to this Contract.

c) Environmental Protection Agency (EPA), as applicable to this Contract.

d) Miami-Dade County Code, Chapter 11A, Article 3. All contractors and subcontractors performing work in connection with this Contract shall provide equal opportunity for employment because of race, religion, color, age, sex, national origin, sexual preference, disability or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.

e) "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.

f) Miami-Dade County Code Section 10-38 "Debarment".

g) Miami-Dade County Ordinance 99-5, codified at 11A-60 et. seq. of Miami-Dade Code pertaining to complying with the County's Domestic Leave Ordinance.

h) Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

i) "Sherman S. Winn Prompt Payment Ordinance" Section 2-8.14 of the County Code.

The Contractor shall hold all licenses and/or certifications, obtain and pay for all permits and/or inspections, and comply with all laws, ordinances, regulations and building code requirements applicable to the work required herein. Damages, penalties, and/or fines imposed on the County or Contractor for failure to obtain and maintain required licenses, certifications, permits and/or inspections shall be borne by the Contractor. The Project Manager shall verify the certification(s), license(s), permit(s), etc. for the Contractor prior to authorizing work and as needed.

Notwithstanding any other provision of this Agreement, Contractor shall not be required pursuant to this Agreement to take any action or abstain from taking any action if such action or abstention would, in the good

faith determination of the Contractor, constitute a violation of any law or regulation to which Contractor is subject, including but not limited to laws and regulations requiring that Contractor conduct its operations in a

safe and sound manner.

## ARTICLE 34. NONDISCRIMINATION

During the performance of this Contract, Contractor agrees to not discriminate against any employee or applicant for employment because of race, religion, color, sex, handicap, marital status, age or national origin, and will take affirmative action to ensure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

By entering into this Contract, the Contractor attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If the Contractor or any owner, subsidiary or other firm affiliated with or related to the Contractor is found by the responsible enforcement agency or the County to be in violation of the Act or the Resolution, such violation shall render this Contract void. This Contract shall be void if the Contractor submits a false affidavit pursuant to this Resolution or the Contractor violates the Act or the Resolution during the term of this Contract, even if the Contractor was not in violation at the time it submitted its affidavit.

## ARTICLE 35. CONFLICT OF INTEREST

The Contractor represents that:

a) No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the grant of this Agreement.

b) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:

   i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or

   ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.

c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.

d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.

e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires

information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the County's Project Manager.

Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

## ARTICLE 36. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

Under no circumstances shall the Contractor without the express written consent of the County:

a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and

b) Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and

c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the County.

## ARTICLE 37. BANKRUPTCY

The County reserves the right to terminate this contract, if, during the term of any contract the Contractor has with the County, the Contractor becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Contractor under federal bankruptcy law or any state insolvency law.

## ARTICLE 38. GOVERNING LAW

This Contract, including appendices, and all matters relating to this Contract (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the State of Florida. Venue shall be Miami-Dade County.

## ARTICLE 39. INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION and/or PROTECTED HEALTH INFORMATION

Any person or entity that performs or assists Miami-Dade County with a function or activity involving the use or disclosure of "Individually Identifiable Health Information (IIHI) and/or Protected Health Information (PHI) shall comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the Miami-Dade County Privacy Standards Administrative Order. HIPAA mandates for privacy, security and electronic transfer standards, include but are not limited to:

1. Use of information only for performing services required by the contract or as required by law;
2. Use of appropriate safeguards to prevent non-permitted disclosures;
3. Reporting to Miami-Dade County of any non-permitted use or disclosure;

4. Assurances that any agents and subcontractors agree to the same restrictions and conditions that apply to the Contractor and reasonable assurances that IIHI/PHI will be held confidential;
5. Making Protected Health Information (PHI) available to the customer;
6. Making PHI available to the customer for review and amendment; and incorporating any amendments requested by the customer;
7. Making PHI available to Miami-Dade County for an accounting of disclosures; and
8. Making internal practices, books and records related to PHI available to Miami-Dade County for compliance audits.

PHI shall maintain its protected status regardless of the form and method of transmission (paper records, and/or electronic transfer of data). The Contractor must give its customers written notice of its privacy information practices including specifically, a description of the types of uses and disclosures that would be made with protected health information.

## ARTICLE 40. SURVIVAL

The parties acknowledge that any of the obligations in this Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Contractor and the County under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the contract date herein above set forth.

| Contractor | Miami-Dade County |
|---|---|
| By: | By: |
| Name: Joaly Tejeiro | Name: |
| Title: President | Title: |
| Date: 10/24/11 | Date: |
| Attest: Corporate Secretary/Notary Public | Attest: Clerk of the Board |
| Corporate Seal/Notary Seal | Approved as to form and legal sufficiency |
| ANDRES M. URRETA MY COMMISSION # DD 945439 EXPIRES: December 9, 2013 Bonded Thru Notary Public Underwriters | Assistant County Attorney |

# Appendix A

## Scope of Services

### 1. Introduction

Miami-Dade County, hereinafter referred to as the "County," as represented by the Miami-Dade County Community Action and Human Services Department, is establishing a Head Start Program Diagnostic & Therapeutic Services Pool of pre-qualified providers with applicable expertise to provide 1) Speech, 2) Occupational, and 3) Physical, diagnostic and therapeutic services to approximately 450 children and their families served by the Head Start/Early Head Start's (HS/EHS) Programs.

### A. Objective

The County requires Contractor to render comprehensive diagnostic and therapeutic services, to HS/EHS Program children identified by the Program Disability Services Coordinator, through a coordinated system for developmental, sensory, motor, language and cognitive concerns.

### B. Designated Target Geographic Areas/Services

The following are the designated target geographic areas and services that Contractor has been pre-approved to serve.

**Areas:** Southwest, Northwest, Northeast and Central Miami-Dade County

**Services:** Speech and Occupational

The Contractor is initially pre-approved to serve 138 children. The County reserves the right to adjust the designated Target Geographic Areas assignment and/or Services provided including the number of children serviced by Contractor to ensure that the County's goals and Program needs are met.

### 2. Requirements

### A. Minimum Requirements

1. Contractor's therapists performing Services shall be licensed by the State of Florida Department of Health, Division of Medical Quality Assurance, for the particular services (e.g., speech, occupational and/or physical therapy) provided, for the duration of the Contract; and

2. The Contractor shall be a Medicaid Provider for the duration of the Contract.

### B. Preferred Qualifications

The County has relied on the Contractor's Proposal to determine that Contractor has met the Preferred Qualifications.

1. Contractor possess at least three years of experience in providing similar diagnostic and therapeutic services with specific knowledge of child development milestones and assessment of children birth to five years of age.

2. Contractor maintains membership(s) with the American Speech-Language-Hearing Association (ASHA), American Occupational Therapy Association (AOTA) and/or American Physical Therapy Association (APTA), as applicable to the type of diagnostic and therapeutic services provided.

The County reserves the right to review any firm which Contractor requests contract assignment, pursuant to Article 19, to determine whether the assignee meets the Minimum and Preferred Qualifications.

**3. Requirements and Services to be Provided**

The Contractor shall provide the following services for the awarded Target Geographic Areas:

a. Adhere to all applicable Head Start Performance Standards, notices and instructions as promulgated by U.S. Department of Health and Human Services (DHHS) Administration for Children, Youths and Families (ACYF), including but not limited to, the Code of Federal Regulations (CFR), Title 45 Parts 74, 1304.20, 1304.21, 1304.52, 1308.4 and 1308.6, Florida Statutes (Section 402.301-402, 319; Section 120.60). Florida Administrative Code (Chapter 65C-22; Chapter 64E-11) and appropriate County requirements, all of which are incorporated herein by reference. The Performance Standards are available through the following link: http://eclkc.ohs.acf.hhs.gov/hslc/Program%20Design%20and%20Management/Head%20Start%20Requirements/Head%20Start%20Requirements.

b. Administer a coordinated system to screen, assess, evaluate and provide educationally relevant speech, occupational, and/or physical therapy services, as assigned by the HS/EHS Program' Disability Services Coordinator, to Program children, ages birth to five years. Contractor's services shall provide a consistent referral procedure for further evaluation by provider and treatment of Program children.

c. Ensure that Program children approved for diagnostic and therapeutic services with Medicaid or private insurance coverage receive all applicable benefits. Medicaid and insurance provider shall be billed for services rendered, when applicable. If Medicaid and/or insurance coverage does not include all services listed in the Scope of Services herein, services that are deemed necessary and approved by the HS/EHS Program's Disability Services Coordinator will be reimbursed by the County. The County will pay up to the rate that the individual Contractor has negotiated with the local Medicaid Administrator for reimbursement.

d. Ensure that all testing instruments and protocols utilized in the evaluation and assessment of Program children are supported by Miami-Dade County Public Schools (M-DCPS) Part B Transition Requirements for Pre-K Evaluations. The information is available through the following link: http://ese.dadeschools.net *(listed under Policies and Procedures).*

e. Perform speech/language, occupational and/or physical evaluation, assessment and therapeutic services of Program children consistent with professional standards and ethical requirements as imposed by the State of Florida Department of Health, Division of Medical Quality Assurance. The County reserves the right to interview all therapists prior to assignments and determine which therapists will be utilized for the Services. The County

may require Contractor to re-assign therapists in accordance with children's needs and remove therapists from rendering Services in accordance with Article 12 of the agreement.

f. Prepare and submit written analysis report to the County's HS/EHS Program's Disability Services Coordinator within two (2) weeks of completion of evaluation/assessment. The report shall include copies of the testing instruments and protocols utilized, individual treatment plan, report to physician and any other appropriate recommendations for each child assessed.

g. Recommend delivery model of therapy sessions for Program children. Therapy sessions are usually delivered in a group setting (4 children maximum per group) as a one-half hour session. However, some instances may require individual therapy sessions. Therapy delivery model to be administered shall be determined by the M-DCPS Special Education Division Staffing Team deliberating at the Individual Education Plan (IEP) Eligibility Meeting, and approved by the HS/EHS Program Disability Services Coordinator, prior to its delivery.

h. Maintain progress notes as established by the HS Program. Progress notes shall include: (1) description of therapy administered, (2) duration of session, (3) child's name and date of birth, (4) identification of Program center site where services were rendered, (5) date of service, (6) objective of session, and (7) measurable outcome achieved. All progress notes shall be signed by the therapist providing the service and a copy shall be submitted to the respective child's Program center at the end of each month for inclusion in the child's record. Additionally, a copy of progress notes shall be forwarded to the HS/EHS Program Disability Services Coordinator as part of the reporting requirements (see Section 6 for requirements).

i. Conduct classroom observations and formulate strategies to assist Program instructional staff and parents of children with suspected disabilities (e.g., strategies for promoting speech, techniques for adapting learning environment, etc.).

j. Attend meetings with Program staff, as deemed necessary and as scheduled by the HS/EHS Program Disability Services Coordinator.

k. Provide individual consultations and in-service trainings/workshops to Program instructional and administrative staff identified by the HS/EHS Program Disability Services Coordinator. Topics of training sessions may include, but are not limited to, strategies for promoting speech, occupational and physical development, and techniques and methods for adapting the learning environment to meet the needs of children with disabilities. Parents identified by the Disability Services Coordinator may also receive training that will allow for learning therapy techniques and how to carry them over into the child's daily routines, ultimately increasing the effectiveness of therapy. Contractor may be required to collaborate with other Pool members in the presentation of in-service trainings/workshops.

l. Provide required diagnostic and therapeutic services for Program children without compensation **if** Service is not covered by Medicaid, **and**, in the event that all funds budgeted for this Program are expended prior to the conclusion of the Program Year.

m. Gain approval from HS/EHS Program Disability Services Coordinator prior to performing any services that are not specifically identified in the Scope of Services herein. Not all diagnostic and therapeutic services that may be required are identified in the Scope of

Services. The County reserves the right to authorize any required services and reimburse said services at the current Medicaid rate.

n. Perform Medicaid relevant administrative support and consultative services on an as needed basis and at the request of the HS/EHS Program's Disability Services Coordinator which may include, but not limited to, the following:

   i. Invoicing and collection, including data entry and electronic submission of claims;
   ii. Medicaid/HMO Policy and Procedures, including documentation;
   iii. Quality assurance reviews of files and records;
   iv. Assistance in preparation for Medicaid audits;
   v. Other related consultative services as necessary and requested by HS Program Staff;
   vi. Review of current cases;
   vii. Assistance in formulation and review of individual treatment plans;
   viii. Individual evaluation, to include typed report as deemed necessary and as requested by HS/EHS Program Disability Services Coordinator;
   ix. Review and consultation with child's primary physician;
   x. Personal meeting or telephone consultation, as necessary, with parents of each child served;
   xi. Child developmental and behavioral assessment;
   xii. Telephone consultations with HS Program Staff;
   xiii. Other Medicaid relevant services not specifically identified; and
   xiv. Consultative advice, including in-service training.

o. Provide notification to the State of Florida Medicaid Program Area Office, ***in writing***, that an affiliation with Miami-Dade County, with reference to the appropriate County entity and Medicaid provider number, is in effect.

p. Perform other related Services as requested by the HS/EHS Program Disability Services Coordinator.

q. Comply with all laws, regulations, ordinances and resolutions applicable to the Heads Start and Early Head Start Services.

r. Contractor should provide therapists that are representative of the diversity of the populations in the community it serves and possess linguistic competency to effectively serve the targeted community.

**4. <u>Location of Services</u>**

The Services shall be provided by the Contractor at the respective HS/EHS Program centers located within the assigned Target Geographic Area(s). Services may also be provided at the Contractor's facility, if necessary and authorized by the HS/EHS Program Disability Services Coordinator.

**5. <u>Hours of Service and Availability</u>**

Services shall be provided while the HS/EHS Program centers are open *(Monday-Friday, 7:30 a.m. through 4:00 p.m.)*. The Program centers' operate in accordance with Miami-Dade County Public School's schedule. However, Services may also be rendered on planning days and school breaks at the Contractor's facility, as approved by the HS/EHS Program Disability Services Coordinator.

**6. Reporting Requirements**

The Contractor shall provide to the HS/EHS Program's Disability Services Coordinator a monthly report for the services provided.

The monthly report shall include the following information:

a. Listing of children evaluated with respective assessment reports completed, testing protocols utilized, date of evaluation, and therapist completing service;
b. Listing of children receiving therapeutic services to include the frequency of sessions and type of service provided per child with funding source identified; follow-up therapeutic services and current status of referrals;
c. Progress notes, observation and parent consultation reports;
d. Completed travel log per therapist for whom reimbursement of travel (i.e., mileage, tolls, parking) expenses is being submitted for;
e. Training design/agenda, attendance sign-in sheets, and a copy of the handout materials for all training of HS Program Staff and/or parents; and
f. An itemized listing of HS Program children referred to Medicaid or insurance provider for authorization of therapeutic services, status of referrals, and basis for any denials.

**7. Invoicing Requirements**

The Contractor shall invoice the HS/EHS Program for the approved Services not covered by Medicaid, private insurance provider or third party payer on a monthly basis, on or before the 15th day of each month following the month in which the Services were rendered, unless the County has granted the Contractor an extension in writing. Payment requests shall be accompanied by such documentation as requested by the HS/EHS Program's Disability Services Coordinator to include documentation identifying Contactor's non-federal resources, either in cash or in-kind, in an amount equivalent to 25% of the total invoice amount being submitted for reimbursement. For the purposes of the in-kind match, Contractor's administrative costs shall not account for more than 15% of the invoice submitted to the County for reimbursement.

It is anticipated that the County will reimburse each invoice within four (4) to six (6) weeks from receipt of complete and error free invoices; however, it is the responsibility of the Contractor to maintain sufficient cash flow pending receipt of reimbursement from the County.

All payments due to the Contractor may be withheld pending receipt and approval by the County of all reports and documents due from the Contractor.

**8. Other Reporting Requirements**

**A. State of Florida Certificate of Status**

The Contractor shall comply with all laws, ordinances and regulations applicable to the Services contemplated herein. Contractor is presumed to be familiar with all Federal, State and local laws, ordinances, codes, rules and regulations that may in any way affect the goods or services offered, especially, Executive Order No. 11246 entitled, "Equal Opportunity" and as amended by Executive Order No. 11375, as supplemented by the Department of Labor Relations (41 CFR, Part 60), the Americans with Disabilities Act of 1990 and implementing regulations, the Rehabilitation Act of 1973, as amended, Chapter 553 of the Florida Statutes and any and all

other local, State and Federal directives, ordinances, rules, orders and laws relating to people with disabilities.

The Contractor shall submit to the HS Program Disability Services Coordinator, within thirty (30) days from the date of execution of the contract, a Certificate of Status in the name of the Contractor, which certifies the following: Contractor is organized under the laws of the State of Florida; all fees and penalties have been paid; most recent annual report has been filed with an active status; and that an Article of Dissolution has not been filed.

**B. Audit Requirements**

Please be advised that the following sequence is provided for informational purposes only.

1. Audit Required. Non-Federal entities that expend $500,000 or more in a year in Federal Awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of OMB circular No. A-133 Revised.

2. Single Audit. Non-Federal entities that expend $500,000 or more in a year in Federal awards shall have a single audit conducted in accordance with OMB Circular A-133 Revised, except when they elect to have a program-specific audit conducted in accordance with Number 3 below.

4. Program-Specific Audit Selection. Non-Federal entities that expend Federal awards under only one Federal program (excluding Research & Development) and the Federal program's laws, regulations, or grant agreements do not require a financial statement audit. The entity may elect to have a program-specific audit conducted. A program-specific audit may not be elected for Research & Development unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency or pass-through entity in the case of a sub-recipient, approves in advance a program-specific audit.

5. Exemption when Federal Awards Expended is less than $500,000. Non-Federal entities that expend less than $500,000 a year in Federal awards are exempt from Federal audit requirements for that year, except as noted OMB Circular A-133 Revised, Subpart B, Section 215(a), but records must be available for review or audit by appropriate officials of the Federal Agency, pass-through entity, and General Accounting Office (GAO).

The Contractor shall submit to the HS/EHS Program Disability Services Coordinator a complete copy of its annual audit reports performed by an independent auditor covering each of the fiscal years for which HS Program funds were awarded. Audits of government entities must comply with OMB circular A-128. Audits of non-profit organizations, non-government entities, hospitals and institutions of higher learning must comply with OMB Circular A-133.

**9. Background Screening**

The Contractor shall comply with the following tasks in providing the Services:

1. An Affidavit of Good Moral Character shall be completed and notarized for each employee, volunteer and subcontracted.

2. Ensure that employees, subcontracted personnel and volunteers who work with vulnerable persons, including children, satisfactorily complete and pass Level 2 background screening before working with vulnerable persons, including children. Contractor shall furnish the

County with proof that employees, subcontracted personnel and volunteers, who work with vulnerable persons, satisfactorily passed Level 2 background screening, pursuant to Chapter 435, Florida Statutes, as may be amended from time to time. Any person with positive response(s) to any of the enumerated charges as defined in Level 1 and Level 2 background checks shall not work with children or youths. All employee personnel files shall reflect the initiation and completion of the required background screening checks. If the Contractor fails to furnish to the County proof that an employee, subcontractor or volunteer's Level 2 background screening was satisfactorily passed and completed prior to that employee, subcontractor or volunteer working with vulnerable persons including children, the Contractor's contract may be subject to termination at the sole discretion of the County.

3. Retain all records demonstrating compliance with the background screening required herein for not less than three years beyond the last date that all applicable terms of the contract have been complied with and final payment has been received and appropriate audits have been submitted to and accepted by the appropriate entity.

## 10. Schedule

Program year operates for 160 to 175 school days for Head Start Services, consistent with the Miami-Dade County Public School District's Calendar, unless otherwise indicated, and for 210 to 226 school days for Early Head Start Services.

## 11. Budget Allocation

Subject to available funding, the maximum amount payable by the County's HS/EHS Program for Services rendered, which does include Medicaid paid services, including Speech, Occupational and Physical, to Pool members in the aggregate, is anticipated not-to-exceed **Three Hundred and Fifty Thousand Dollars ($350,000.00)**, for a full Program year. The initial Program year (if a partial Program year) shall be prorated.

In the event that services authorized by the HS/EHS Program Disability Services Coordinator are not covered under the Medicaid guidelines and when no other funding source is available, the HS/EHS Program shall pay for said services as further defined herein, subject to appropriation of funds to the County from DHHS, and funding availability. The HS/EHS Program however will not pay any difference between the Contractor customary charges and Medicaid reimbursements.

Itemized invoices for Services rendered will be approved in accordance with the following Medicaid approved rates, or as amended by Medicaid:

### A. Speech Services

i. Fifty dollars ($50.00) per child for each diagnostic speech/language evaluation completed and documented by a licensed Speech Language Pathologist;
ii. Forty dollars ($40.00) per child, per 30-minute session of group speech/language therapy provided by a licensed Speech Language Pathologist;
iii. Twenty-eight dollar ($28.00) per child, per 30-session of individual speech/language therapy provided by a licensed Speech Language Assistant; and
iv. Sixty dollars ($60.00) per hour, per child, for Sign Language interpretation for child and parent.

**B. Occupational Services**

i. Fifty dollars ($50.00) per child for each diagnostic occupational evaluation completed and documented by a licensed Occupational Therapist; and
ii. Forty dollars ($40.00) per child, per 30-minute session of individual occupational therapy provided by a licensed Occupational Therapist.

**C. Physical Services**

i. Fifty dollars ($50.00) per child for each diagnostic physical evaluation completed and documented by a licensed Physical Therapist; and
ii. Forty dollars ($40.00) per child, per 30-minute session of individual physical therapy provided by a licensed Physical Therapist.

Medicaid approved rates are subject to change, therefore, the applicable approved and established Medicaid rates shall be honored.

**Appendix B**

## HIPAA BUSINESS ASSOCIATE ADDENDUM

This HIPAA Business Associate Addendum ("Addendum") supplements and is made a part of the Agreement by and between the Miami-Dade County, Florida ("County"), and BioNetworks, Inc., Business Associate ("Associate").

## RECITALS

A. As part of the Agreement, it is necessary for the County to disclose certain information ("Information") to Associate pursuant to the terms of the Agreement, some of which may constitute Protected Health Information ("PHI").

B. County and Associate intend to protect the privacy and provide for the security of PHI, including but not limited to, ePHI, disclosed to Associate pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.

C. The purpose of this Addendum is to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations, including, but not limited to, Title 45, Sections 164.308(b), 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations ("CFR"), as the same may be amended from time to time.

In consideration of the mutual promises below and the exchange of information pursuant to the Agreement, the parties agree as follows:

**1. Definitions.** Terms used, but not otherwise defined, shall have the same meaning as those terms in 45 CFR Sections 160.103, 164.304 and 164.501.

a. "Business Associate" shall have the meaning given to such term under the HIPAA Regulations, including, but not limited to, 45 CFR Section 160.103.

b. "Covered Entity" shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR Section 160.103.

c. "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual, the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including, but not limited to 45 CFR Section 160.103. [45 CFR Parts 160, 162 and 164]

d. "Electronic Protected Health Information" or "ePHI" means any information that is transmitted or maintained in electronic media: (i) that relates to the past, present or future physical or mental condition of an individual, the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual. and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including, but not limited to 45 CFR Section 160.103. [45 CFR Parts 160, 162 and 164]

e. "Electronic Media" shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including but not limited to, 45 CFR Section 160.103.

f. "Security incident" shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including but not limited to, 45 CFR Section 164.304.

**Appendix B**

2. **Obligations of Associate.**

a. Permitted Uses and Disclosures. Associate may use and/or disclose PHI received by Associate pursuant to the Agreement ("County's PHI") solely in accordance with the specifications set forth in the Scope of Services, Appendix A. In the event of any conflict between this Addendum and Appendix A, this Addendum shall control. [45 CFR § 164.504(e)(2)(i)]

b. Nondisclosure. Associate shall not use or further disclose County's PHI other than as permitted or required by law. [45 CFR § 164.504(e)(2)(ii)(A)]

c. Safeguards. Associate shall use appropriate safeguards to prevent use or disclosure of County's PHI in a manner other than as provided in this Addendum. [45 CFR § 164.504(e)(2)(ii)(B)] Associate shall maintain a comprehensive written information security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Associate's operations and the nature and scope of its activities. Appropriate safeguards used by Associate shall protect the confidentiality, integrity, and availability of the PHI and ePHI that is created, received, maintained, or transmitted on behalf of the County. [45 CFR § 164.314(a)(2)(i)(A)] County has at its sole discretion, the option to audit and inspect, the Associate's safeguards at any time during the life of the Agreement, upon reasonable notice being given to Associate for production of documents and coordination of inspection(s).

d. Reporting of Disclosures. Associate shall report to the County's Project Manager, any use or disclosure of the County's PHI in a manner other than as provided in this Addendum. [45 CFR § 164.504(e)(2)(ii)(c)] Associate shall report to the County through the County's Project Manager, any security incident of which it becomes aware within forty-eight (48) hours of discovery of the incident. [45 CFR § 164.314(a)(2)(i)(C)]

e. Associate's Agents. Associate agrees and shall ensure that any agents, including subcontractors, to whom it provides PHI received from (or created or received by Associate on behalf of) the County, agrees in writing to the same restrictions and conditions that apply to Associate with respect to such PHI and that such agents conduct their operations within the United States. Associate agrees and shall ensure that any agents, including subcontractors, to whom it provides ePHI received, created, maintained, or transmitted on behalf of the County, agrees in writing to implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of that ePHI. [45 CFR § 164.314(a)(2)(i)(B)] In no case may Associate's Agents reside and operate outside of the United States.

f. Documentation of Disclosures. Associate agrees to document disclosures of the County's PHI and information related to such disclosures as would be required for the County to respond to a request by an individual for an accounting of disclosures of PHI. Associate agrees to provide the County or an individual, in a time and manner designated by the County, information collected in accordance with the Agreement, to permit the County to respond to such a request for an accounting. [45 CFR § 164.528]

g. Availability of Information to County. Associate shall make available to the County such information as the County may require to fulfill the County's obligations to provide access to, provide a copy of, and account for, disclosures of PHI pursuant to HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR Sections 164.524 and 164.528. [45 CFR § 164.504(e)(2)(ii)(E) and (G)]

h. Amendment of PHI. Associate shall make the County's PHI available to the County as may be required to fulfill the County's obligations to amend PHI pursuant to HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR Section 164.526 and Associate shall, as directed by the County, incorporate any amendments to the County's PHI into copies of such PHI maintained by Associate, and in the time and manner designated by the County. [45 CFR § 164.504(e)(2)(ii)(F)]

i. Internal Practices. Associate shall make its internal practices, books and records relating to the use and disclosure of the County's PHI (or PHI created or received by Associate on behalf of the County) available to the County and to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by the County or the Secretary for purposes of determining Associate's compliance with HIPAA and the HIPAA Regulations. [45 CFR § 164.504(e)(2)(ii)(H) and 45 CFR Part 64, Subpart C.]

j. Mitigation. Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Associate of a use or disclosure of the County's PHI by Associate in violation of the requirements of this Addendum.

k. Associate's Insurance. Associate agrees to maintain the insurance coverage provided in the Agreement.

l. Notification of Breach. Associate shall notify the County within twenty-four (24) hours, and shall provide written notice no later than forty-eight (48) hours of any suspected or actual breach of security, intrusion or unauthorized disclosure of PHI and/or any actual or suspected disclosure of data in violation of any applicable federal or state laws or regulations. Associate shall take (i) prompt corrective action to cure any such deficiencies, and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

m. Expenses. Any and all expenses incurred by Associate in compliance with the terms of this Addendum or in compliance with the HIPAA Regulations shall be borne by Associate.

n. No Third Party Beneficiary. The provisions and covenants set forth in this Agreement are expressly entered into only by and between Associate and the County and are intended only for their benefit. Neither Associate nor the County intends to create or establish any third party beneficiary status or right (or the equivalent thereof) in any other third party nor shall any other third party have any right to enforce or enjoy any benefit created or established by the provisions and covenants in this Agreement.

3. **Audits, Inspection and Enforcement.** From time to time, after reasonable notice, upon any breach of this Addendum by Associate, the County may inspect the facilities, systems, books and records of Associate to monitor compliance with this Addendum. Associate shall promptly remedy any violation of this Addendum and shall certify the same to the County in writing. The fact that the County inspects, or fails to utilize its right to inspect, Associate's facilities, systems, books, records, and procedures does not relieve Associate of its responsibility to comply with this Addendum, nor does the County's (i) failure to detect or (ii) detection, but failure to notify Associate or require Associate to remedy such breach, constitute acceptance of such practice or a waiver of the County's enforcement rights under this Addendum.

4. **Termination.**

a. Material Breach. A breach by Associate of any provision of this Addendum, shall constitute a material breach of the Agreement and shall provide grounds for immediate termination of the Agreement by the County. [45 CFR § 164.504(e)(3) and 45 CFR § 164.314(a)(2)(i)(D)]

b. Termination for Cause - Reasonable Steps to Cure Breach. If the County recognizes a pattern of activity or practice of Associate that constitutes a material breach or violation of the Associate's obligations under the provisions of this Addendum and does not terminate the Agreement pursuant to Section 4a, above, the County may provide an opportunity for Associate to end the violation or cure the breach within five (5) days, or other cure period as may be specified in the Agreement. If Associate does not cure the breach or end the violation within the time period provided, the County may immediately terminate the Agreement.

c. Judicial or Administrative Proceedings. The County may terminate the Agreement, effective immediately, if (i) Associate is named as a defendant in a criminal or administrative proceeding for a violation of HIPAA, or (ii) a finding or stipulation that Associate has violated any standard or requirement of the HIPAA Regulations (or other security or privacy law) is made in any administrative or civil proceeding.

d. Effect of Termination. Upon termination of the Agreement for any reason, Associate shall return or destroy as directed by the County all PHI, including but not limited to ePHI, received from the County (or created or received by Associate on behalf of the County) that Associate still maintains in any form. This provision shall also apply to County PHI that is in the possession of subcontractors or agents of Associate. Associate shall retain no copies of such PHI or, if return or destruction is not feasible, Associate shall provide to the County notification of the conditions that make return or destruction infeasible, and shall continue to extend the protections of this Addendum to such information,

and limit further use or disclosure of such PHI to those purposes that make the return or destruction of such PHI infeasible. [45 CFR § 164.504(e)(2)(ii)(I)]

5. **Indemnification.** Associate shall indemnify and hold harmless the County and its officers, employees, trustees, agents, and instrumentalities (the indemnified parties) from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, trustees, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to, or resulting from the performance of this Addendum by Associate or its employees, agents, servants, partners, principals, or subcontractors. Associate shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of any of the indemnified parties, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Associate expressly understands and agrees that any insurance protection required by this Addendum, or otherwise provided by Associate, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the indemnified parties as herein provided. This paragraph shall survive the termination of the Agreement.

6. **Limitation of Liability.** Nothing in this Addendum shall be construed to affect or limit the County's sovereign immunity as set forth in Florida Statutes, Section 768.28.

7. **Amendment.**

a. Amendment to Comply with Law. The parties acknowledge that state and federal laws relating to the security and privacy of PHI, including electronic data, are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HIPAA Regulations and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that the County must receive satisfactory written assurance from Associate that Associate will adequately safeguard all PHI that it receives or creates pursuant to this Agreement. Upon the County's request, Associate agrees to promptly enter into an amendment to the Agreement embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA Regulations or other applicable laws. The County, in addition to any other remedies including specific performance, may terminate the Agreement upon five [5] days' written notice in the event Associate does not enter into said amendment to the Agreement providing assurances regarding the safeguarding of PHI that the County, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA Regulations. Notwithstanding Associate's failure to enter into an amendment, Associate shall comply with all provisions of the HIPAA laws.

b. Amendment to Business Associate Addendum. In addition to amendments described in 7a above, this Addendum may be otherwise modified or amended by written mutual agreement of the parties without amendment of the remainder of this Agreement.

8. **Assistance in Litigation or Administrative Proceedings.** Associate shall make itself, and any subcontractors, employees or agents assisting Associate in the performance of its obligations under this Agreement, available to the County at the County's convenience upon reasonable notice, at no cost to the County, to testify as witnesses, for document production, or otherwise, in the event of litigation or administrative proceedings being commenced against the County, its trustees, officers, agents or employees based upon claimed violation of HIPAA, the HIPAA Regulations or other laws relating to security and privacy, except where Associate or its subcontractor, employee or agent is a named adverse party.

9. **Effect on Agreement.** Except as specifically required to implement the purposes of this Addendum, or to the extent inconsistent with this Addendum, all other terms of the Agreement shall remain in force and effect. In the event of any conflict between this Addendum and Agreement, this Addendum shall control.

10. **Interpretation.** This Addendum and the Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA Regulations and applicable Florida laws. The parties agree that any ambiguity in this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA Regulations.

**Appendix B**

**11.** **Jurisdiction**. Any litigation between the parties regarding the terms of this Addendum shall take place in Miami-Dade County, Florida.

Head Start Program Diagnostic & Therapeutic Services Pool

Contract No. RFQ782e

Target Geographic Areas: Hialeah and Northwest Miami-Dade County

Services: Speech, Occupational and Physical

THIS AGREEMENT made and entered into as of this _____ day of _____ by and between Integrated Rehabilitation Center, Inc., a corporation organized and existing under the laws of the State of Florida, having its principal office at 5931 N. W. 173rd Drive, Unit 10, Miami, FL 33015 (hereinafter referred to as the "Contractor"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County"),

WITNESSETH:

WHEREAS, the Contractor has offered to provide Services as part of the Speech, Occupational and Physical Diagnostic & Therapeutic Services Pool for the Head Start Program, on a non-exclusive basis, that shall conform to the Scope of Services (Appendix A); Miami-Dade County's Request for Qualifications (RFQ) No. 782 and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the Contractor has submitted a written proposal dated August 19, 2011, hereinafter referred to as the "Contractor's Proposal" which is incorporated herein by reference; and,

WHEREAS, the County desires to procure from the Contractor such Diagnostic and Therapeutic Services for the County, in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

## ARTICLE 1. DEFINITIONS

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:

a) The words "Contract" or "Contract Documents" or "Agreement" to mean collectively these terms and conditions, the Scope of Services (Appendix A), the Business Associate Addendum (Appendix B), RFQ No. 782 and all associated addenda and attachments, the Contractor's Proposal, and all other attachments hereto and all amendments issued hereto.

b) The words "Contract Date" to mean the date on which this Agreement is effective.

c) The words "Contract Manager" to mean Miami-Dade County's Director, Internal Services Department, or the duly authorized representative designated to manage the Contract.

d) The word "Contractor" to mean Integrated Rehabilitation Center, Inc. and its permitted successors and assigns.

e) The word "Days" to mean Calendar Days.

f) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the County's Project Manager for review and approval pursuant to the terms of this Agreement.

g) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the County's Project Manager; and similarly the words "approved", acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the County's Project Manager.

h) The words "Extra Work" or "Additional Work" resulting in additions or deletions or modifications to the amount, type or value of the Work and Services as required in this Contract, as directed and/or approved by the County.

i) The words "Project Manager" to mean the County Manager or the duly authorized representative designated to manage the Project.

j) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Contractor.

k) The word "subcontractor" or "subconsultant" to mean any person, entity, firm or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.

l) The words "Work", "Services" "Program", or "Project" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.

## ARTICLE 2. ORDER OF PRECEDENCE

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) these terms and conditions, 2) Appendices to these terms and conditions (the Scope of Services and Business Associate Addendum) 3) the Miami-Dade County's RFQ No. 782 and any associated addenda and attachments thereof, and 4) the Contractor's Proposal.

## ARTICLE 3. RULES OF INTERPRETATION

a) References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.

b) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.

c) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.

d) The titles, headings, captions and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor affect the meaning thereof.

## ARTICLE 4. NATURE OF THE AGREEMENT

a) This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto or their authorized representatives.

b) The Contractor shall provide the services set forth in the Scope of Services, and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.

c) The Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.

d) The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract.

All Work and Services shall be accomplished at the direction of and to the satisfaction of the County's Project Manager.

e) The Contractor acknowledges that the County shall be responsible for making all policy decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the County. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the County with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

## ARTICLE 5. CONTRACT TERM

The Contract shall become effective on date indicated on the front page and shall continue through July 31, 2017. The County reserves the right to exercise its option to extend this Contract for up to one hundred-eighty (180) calendar days beyond the current Contract period and will notify the Contractor in writing of the extension. This Contract may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners.

## ARTICLE 6. NOTICE REQUIREMENTS

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by Registered or Certified Mail, with return receipt requested; or delivered personally; or delivered via fax or e-mail (if provided below) and followed with delivery of hard copy; and in any case addressed as follows:

**(1) to the County**

a) to the Project Manager:

Miami-Dade County
Community Action and Human Services Department
701 N. W. 1st Court
OTV 9-102
Miami, FL 33136
Attention: Head Start Program Disability Services Coordinator
Phone: 786-469-4668
Fax: 786-469-4756
E-mail: LGRACE@miamidade.gov

and,
b) to the Contract Manager:

Miami-Dade County
Internal Services Department
111 N.W. 1st Street, Suite 1375
Miami, FL 33128-1974

Attention: Procurement Management
Phone: (305) 375-5548
Fax: (305) 375-2316

(2) To the Contractor

Integrated Rehabilitation Center, Inc.
5931 N. W. 173 Drive, Unit 10
Miami, FL 33015
Attention: Ana C. Espinosa, President
Phone: (305) 826-7884
Fax: (305) 826-1545
E-mail: interehacen@aol.org

Either party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

## ARTICLE 7. PAYMENT FOR SERVICES/AMOUNT OBLIGATED

The Contractor warrants that it has reviewed the County's requirements and has asked such questions and conducted such other inquiries as the Contractor deemed necessary in order to determine the price the Contractor will charge to provide the Work and Services to be performed under this Contract. The compensation for all Work and Services performed under this Contract, including all costs associated with such Work and Services, shall be in accordance with the Medicaid approved rates as specified in the Scope of Services (Appendix A), unless otherwise approved by the County, subject to appropriation and availability of funds.

All Services undertaken by the Contractor before County's approval of this Contract shall be at the Contractor's risk and expense.

## ARTICLE 8. PRICING

The Contractor's Medicaid negotiated rates apply for all diagnostic and/or therapeutic services rendered for the term of the Contract, including any extension periods; however, the Contractor may offer incentive discounts to the County at any time during the Contract term, including any extension thereof.

With respect to travel costs and travel related expenses paid by the County, the Contractor agrees to adhere to Section 112.061 of the Florida Statutes as they pertain to out-of-pocket expenses including employee lodging, transportation, per diem, and all miscellaneous cost-and fees. The County shall not be liable for any such expenses that have not been approved in advance, in writing, by the County.

## ARTICLE 9. METHOD AND TIMES OF PAYMENT

The Contractor agrees that under the provisions of this Agreement, payment for the Services shall be processed in accordance with the invoicing requirements as specified in Appendix A, Scope of Services. All invoices shall be taken from the books of account kept by the Contractor, shall be supported by copies of payroll distribution, receipt bills or other documents reasonably required by the County, shall show the County's contract number, and shall have a unique

invoice number assigned by the Contractor. It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that interest payments be made on late payments. In accordance with Florida Statutes, Section 218.74 and Section 2-8.1.4 of the Miami-Dade County Code, the time at which payment shall be due from the County or the Public Health Trust shall be forty-five (45) days from receipt of a proper invoice. The time at which payment shall be due to small businesses shall be thirty (30) days from receipt of a proper invoice. All payments due from the County or the Public Health Trust, and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Manager, or his or her designee(s), not later that sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust.

Invoices and associated back-up documentation shall be submitted in duplicate by the Contractor to the County as follows:

Miami-Dade County
Community Action and Human Services Department
Head Start Program
701 N. W. 1st Court
OTV 10-177
Miami, FL 33136
Attention: Fiscal Coordinator
Phone: 786-469-4743

The County may at any time designate a different address and/or contact person by giving written notice to the other party.

## ARTICLE 10. INDEMNIFICATION AND INSURANCE

The Contractor shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners principals or subcontractors. The Contractor shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

Upon County's notification, the Contractor shall furnish to the Internal Services Department, Certificates of insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

1. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440.

2. Commercial General Liability Insurance on a comprehensive basis in an amount not less

than $300,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage. The mailing address of Miami-Dade County 111 N.W. 1st Street, Suite 1300, Miami, Florida 33128-1974, as the certificate holder, must appear on the certificate of insurance.**

3. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, in an amount not less than $300,000 combined single limit per occurrence for bodily injury and property damage.

4. Malpractice Insurance in an amount not less than $250,000 per claim.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operation of the Contractor. All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

OR

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued by the State of Florida Department of Financial Services and are members of the Florida Guaranty Fund.

**Certificates of Insurance must indicate that for any cancellation of coverage before the expiration date, the issuing insurance carrier will endeavor to mail thirty (30) day written advance notice to the certificate holder. In addition, the Contractor hereby agrees not to modify the insurance coverage without thirty (30) days written advance notice to the County.**

**NOTE: MIAMI-DADE COUNTY CONTRACT NUMBER AND TITLE MUST APPEAR ON EACH CERTIFICATE OF INSURANCE.**

Compliance with the foregoing requirements shall not relieve the Contractor of this liability and obligation under this section or under any other section in this Agreement.

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within ten (10) business days after notification of recommendation to award. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Contractor shall have an additional five (5) business days to submit a corrected certificate to the County. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement within fifteen (15) business days, the Contractor shall be in default of the contractual terms and conditions and award of the Contract may be rescinded, unless such timeframe for submission has been extended by the County.

The Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the County. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the

County at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the County shall suspend the Contract until such time as the new or renewed certificates are received by the County in the manner prescribed herein; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the County may, at its sole discretion, terminate this contract.

## ARTICLE 11. MANNER OF PERFORMANCE

a) The Contractor shall provide the Services described herein in a competent and professional manner satisfactory to the County in accordance with the terms and conditions of this Agreement. The County shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services. At the request of the County the Contractor shall promptly remove from the project any Contractor's employee, subcontractor, or any other person performing Services hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.

b) The Contractor agrees to defend, hold harmless and indemnify the County and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the County, occurring on account of, arising from or in connection with the removal and replacement of any Contractor's personnel performing services hereunder at the behest of the County. Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and or demotion of such Contractor's personnel.

c) The Contractor agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to replace any its personnel if so directed upon reasonable request from the County, should the County make a determination, in its sole discretion, that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.

d) The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner.

e) The Contractor shall at all times cooperate with the County and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.

f) The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

## ARTICLE 12. EMPLOYEES ARE THE RESPONSIBILITY OF THE CONTRACTOR

All employees of the Contractor shall be considered to be, at all times, employees of the Contractor under its sole direction and not employees or agents of the County. The Contractor

shall supply competent employees. Miami-Dade County may require the Contractor to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on County property is not in the best interest of the County. Each employee shall have and wear proper identification.

## ARTICLE 13. INDEPENDENT CONTRACTOR RELATIONSHIP

The Contractor is, and shall be, in the performance of all work services and activities under this Agreement, an independent contractor, and not an employee, agent or servant of the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Contractor's sole direction, supervision and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Contractor's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees and agents of the County.

The Contractor does not have the power or authority to bind the County in any promise, agreement or representation other than specifically provided for in this Agreement.

## ARTICLE 14. AUTHORITY OF THE COUNTY'S PROJECT MANAGER

a) The Contractor hereby acknowledges that the County's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Contractor's Proposal; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.

b) The Contractor shall be bound by all determinations or orders and shall promptly obey and follow every order of the Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Contractor agrees with the Project Manager's determination or order. Where orders are given orally, they will be issued in writing by the Project Manager as soon thereafter as is practicable.

c) The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Contractor and the Project Manager are unable to resolve their difference, the Contractor may initiate a dispute in accordance with the procedures set forth in this Article. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.

d) In the event of such dispute, the parties to this Agreement authorize the County Manager or designee, who may not be the Project Manager or anyone associated with this Project, acting personally, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the County Manager's purview as set forth above shall be conclusive, final and binding on parties. Any such dispute shall be brought, if at all, before the County Manager within 10 days of the occurrence, event or act out of which the dispute arises.

e) The County Manager may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether Contractor's performance or any Deliverable meets the requirements of this Agreement and any specifications with respect thereto set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the County Manager participated therein, or by any prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the Agreement. All such disputes shall be submitted in writing by the Contractor to the County Manager for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. Whenever the County Manager is entitled to exercise discretion or judgement or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The County Manager, as appropriate, shall render a decision in writing and deliver a copy of the same to the Contractor. Except as such remedies may be limited or waived elsewhere in the Agreement, Contractor reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.

## ARTICLE 15. MUTUAL OBLIGATIONS

a) This Agreement, including attachments and appendixes to the Agreement, shall constitute the entire Agreement between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of both parties.

b) Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.

c) In those situations where this Agreement imposes an indemnity obligation on the Contractor, the County may, at its expense, elect to participate in the defense if the County should so choose. Furthermore, the County may at its own expense defend or settle any such claims if the Contractor fails to diligently defend such claims, and thereafter seek indemnity for costs from the Contractor.

## ARTICLE 16. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING

The Contractor shall maintain, and shall require that its subcontractors and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in the Scope of Services. The Contractor and its subcontractors and suppliers, shall retain such records, and all other documents relevant to the Services furnished under this Agreement for a period of three (3) years from the expiration date of this Agreement and any extension thereof.

## ARTICLE 17. AUDITS

The County, or its duly authorized representatives or governmental agencies shall, until the expiration of three (3) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Contractor's books, documents, papers and records and of its subcontractors and suppliers which apply to all

matters of the County. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, as applicable, and shall only address those transactions related to this Agreement.

Pursuant to County Ordinance No. 03-2, the Contractor will grant access to the Commission Auditor to all financial and performance related records, property, and equipment purchased in whole or in part with government funds. The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

## ARTICLE 18. SUBSTITUTION OF PERSONNEL

In the event the Contractor wishes to substitute personnel for the key personnel identified by the Contractor's Proposal, the Contractor must notify the County in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution.

## ARTICLE 19. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT

The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, including its rights, title or interest in or to the same or any part thereof without the prior written consent of the County.

## ARTICLE 20. SUBCONTRACTUAL RELATIONS

a) If the Contractor will cause any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.

b) The Contractor, before making any subcontract for any portion of the services, will state in writing to the County the name of the proposed Subcontractor, the portion of the Services which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the County may require. The County will have the right to require the Contractor not to award any subcontract to a person, firm or corporation disapproved by the County.

c) Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed. Such Services performed by such Subcontractor will strictly comply with the requirements of this Contract.

d) In order to qualify as a Subcontractor satisfactory to the County, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the satisfaction of the County that it has the necessary facilities, skill and experience, and ample financial resources to perform the Services in a satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the County that it has satisfactorily performed services of the same general type which

is required to be performed under this Agreement.

e) The County shall have the right to withdraw its consent to a subcontract if it appears to the County that the subcontract will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the County's and County's proprietary and confidential information. Contractor shall furnish to the County copies of all subcontracts between Contractor and Subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the County permitting the County to request completion of performance by the Subcontractor of its obligations under the subcontract, in the event the County finds the Contractor in breach of its obligations, the option to pay the Subcontractor directly for the performance by such subcontractor. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County to any subcontractor hereunder as more fully described herein.

## ARTICLE 21. ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS

The Contractor understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the County were provided to the Contractor for evaluation purposes only. However, since these assumptions, parameters, projections, estimates and explanations represent predictions of future events the County makes no representations or guarantees; and the County shall not be responsible for the accuracy of the assumptions presented; and the County shall not be responsible for conclusions to be drawn therefrom; and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Contractor. The Contractor accepts all risk associated with using this information.

## ARTICLE 22. SEVERABILITY

If this Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

## ARTICLE 23. TERMINATION AND SUSPENSION OF WORK

a) The County may terminate this Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the County through fraud, misrepresentation or material misstatement.

b) The County may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the County and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.

c) The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be debarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.

d) In addition to cancellation or termination as otherwise provided in this Agreement, the County may at any time, in its sole discretion, with or without cause, terminate this Agreement by written notice to the Contractor.

e) In the event that the County exercises its right to terminate this Agreement, the Contractor shall, upon receipt of such notice, unless otherwise directed by the County:

i. stop work on the date specified in the notice ("the Effective Termination Date");

ii. take such action as may be necessary for the protection and preservation of the County's materials and property;

iii. cancel orders;

iv. assign to the County and deliver to any location designated by the County any noncancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services:

v. take no action which will increase the amounts payable by the County under this Agreement; and

f) In the event that the County exercises its right to terminate this Agreement, the Contractor will be compensated as stated in the payment Articles herein for the:

i. portion of the Services completed in accordance with the Agreement up to the Effective Termination Date; and

ii. noncancelable Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement but not incorporated in the Services.

g) All compensation pursuant to this Article are subject to audit.

## ARTICLE 24. EVENT OF DEFAULT

a) An Event of Default shall mean a breach of this Agreement by the Contractor. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an Event of Default, shall include the following:

i. the Contractor has not delivered Deliverables on a timely basis.

ii. the Contractor has refused or failed, except in case for which an extension of time is provided, to supply enough properly skilled Staff Personnel;

iii. the Contractor has failed to make prompt payment to subcontractors or suppliers for any Services;

iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a

receiver;

v. the Contractor has failed to obtain the approval of the County where required by this Agreement;

vi. the Contractor has failed to provide "adequate assurances" as required under subsection "b" below;

vii. the Contractor has failed in the representation of any warranties stated herein.

b) When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the County may request that the Contractor, within the timeframe set forth in the County's request, provide adequate assurances to the County, in writing, of the Contractor's ability to perform in accordance with terms of this Agreement. Until the County receives such assurances the County may request an adjustment to the compensation received by the Contractor for portions of the Services which the Contractor has not performed. In the event that the Contractor fails to provide to the County the requested assurances within the prescribed time frame, the County may:

i. treat such failure as a repudiation of this Agreement;

ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.

c) In the event the County shall terminate this Agreement for default, the County or its designated representatives, may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.

## ARTICLE 25. NOTICE OF DEFAULT - OPPORTUNITY TO CURE

If an Event of Default occurs, in the determination of the County, the County may so notify the Contractor ("Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured immediately or this Agreement with the County may be terminated. Notwithstanding, the County may, in its sole discretion, allow the Contractor to rectify the default to the County's reasonable satisfaction within a thirty (30) day period. The County may grant an additional period of such duration as the County shall deem appropriate without waiver of any of the County's rights hereunder, so long as the Contractor has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the County prescribes. The default notice shall specify the date the Contractor shall discontinue the Services upon the Termination Date.

## ARTICLE 26. REMEDIES IN THE EVENT OF DEFAULT

If an Event of Default occurs, the Contractor shall be liable for all damages resulting from the default, including but not limited to:

a) lost revenues;

b) the difference between the cost associated with procuring Services hereunder and the amount actually expended by the County for reprocurement of Services, including procurement and administrative costs; and,

c) such other direct damages.

The Contractor shall also remain liable for any liabilities and claims related to the Contractor's default. The County may also bring any suit or proceeding for specific performance or for an injunction.

## ARTICLE 27. PATENT AND COPYRIGHT INDEMNIFICATION

a) The Contractor warrants that all Deliverables furnished hereunder, including but not limited to: equipment programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any patent, copyrights, service marks, trade secret, or any other third party proprietary rights.

b) The Contractor shall be liable and responsible for any and all claims made against the County for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the Work, or the County's continued use of the Deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the County and defend any action brought against the County with respect to any claim, demand, cause of action, debt, or liability.

c) In the event any Deliverable or anything provided to the County hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation to, at the County's option to (i) modify, or require that the applicable subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the County, at the Contractor's expense, the rights provided under this Agreement to use the item(s).

d) The Contractor shall be solely responsible for determining and informing the County whether a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Deliverable hereunder. The Contractor shall enter into agreements with all suppliers and subcontractors at the Contractor's own risk. The County may reject any Deliverable that it believes to be the subject of any such litigation or injunction, or if, in the County's judgment, use thereof would delay the Work or be unlawful.

e) The Contractor shall not infringe any copyright, trademark, service mark, trade secrets, patent rights, or other intellectual property rights in the performance of the Work.

## ARTICLE 28. CONFIDENTIALITY

a) All Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County in connection with the Services performed under this Agreement, made or developed by the Contractor or its subcontractors in the course of the performance of such Services, or the results of such Services, or which the County holds the proprietary rights,

constitute Confidential Information and may not, without the prior written consent of the County, be used by the Contractor or its employees, agents, subcontractors or suppliers for any purpose other than for the benefit of the County, unless required by law. In addition to the foregoing, all County employee information and County financial information shall be considered confidential information and shall be subject to all the requirements stated herein. Neither the Contractor nor its employees, agents, subcontractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the County. Additionally, the Contractor expressly agrees to be bound by and to defend, indemnify and hold harmless the County, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.

b) The Contractor shall advise each of its employees, agents, subcontractors and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the County in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.

c) It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the County shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Services performed hereunder, the Contractor shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors or suppliers without the prior written consent of the County. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall accompany such materials.

## ARTICLE 29. PROPRIETARY INFORMATION

As a political subdivision of the State of Florida, Miami-Dade County is subject to the stipulations of Florida's Public Records Law.

The Contractor acknowledges that all computer software in the County's possession may constitute or contain information or materials which the County has agreed to protect as proprietary information from disclosure or unauthorized use and may also constitute or contain information or materials which the County has developed at its own expense, the disclosure of which could harm the County's proprietary interest therein.

During the term of the contract, the Contractor will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the County's property, any computer programs, data compilations, or other software which the County has developed, has used or is using, is holding for use, or which are otherwise in the possession of the County (hereinafter "Computer Software"). All third-party license agreements must also be honored by the contractors and their employees, except as authorized by the County and, if the Computer Software has been leased or purchased by the County, all hired party license agreements must also be honored by the contractors' employees with the approval of the lessor or Contractors thereof. This includes mainframe, minis, telecommunications, personal computers and any and all information technology software.

The Contractor will report to the County any information discovered or which is disclosed to the Contractor which may relate to the improper use, publication, disclosure or removal from the County's property of any information technology software and hardware and will take such steps as are within the Contractor's authority to prevent improper use, disclosure or removal.

## ARTICLE 30. PROPRIETARY RIGHTS

a) The Contractor hereby acknowledges and agrees that the County retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the County to the Contractor hereunder or furnished by the Contractor to the County and/or created by the Contractor for delivery to the County, even if unfinished or in process, as a result of the Services the Contractor performs in connection with this Agreement, including all copyright and other proprietary rights therein, which the Contractor as well as its employees, agents, subcontractors and suppliers may use only in connection of the performance of Services under this Agreement. The Contractor shall not, without the prior written consent of the County, use such documentation on any other project in which the Contractor or its employees, agents, subcontractors or suppliers are or may become engaged. Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the County's copyrights or other proprietary rights.

b) All rights, title and interest in and to certain inventions, ideas, designs and methods, specifications and other documentation related thereto developed by the Contractor and its subcontractors specifically for the County, hereinafter referred to as "Developed Works" shall become the property of the County.

c) Accordingly, neither the Contractor nor its employees, agents, subcontractors 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 the Contractor, or any employee, agent, subcontractor or supplier thereof, without the prior written consent of the County, except as required for the Contractor's performance hereunder.

d) Except as otherwise provided in subsections a, b, and c above, or elsewhere herein, the Contractor and its subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder, that have not been customized to satisfy the performance criteria set forth in the Scope of Services. Notwithstanding the foregoing, the Contractor hereby grants, and shall require that its subcontractors and suppliers grant, if the County so desires, a perpetual, irrevocable and unrestricted right and license to use, duplicate, disclose and/or permit any other person(s) or entity(ies) to use all such Licensed Software and the associated specifications, technical data and other Documentation for the operations of the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. Such license specifically includes, but is not limited to, the right of the County to use and/or disclose, in whole or in part, the technical documentation and Licensed Software, including source code provided hereunder, to any person or entity outside the County for such person's or entity's use in furnishing any and/or all of the Deliverables provided hereunder exclusively for the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. No such License Software,

specifications, data, documentation or related information shall be deemed to have been given in confidence and any statement or legend to the contrary shall be void and of no effect.

## ARTICLE 31. VENDOR REGISTRATION AND FORMS/CONFLICT OF INTEREST

a) Vendor Registration

The Contractor shall be a registered vendor with the County – Internal Services Department, for the duration of this Agreement. In becoming a Registered Vendor with Miami-Dade County, the Contractor confirms its knowledge of and commitment to comply with the following:

1. ***Miami-Dade County Ownership Disclosure Affidavit***
   (Section 2-8.1 of the County Code)

2. ***Miami-Dade County Employment Disclosure Affidavit***
   *(Section 2.8-1(d)(2) of the County Code)*

3. ***Miami-Dade Employment Drug-free Workplace Certification***
   *(Section 2-8.1.2(b) of the County Code)*

4. ***Miami-Dade Disability and Nondiscrimination Affidavit***
   *(Section 2-8.1.5* of the County Code*)*

5. ***Miami-Dade County Debarment Disclosure Affidavit***
   *(Section 10.38 of the County Code)*

6. ***Miami-Dade County Vendor Obligation to County Affidavit***
   *(Section 2-8.1 of the County Code)*

7. ***Miami-Dade County Code of Business Ethics Affidavit***
   *(Section 2-8.1(i) and 2-11(b)(1) of the County Code through (6) and (9) of the County Code and Section 2-11.1(c) of the County Code)*

8. ***Miami-Dade County Family Leave Affidavit***
   *(Article V of Chapter 11 of the County Code)*

9. ***Miami-Dade County Living Wage Affidavit***
   *(Section 2-8.9 of the County Code)*

10. ***Miami-Dade County Domestic Leave and Reporting Affidavit***
    *(Article 8, Section 11A-60 11A-67 of the County Code)*

11. ***Subcontracting Practices***
    *(Ordinance 97-35)*

12. ***Subcontractor /Supplier Listing***
    *(Section 2-8.8 of the County Code)*

13. ***Environmentally Acceptable Packaging***
    *(Resolution R-738-92)*

14. ***W-9 and 8109 Forms***
    (as required by the Internal Revenue Service)

15. ***FEIN Number or Social Security Number***
    In order to establish a file, the Contractor's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. This number becomes Contractor's "County Vendor Number". To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:
    - Identification of individual account records
    - To make payments to individual/Contractor for goods and services provided to Miami-Dade County
    - Tax reporting purposes
    - To provide a unique identifier in the vendor database that may be used for searching and sorting departmental records

16. ***Office of the Inspector General***
    (Section 2-1076 of the County Code)

17. ***Small Business Enterprises***
    The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.2, 2-8.2.3 and 2-8.2.4 of the County Code and Title 49 of the Code of Federal Regulations.

18. ***Antitrust Laws***
    By acceptance of any contract, the Contractor agrees to comply with all antitrust laws of the United States and the State of Florida.

b) Conflict of Interest

Section 2-11.1(d) of Miami-Dade County Code requires that any County employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, competing or applying for a contract, must first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County. Any such contract or business engagement entered in violation of this subsection, as amended, shall be rendered voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

## ARTICLE 32. INSPECTOR GENERAL REVIEWS

***Independent Private Sector Inspector General Reviews***

Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Contractor shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Contractor, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Contractor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

***Miami-Dade County Inspector General Review***

According to Section 2-1076 of the Code of Miami-Dade County, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Contractor. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (I) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under $1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award.***

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General is empowered to retain the services of independent private sector inspectors general (IPSIG) to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Contractor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Contractor from the Inspector General or IPSIG retained by the Inspector General, the Contractor shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Contractor's possession, custody or control which, in the Inspector General's or

IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

## ARTICLE 33. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS

Contractor agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State and the County orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this Agreement, including but not limited to:

a) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.

b) Miami-Dade County Florida, Department of Small Business Development Participation Provisions, as applicable to this Contract.

c) Environmental Protection Agency (EPA), as applicable to this Contract.

d) Miami-Dade County Code, Chapter 11A, Article 3. All contractors and subcontractors performing work in connection with this Contract shall provide equal opportunity for employment because of race, religion, color, age, sex, national origin, sexual preference, disability or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.

e) "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.

f) Miami-Dade County Code Section 10-38 "Debarment".

g) Miami-Dade County Ordinance 99-5, codified at 11A-60 et. seq. of Miami-Dade Code pertaining to complying with the County's Domestic Leave Ordinance.

h) Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

i) "Sherman S. Winn Prompt Payment Ordinance" Section 2-8.14 of the County Code.

The Contractor shall hold all licenses and/or certifications, obtain and pay for all permits and/or inspections, and comply with all laws, ordinances, regulations and building code requirements applicable to the work required herein. Damages, penalties, and/or fines imposed on the County or Contractor for failure to obtain and maintain required licenses, certifications, permits and/or inspections shall be borne by the Contractor. The Project Manager shall verify the certification(s), license(s), permit(s), etc. for the Contractor prior to authorizing work and as needed.

Notwithstanding any other provision of this Agreement, Contractor shall not be required pursuant to this Agreement to take any action or abstain from taking any action if such action or abstention would, in the good

faith determination of the Contractor, constitute a violation of any law or regulation to which Contractor is subject, including but not limited to laws and regulations requiring that Contractor conduct its operations in a safe and sound manner.

## ARTICLE 34. NONDISCRIMINATION

During the performance of this Contract, Contractor agrees to not discriminate against any employee or applicant for employment because of race, religion, color, sex, handicap, marital status, age or national origin, and will take affirmative action to ensure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

By entering into this Contract, the Contractor attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If the Contractor or any owner, subsidiary or other firm affiliated with or related to the Contractor is found by the responsible enforcement agency or the County to be in violation of the Act or the Resolution, such violation shall render this Contract void. This Contract shall be void if the Contractor submits a false affidavit pursuant to this Resolution or the Contractor violates the Act or the Resolution during the term of this Contract, even if the Contractor was not in violation at the time it submitted its affidavit.

## ARTICLE 35. CONFLICT OF INTEREST

The Contractor represents that:

a) No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the grant of this Agreement.

b) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:

   i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or

   ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.

c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.

d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.

e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the County's Project Manager.

Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

## ARTICLE 36. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

Under no circumstances shall the Contractor without the express written consent of the County:

a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and

b) Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and

c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the County.

## ARTICLE 37. BANKRUPTCY

The County reserves the right to terminate this contract, if, during the term of any contract the Contractor has with the County, the Contractor becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Contractor under federal bankruptcy law or any state insolvency law.

## ARTICLE 38. GOVERNING LAW

This Contract, including appendices, and all matters relating to this Contract (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the State of Florida. Venue shall be Miami-Dade County.

## ARTICLE 39. INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION and/or PROTECTED HEALTH INFORMATION

Any person or entity that performs or assists Miami-Dade County with a function or activity involving the use or disclosure of "Individually Identifiable Health Information (IIHI) and/or Protected Health Information (PHI) shall comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the Miami-Dade County Privacy Standards Administrative Order. HIPAA mandates for privacy, security and electronic transfer standards, include but are not limited to:

1. Use of information only for performing services required by the contract or as required by law;
2. Use of appropriate safeguards to prevent non-permitted disclosures;
3. Reporting to Miami-Dade County of any non-permitted use or disclosure;

4. Assurances that any agents and subcontractors agree to the same restrictions and conditions that apply to the Contractor and reasonable assurances that IIHI/PHI will be held confidential;
5. Making Protected Health Information (PHI) available to the customer;
6. Making PHI available to the customer for review and amendment; and incorporating any amendments requested by the customer;
7. Making PHI available to Miami-Dade County for an accounting of disclosures; and
8. Making internal practices, books and records related to PHI available to Miami-Dade County for compliance audits.

PHI shall maintain its protected status regardless of the form and method of transmission (paper records, and/or electronic transfer of data). The Contractor must give its customers written notice of its privacy information practices including specifically, a description of the types of uses and disclosures that would be made with protected health information.

**ARTICLE 40. SURVIVAL**

The parties acknowledge that any of the obligations in this Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Contractor and the County under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the contract date herein above set forth.

| Contractor | Miami-Dade County |
|---|---|
| By: Integrated Rehabilitation Center | By: _____ |
| Name: Ana C Espinosa | Name: _____ |
| Title: President | Title: _____ |
| Date: 10/24/11 | Date: _____ |
| Attest: _____ Corporate Secretary/Notary Public | Attest: _____ Clerk of the Board |

Corporate Seal/Notary Seal

Notary Public State of Florida
Barbara M Perez
My Commission DD868702
Expires 03/11/2013

Approved as to form
and legal sufficiency

_____
Assistant County Attorney

STATE OF FLORIDA
COUNTY OF Broward
Sworn to (or affirmed) and subscribed before me this 24 day of 10 20 11
Notary Public Signature
Type of Identification Produced Florida Driver License





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# Appendix A

## Scope of Services

### 1. Introduction

Miami-Dade County, hereinafter referred to as the "County," as represented by the Miami-Dade County Community Action and Human Services Department, is establishing a Head Start Program Diagnostic & Therapeutic Services Pool of pre-qualified providers with applicable expertise to provide 1) Speech, 2) Occupational, and 3) Physical, diagnostic and therapeutic services to approximately 450 children and their families served by the Head Start/Early Head Start's (HS/EHS) Programs.

### A. Objective

The County requires Contractor to render comprehensive diagnostic and therapeutic services, to HS/EHS Program children identified by the Program Disability Services Coordinator, through a coordinated system for developmental, sensory, motor, language and cognitive concerns.

### B. Designated Target Geographic Areas/Services

The following are the designated target geographic areas and services that Contractor has been pre-approved to serve.

**Areas:** Hialeah and Northwest Miami-Dade County

**Services:** Speech, Occupational and Physical

The Contractor is initially pre-approved to serve **37** children. The County reserves the right to adjust the designated Target Geographic Areas assignment and/or Services provided including the number of children serviced by Contractor to ensure that the County's goals and Program needs are met.

### 2. Requirements

### A. Minimum Requirements

1. Contractor's therapists performing Services shall be licensed by the State of Florida Department of Health, Division of Medical Quality Assurance, for the particular services (e.g., speech, occupational and/or physical therapy) provided, for the duration of the Contract; and

2. The Contractor shall be a Medicaid Provider for the duration of the Contract.

### B. Preferred Qualifications

The County has relied on the Contractor's Proposal to determine that Contractor has met the Preferred Qualifications.

1. Contractor possess at least three years of experience in providing similar diagnostic and therapeutic services with specific knowledge of child development milestones and assessment of children birth to five years of age.

2. Contractor maintains membership(s) with the American Speech-Language-Hearing Association (ASHA), American Occupational Therapy Association (AOTA) and/or American Physical Therapy Association (APTA), as applicable to the type of diagnostic and therapeutic services provided.

The County reserves the right to review any firm which Contractor requests contract assignment, pursuant to Article 19, to determine whether the assignee meets the Minimum and Preferred Qualifications.

**3. Requirements and Services to be Provided**

The Contractor shall provide the following services for the awarded Target Geographic Areas:

a. Adhere to all applicable Head Start Performance Standards, notices and instructions as promulgated by U.S. Department of Health and Human Services (DHHS) Administration for Children, Youths and Families (ACYF), including but not limited to, the Code of Federal Regulations (CFR), Title 45 Parts 74, 1304.20, 1304.21, 1304.52, 1308.4 and 1308.6, Florida Statutes (Section 402.301-402, 319; Section 120.60). Florida Administrative Code (Chapter 65C-22; Chapter 64E-11) and appropriate County requirements, all of which are incorporated herein by reference. The Performance Standards are available through the following link: http://eclkc.ohs.acf.hhs.gov/hslc/Program%20Design%20and%20Management/Head%20Start%20Requirements/Head%20Start%20Requirements.

b. Administer a coordinated system to screen, assess, evaluate and provide educationally relevant speech, occupational, and/or physical therapy services, as assigned by the HS/EHS Program' Disability Services Coordinator, to Program children, ages birth to five years. Contractor's services shall provide a consistent referral procedure for further evaluation by provider and treatment of Program children.

c. Ensure that Program children approved for diagnostic and therapeutic services with Medicaid or private insurance coverage receive all applicable benefits. Medicaid and insurance provider shall be billed for services rendered, when applicable. If Medicaid and/or insurance coverage does not include all services listed in the Scope of Services herein, services that are deemed necessary and approved by the HS/EHS Program's Disability Services Coordinator will be reimbursed by the County. The County will pay up to the rate that the individual Contractor has negotiated with the local Medicaid Administrator for reimbursement.

d. Ensure that all testing instruments and protocols utilized in the evaluation and assessment of Program children are supported by Miami-Dade County Public Schools (M-DCPS) Part B Transition Requirements for Pre-K Evaluations. The information is available through the following link: http://ese.dadeschools.net *(listed under Policies and Procedures).*

e. Perform speech/language, occupational and/or physical evaluation, assessment and therapeutic services of Program children consistent with professional standards and ethical requirements as imposed by the State of Florida Department of Health, Division of Medical Quality Assurance. The County reserves the right to interview all therapists prior to assignments and determine which therapists will be utilized for the Services. The County

may require Contractor to re-assign therapists in accordance with children's needs and remove therapists from rendering Services in accordance with Article 12 of the agreement.

f. Prepare and submit written analysis report to the County's HS/EHS Program's Disability Services Coordinator within two (2) weeks of completion of evaluation/assessment. The report shall include copies of the testing instruments and protocols utilized, individual treatment plan, report to physician and any other appropriate recommendations for each child assessed.

g. Recommend delivery model of therapy sessions for Program children. Therapy sessions are usually delivered in a group setting (4 children maximum per group) as a one-half hour session. However, some instances may require individual therapy sessions. Therapy delivery model to be administered shall be determined by the M-DCPS Special Education Division Staffing Team deliberating at the Individual Education Plan (IEP) Eligibility Meeting, and approved by the HS/EHS Program Disability Services Coordinator, prior to its delivery.

h. Maintain progress notes as established by the HS Program. Progress notes shall include: (1) description of therapy administered, (2) duration of session, (3) child's name and date of birth, (4) identification of Program center site where services were rendered, (5) date of service, (6) objective of session, and (7) measurable outcome achieved. All progress notes shall be signed by the therapist providing the service and a copy shall be submitted to the respective child's Program center at the end of each month for inclusion in the child's record. Additionally, a copy of progress notes shall be forwarded to the HS/EHS Program Disability Services Coordinator as part of the reporting requirements (see Section 6 for requirements).

i. Conduct classroom observations and formulate strategies to assist Program instructional staff and parents of children with suspected disabilities (e.g., strategies for promoting speech, techniques for adapting learning environment, etc.).

j. Attend meetings with Program staff, as deemed necessary and as scheduled by the HS/EHS Program Disability Services Coordinator.

k. Provide individual consultations and in-service trainings/workshops to Program instructional and administrative staff identified by the HS/EHS Program Disability Services Coordinator. Topics of training sessions may include, but are not limited to, strategies for promoting speech, occupational and physical development, and techniques and methods for adapting the learning environment to meet the needs of children with disabilities. Parents identified by the Disability Services Coordinator may also receive training that will allow for learning therapy techniques and how to carry them over into the child's daily routines, ultimately increasing the effectiveness of therapy. Contractor may be required to collaborate with other Pool members in the presentation of in-service trainings/workshops.

l. Provide required diagnostic and therapeutic services for Program children without compensation **if** Service is not covered by Medicaid, **and**, in the event that all funds budgeted for this Program are expended prior to the conclusion of the Program Year.

m. Gain approval from HS/EHS Program Disability Services Coordinator prior to performing any services that are not specifically identified in the Scope of Services herein. Not all diagnostic and therapeutic services that may be required are identified in the Scope of

Services. The County reserves the right to authorize any required services and reimburse said services at the current Medicaid rate.

n. Perform Medicaid relevant administrative support and consultative services on an as needed basis and at the request of the HS/EHS Program's Disability Services Coordinator which may include, but not limited to, the following:

   i. Invoicing and collection, including data entry and electronic submission of claims;
   ii. Medicaid/HMO Policy and Procedures, including documentation;
   iii. Quality assurance reviews of files and records;
   iv. Assistance in preparation for Medicaid audits;
   v. Other related consultative services as necessary and requested by HS Program Staff;
   vi. Review of current cases;
   vii. Assistance in formulation and review of individual treatment plans;
   viii. Individual evaluation, to include typed report as deemed necessary and as requested by HS/EHS Program Disability Services Coordinator;
   ix. Review and consultation with child's primary physician;
   x. Personal meeting or telephone consultation, as necessary, with parents of each child served;
   xi. Child developmental and behavioral assessment;
   xii. Telephone consultations with HS Program Staff;
   xiii. Other Medicaid relevant services not specifically identified; and
   xiv. Consultative advice, including in-service training.

o. Provide notification to the State of Florida Medicaid Program Area Office, ***in writing***, that an affiliation with Miami-Dade County, with reference to the appropriate County entity and Medicaid provider number, is in effect.

p. Perform other related Services as requested by the HS/EHS Program Disability Services Coordinator.

q. Comply with all laws, regulations, ordinances and resolutions applicable to the Heads Start and Early Head Start Services.

r. Contractor should provide therapists that are representative of the diversity of the populations in the community it serves and possess linguistic competency to effectively serve the targeted community.

**4. Location of Services**

The Services shall be provided by the Contractor at the respective HS/EHS Program centers located within the assigned Target Geographic Area(s). Services may also be provided at the Contractor's facility, if necessary and authorized by the HS/EHS Program Disability Services Coordinator.

**5. Hours of Service and Availability**

Services shall be provided while the HS/EHS Program centers are open *(Monday-Friday, 7:30 a.m. through 4:00 p.m.)*. The Program centers' operate in accordance with Miami-Dade County Public School's schedule. However, Services may also be rendered on planning days and school breaks at the Contractor's facility, as approved by the HS/EHS Program Disability Services Coordinator.

**6. Reporting Requirements**

The Contractor shall provide to the HS/EHS Program's Disability Services Coordinator a monthly report for the services provided.

The monthly report shall include the following information:

a. Listing of children evaluated with respective assessment reports completed, testing protocols utilized, date of evaluation, and therapist completing service;
b. Listing of children receiving therapeutic services to include the frequency of sessions and type of service provided per child with funding source identified; follow-up therapeutic services and current status of referrals;
c. Progress notes, observation and parent consultation reports;
d. Completed travel log per therapist for whom reimbursement of travel (i.e., mileage, tolls, parking) expenses is being submitted for;
e. Training design/agenda, attendance sign-in sheets, and a copy of the handout materials for all training of HS Program Staff and/or parents; and
f. An itemized listing of HS Program children referred to Medicaid or insurance provider for authorization of therapeutic services, status of referrals, and basis for any denials.

**7. Invoicing Requirements**

The Contractor shall invoice the HS/EHS Program for the approved Services not covered by Medicaid, private insurance provider or third party payer on a monthly basis, on or before the 15th day of each month following the month in which the Services were rendered, unless the County has granted the Contractor an extension in writing. Payment requests shall be accompanied by such documentation as requested by the HS/EHS Program's Disability Services Coordinator to include documentation identifying Contactor's non-federal resources, either in cash or in-kind, in an amount equivalent to 25% of the total invoice amount being submitted for reimbursement. For the purposes of the in-kind match, Contractor's administrative costs shall not account for more than 15% of the invoice submitted to the County for reimbursement.

It is anticipated that the County will reimburse each invoice within four (4) to six (6) weeks from receipt of complete and error free invoices; however, it is the responsibility of the Contractor to maintain sufficient cash flow pending receipt of reimbursement from the County.

All payments due to the Contractor may be withheld pending receipt and approval by the County of all reports and documents due from the Contractor.

**8. Other Reporting Requirements**

**A. State of Florida Certificate of Status**

The Contractor shall comply with all laws, ordinances and regulations applicable to the Services contemplated herein. Contractor is presumed to be familiar with all Federal, State and local laws, ordinances, codes, rules and regulations that may in any way affect the goods or services offered, especially, Executive Order No. 11246 entitled, "Equal Opportunity" and as amended by Executive Order No. 11375, as supplemented by the Department of Labor Relations (41 CFR, Part 60), the Americans with Disabilities Act of 1990 and implementing regulations, the Rehabilitation Act of 1973, as amended, Chapter 553 of the Florida Statutes and any and all

other local, State and Federal directives, ordinances, rules, orders and laws relating to people with disabilities.

The Contractor shall submit to the HS Program Disability Services Coordinator, within thirty (30) days from the date of execution of the contract, a Certificate of Status in the name of the Contractor, which certifies the following: Contractor is organized under the laws of the State of Florida; all fees and penalties have been paid; most recent annual report has been filed with an active status; and that an Article of Dissolution has not been filed.

**B. Audit Requirements**

Please be advised that the following sequence is provided for informational purposes only.

1. Audit Required. Non-Federal entities that expend $500,000 or more in a year in Federal Awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of OMB circular No. A-133 Revised.

2. Single Audit. Non-Federal entities that expend $500,000 or more in a year in Federal awards shall have a single audit conducted in accordance with OMB Circular A-133 Revised, except when they elect to have a program-specific audit conducted in accordance with Number 3 below.

4. Program-Specific Audit Selection. Non-Federal entities that expend Federal awards under only one Federal program (excluding Research & Development) and the Federal program's laws, regulations, or grant agreements do not require a financial statement audit. The entity may elect to have a program-specific audit conducted. A program-specific audit may not be elected for Research & Development unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency or pass-through entity in the case of a sub-recipient, approves in advance a program-specific audit.

5. Exemption when Federal Awards Expended is less than $500,000. Non-Federal entities that expend less than $500,000 a year in Federal awards are exempt from Federal audit requirements for that year, except as noted OMB Circular A-133 Revised, Subpart B, Section 215(a), but records must be available for review or audit by appropriate officials of the Federal Agency, pass-through entity, and General Accounting Office (GAO).

The Contractor shall submit to the HS/EHS Program Disability Services Coordinator a complete copy of its annual audit reports performed by an independent auditor covering each of the fiscal years for which HS Program funds were awarded. Audits of government entities must comply with OMB circular A-128. Audits of non-profit organizations, non-government entities, hospitals and institutions of higher learning must comply with OMB Circular A-133.

**9. Background Screening**

The Contractor shall comply with the following tasks in providing the Services:

1. An Affidavit of Good Moral Character shall be completed and notarized for each employee, volunteer and subcontracted personnel.

2. Ensure that employees, subcontracted personnel and volunteers who work with vulnerable persons, including children, satisfactorily complete and pass Level 2 background screening before working with vulnerable persons, including children. Contractor shall furnish the

County with proof that employees, subcontracted personnel and volunteers, who work with vulnerable persons, satisfactorily passed Level 2 background screening, pursuant to Chapter 435, Florida Statutes, as may be amended from time to time. Any person with positive response(s) to any of the enumerated charges as defined in Level 1 and Level 2 background checks shall not work with children or youths. All employee personnel files shall reflect the initiation and completion of the required background screening checks. If the Contractor fails to furnish to the County proof that an employee, subcontractor or volunteer's Level 2 background screening was satisfactorily passed and completed prior to that employee, subcontractor or volunteer working with vulnerable persons including children, the Contractor's contract may be subject to termination at the sole discretion of the County.

3. Retain all records demonstrating compliance with the background screening required herein for not less than three years beyond the last date that all applicable terms of the contract have been complied with and final payment has been received and appropriate audits have been submitted to and accepted by the appropriate entity.

## 10. Schedule

Program year operates for 160 to 175 school days for Head Start Services, consistent with the Miami-Dade County Public School District's Calendar, unless otherwise indicated, and for 210 to 226 school days for Early Head Start Services.

## 11. Budget Allocation

Subject to available funding, the maximum amount payable by the County's HS/EHS Program for Services rendered, which does include Medicaid paid services, including Speech, Occupational and Physical, to Pool members in the aggregate, is anticipated not-to-exceed **Three Hundred and Fifty Thousand Dollars ($350,000.00)**, for a full Program year. The initial Program year (if a partial Program year) shall be prorated.

In the event that services authorized by the HS/EHS Program Disability Services Coordinator are not covered under the Medicaid guidelines and when no other funding source is available, the HS/EHS Program shall pay for said services as further defined herein, subject to appropriation of funds to the County from DHHS, and funding availability. The HS/EHS Program however will not pay any difference between the Contractor customary charges and Medicaid reimbursements.

Itemized invoices for Services rendered will be approved in accordance with the following Medicaid approved rates, or as amended by Medicaid:

### A. Speech Services

i. Fifty dollars ($50.00) per child for each diagnostic speech/language evaluation completed and documented by a licensed Speech Language Pathologist;
ii. Forty dollars ($40.00) per child, per 30-minute session of group speech/language therapy provided by a licensed Speech Language Pathologist; and
iii. Twenty-eight dollar ($28.00) per child, per 30-session of individual speech/language therapy provided by a licensed Speech Language Assistant;
iv. Sixty dollars ($60.00) per hour, per child, for Sign Language interpretation for child and parent.

**B. Occupational Services**

i. Fifty dollars ($50.00) per child for each diagnostic occupational evaluation completed and documented by a licensed Occupational Therapist; and
ii. Forty dollars ($40.00) per child, per 30-minute session of individual occupational therapy provided by a licensed Occupational Therapist.

**C. Physical Services**

i. Fifty dollars ($50.00) per child for each diagnostic physical evaluation completed and documented by a licensed Physical Therapist; and
ii. Forty dollars ($40.00) per child, per 30-minute session of individual physical therapy provided by a licensed Physical Therapist.

Medicaid approved rates are subject to change, therefore, the applicable approved and established Medicaid rates shall be honored.

**Appendix B**

## HIPAA BUSINESS ASSOCIATE ADDENDUM

This HIPAA Business Associate Addendum ("Addendum") supplements and is made a part of the Agreement by and between the Miami-Dade County, Florida ("County"), and Integrated Rehabilitation Center, Inc., Business Associate ("Associate").

## RECITALS

A. As part of the Agreement, it is necessary for the County to disclose certain information ("Information") to Associate pursuant to the terms of the Agreement, some of which may constitute Protected Health Information ("PHI").

B. County and Associate intend to protect the privacy and provide for the security of PHI, including but not limited to, ePHI, disclosed to Associate pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.

C. The purpose of this Addendum is to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations, including, but not limited to, Title 45, Sections 164.308(b), 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations ("CFR"), as the same may be amended from time to time.

In consideration of the mutual promises below and the exchange of information pursuant to the Agreement, the parties agree as follows:

1. **Definitions.** Terms used, but not otherwise defined, shall have the same meaning as those terms in 45 CFR Sections 160.103, 164.304 and 164.501.

a. "Business Associate" shall have the meaning given to such term under the HIPAA Regulations, including, but not limited to, 45 CFR Section 160.103.

b. "Covered Entity" shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR Section 160.103.

c. "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual, the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including, but not limited to 45 CFR Section 160.103. [45 CFR Parts 160, 162 and 164]

d. "Electronic Protected Health Information" or "ePHI" means any information that is transmitted or maintained in electronic media: (i) that relates to the past, present or future physical or mental condition of an individual, the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual. and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including, but not limited to 45 CFR Section 160.103. [45 CFR Parts 160, 162 and 164]

e. "Electronic Media" shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including but not limited to, 45 CFR Section 160.103.

f. "Security incident" shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including but not limited to, 45 CFR Section 164.304.

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**Appendix B**

**2. Obligations of Associate.**

a. Permitted Uses and Disclosures. Associate may use and/or disclose PHI received by Associate pursuant to the Agreement ("County's PHI") solely in accordance with the specifications set forth in the Scope of Services, Appendix A. In the event of any conflict between this Addendum and Appendix A, this Addendum shall control. [45 CFR § 164.504(e)(2)(i)]

b. Nondisclosure. Associate shall not use or further disclose County's PHI other than as permitted or required by law. [45 CFR § 164.504(e)(2)(ii)(A)]

c. Safeguards. Associate shall use appropriate safeguards to prevent use or disclosure of County's PHI in a manner other than as provided in this Addendum. [45 CFR § 164.504(e)(2)(ii)(B)] Associate shall maintain a comprehensive written information security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Associate's operations and the nature and scope of its activities. Appropriate safeguards used by Associate shall protect the confidentiality, integrity, and availability of the PHI and ePHI that is created, received, maintained, or transmitted on behalf of the County. [45 CFR § 164.314(a)(2)(i)(A)] County has at its sole discretion, the option to audit and inspect, the Associate's safeguards at any time during the life of the Agreement, upon reasonable notice being given to Associate for production of documents and coordination of inspection(s).

d. Reporting of Disclosures. Associate shall report to the County's Project Manager, any use or disclosure of the County's PHI in a manner other than as provided in this Addendum. [45 CFR § 164.504(e)(2)(ii)(c)] Associate shall report to the County through the County's Project Manager, any security incident of which it becomes aware within forty-eight (48) hours of discovery of the incident. [45 CFR § 164.314(a)(2)(i)(C)]

e. Associate's Agents. Associate agrees and shall ensure that any agents, including subcontractors, to whom it provides PHI received from (or created or received by Associate on behalf of) the County, agrees in writing to the same restrictions and conditions that apply to Associate with respect to such PHI and that such agents conduct their operations within the United States. Associate agrees and shall ensure that any agents, including subcontractors, to whom it provides ePHI received, created, maintained, or transmitted on behalf of the County, agrees in writing to implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of that ePHI. [45 CFR § 164.314(a)(2)(i)(B)] In no case may Associate's Agents reside and operate outside of the United States.

f. Documentation of Disclosures. Associate agrees to document disclosures of the County's PHI and information related to such disclosures as would be required for the County to respond to a request by an individual for an accounting of disclosures of PHI. Associate agrees to provide the County or an individual, in a time and manner designated by the County, information collected in accordance with the Agreement, to permit the County to respond to such a request for an accounting. [45 CFR § 164.528]

g. Availability of Information to County. Associate shall make available to the County such information as the County may require to fulfill the County's obligations to provide access to, provide a copy of, and account for, disclosures of PHI pursuant to HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR Sections 164.524 and 164.528. [45 CFR § 164.504(e)(2)(ii)(E) and (G)]

h. Amendment of PHI. Associate shall make the County's PHI available to the County as may be required to fulfill the County's obligations to amend PHI pursuant to HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR Section 164.526 and Associate shall, as directed by the County, incorporate any amendments to the County's PHI into copies of such PHI maintained by Associate, and in the time and manner designated by the County. [45 CFR § 164.504(e)(2)(ii)(F)]

i. Internal Practices. Associate shall make its internal practices, books and records relating to the use and disclosure of the County's PHI (or PHI created or received by Associate on behalf of the County) available to the County and to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by the

County or the Secretary for purposes of determining Associate's compliance with HIPAA and the HIPAA Regulations. [45 CFR § 164.504(e)(2)(ii)(H) and 45 CFR Part 64, Subpart C.]

j. Mitigation. Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Associate of a use or disclosure of the County's PHI by Associate in violation of the requirements of this Addendum.

k. Associate's Insurance. Associate agrees to maintain the insurance coverage provided in the Agreement.

l. Notification of Breach. Associate shall notify the County within twenty-four (24) hours, and shall provide written notice no later than forty-eight (48) hours of any suspected or actual breach of security, intrusion or unauthorized disclosure of PHI and/or any actual or suspected disclosure of data in violation of any applicable federal or state laws or regulations. Associate shall take (i) prompt corrective action to cure any such deficiencies, and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

m. Expenses. Any and all expenses incurred by Associate in compliance with the terms of this Addendum or in compliance with the HIPAA Regulations shall be borne by Associate.

n. No Third Party Beneficiary. The provisions and covenants set forth in this Agreement are expressly entered into only by and between Associate and the County and are intended only for their benefit. Neither Associate nor the County intends to create or establish any third party beneficiary status or right (or the equivalent thereof) in any other third party nor shall any other third party have any right to enforce or enjoy any benefit created or established by the provisions and covenants in this Agreement.

**3. Audits, Inspection and Enforcement.** From time to time, after reasonable notice, upon any breach of this Addendum by Associate, the County may inspect the facilities, systems, books and records of Associate to monitor compliance with this Addendum. Associate shall promptly remedy any violation of this Addendum and shall certify the same to the County in writing. The fact that the County inspects, or fails to utilize its right to inspect, Associate's facilities, systems, books, records, and procedures does not relieve Associate of its responsibility to comply with this Addendum, nor does the County's (i) failure to detect or (ii) detection, but failure to notify Associate or require Associate to remedy such breach, constitute acceptance of such practice or a waiver of the County's enforcement rights under this Addendum.

**4. Termination.**

a. Material Breach. A breach by Associate of any provision of this Addendum, shall constitute a material breach of the Agreement and shall provide grounds for immediate termination of the Agreement by the County. [45 CFR § 164.504(e)(3) and 45 CFR § 164.314(a)(2)(i)(D)]

b. Termination for Cause - Reasonable Steps to Cure Breach. If the County recognizes a pattern of activity or practice of Associate that constitutes a material breach or violation of the Associate's obligations under the provisions of this Addendum and does not terminate the Agreement pursuant to Section 4a, above, the County may provide an opportunity for Associate to end the violation or cure the breach within five (5) days, or other cure period as may be specified in the Agreement. If Associate does not cure the breach or end the violation within the time period provided, the County may immediately terminate the Agreement.

c. Judicial or Administrative Proceedings. The County may terminate the Agreement, effective immediately, if (i) Associate is named as a defendant in a criminal or administrative proceeding for a violation of HIPAA, or (ii) a finding or stipulation that Associate has violated any standard or requirement of the HIPAA Regulations (or other security or privacy law) is made in any administrative or civil proceeding.

d. Effect of Termination. Upon termination of the Agreement for any reason, Associate shall return or destroy as directed by the County all PHI, including but not limited to ePHI, received from the County (or created or received by Associate on behalf of the County) that Associate still maintains in any form. This provision shall also apply to County PHI that is in the possession of subcontractors or agents of Associate. Associate shall retain no copies of such

PHI or, if return or destruction is not feasible, Associate shall provide to the County notification of the conditions that make return or destruction infeasible, and shall continue to extend the protections of this Addendum to such information, and limit further use or disclosure of such PHI to those purposes that make the return or destruction of such PHI infeasible. [45 CFR § 164.504(e)(2)(ii)(I)]

5. **Indemnification.** Associate shall indemnify and hold harmless the County and its officers, employees, trustees, agents, and instrumentalities (the indemnified parties) from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, trustees, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to, or resulting from the performance of this Addendum by Associate or its employees, agents, servants, partners, principals, or subcontractors. Associate shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of any of the indemnified parties, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Associate expressly understands and agrees that any insurance protection required by this Addendum, or otherwise provided by Associate, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the indemnified parties as herein provided. This paragraph shall survive the termination of the Agreement.

6. **Limitation of Liability.** Nothing in this Addendum shall be construed to affect or limit the County's sovereign immunity as set forth in Florida Statutes, Section 768.28.

7. **Amendment.**

a. Amendment to Comply with Law. The parties acknowledge that state and federal laws relating to the security and privacy of PHI, including electronic data, are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HIPAA Regulations and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that the County must receive satisfactory written assurance from Associate that Associate will adequately safeguard all PHI that it receives or creates pursuant to this Agreement. Upon the County's request, Associate agrees to promptly enter into an amendment to the Agreement embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA Regulations or other applicable laws. The County, in addition to any other remedies including specific performance, may terminate the Agreement upon five [5] days' written notice in the event Associate does not enter into said amendment to the Agreement providing assurances regarding the safeguarding of PHI that the County, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA Regulations. Notwithstanding Associate's failure to enter into an amendment, Associate shall comply with all provisions of the HIPAA laws.

b. Amendment to Business Associate Addendum. In addition to amendments described in 7a above, this Addendum may be otherwise modified or amended by written mutual agreement of the parties without amendment of the remainder of this Agreement.

8. **Assistance in Litigation or Administrative Proceedings.** Associate shall make itself, and any subcontractors, employees or agents assisting Associate in the performance of its obligations under this Agreement, available to the County at the County's convenience upon reasonable notice, at no cost to the County, to testify as witnesses, for document production, or otherwise, in the event of litigation or administrative proceedings being commenced against the County, its trustees, officers, agents or employees based upon claimed violation of HIPAA, the HIPAA Regulations or other laws relating to security and privacy, except where Associate or its subcontractor, employee or agent is a named adverse party.

9. **Effect on Agreement.** Except as specifically required to implement the purposes of this Addendum, or to the extent inconsistent with this Addendum, all other terms of the Agreement shall remain in force and effect. In the event of any conflict between this Addendum and Agreement, this Addendum shall control.

10. **Interpretation.** This Addendum and the Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA Regulations and applicable Florida laws. The parties agree that any ambiguity in

this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA Regulations.

**11.** **Jurisdiction**. Any litigation between the parties regarding the terms of this Addendum shall take place in Miami-Dade County, Florida.

# Memorandum

MIAMI-DADE COUNTY

**Date:** September 16, 2011

**To:** Miriam Singer, CPPO
Director
Department of Procurement Management

**From:** Maria Carballeira, CPPB
Procurement Contracting Officer
Chairperson, Evaluation/Selection Committee

**Subject:** Report of Evaluation/Selection Committee for RFQ No. 782 – Head Start Program Diagnostic & Therapeutic Services Pool

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The County issued Request for Qualifications (RFQ) No. 782 to solicit qualifications for consideration into the Head Start Program Diagnostic & Therapeutic Services Pool (the "Pool"). The selected pool members shall provide Head Start Program Diagnostic and Therapeutic Services as defined by the U.S. Department of Health and Human Services (DHHS) and Miami-Dade County rules and guidelines. Appoximately 400 children and their families will be served by the Program via this Pool.

The Evaluation/Selection Committee has completed the evaluation of proposals submitted in response to the solicitation following the guidelines published in the solicitation.

**Committee meeting dates:**
August 26, 2011 (kick-off)
September 13, 2011 (scoring, ranking and recommendation)

**Verification of compliance with contract measures:**
Contract measures are not applicable, as project is supported by federal funds.

**Verification of compliance with minimum qualification requirements:**
The solicitation had minimum qualification requirements which were reviewed by the Chairperson and Grace Laskis of the client department, Community Action Agency (CAA). All of the proposers met the requirements.

**Local Certified Service-Disabled Veteran's Business Enterprise Preference:**
Local Certified Service-Disabled Veteran's Business Enterprise Preference is not applicable, as project is supported by federal funds.

**Summary of scores:**
The final scores are as follows:

| *Proposer* | *Score* |
|---|---|
| | *(max. 500)* |
| 1. Hearing and Speech Center of Florida, Inc. | 495 |
| 2. Speech Pathology and Educational Center, Inc. | 487 |
| 3. Easter Seals South Florida, Inc. | 474 |
| 4. BioNetworks, Inc. | 466 |
| 5. Integrated Rehabilitation Center, Inc. | 447 |
| 6. All-Star Kids Rehab, Inc. | 349 |
| 7. Speech Therapy Associates of South Florida, P.A. | 346 |

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Pricing was not considered in the scoring, as the Medicaid Administrator negotiated rates for each proposer applies for all diagnostic and therapeutic services rendered.

The Evaluation/Selection Committee decided not to hold oral presentations, as the proposals did not require further clarification.

**Local Preference:**
Local Preference is not applicable, as project is supported by federal funds.

**Negotiations:**
The Evaluation/Selection Committee recommends that the County enter into negotiations with the top five firms for consideration into the Pool as follows:

1. Hearing and Speech Center of Florida, Inc.
2. Speech Pathology and Educational Center, Inc.
3. Easter Seals South Florida, Inc.
4. BioNetworks, Inc.
5. Integrated Rehabilitation Center, Inc.

The following individuals will participate in the negotiations:

Maria Carballeira, Procurement Contracting Officer, Department of Procurement Management
Florreyn "Joy" Vickers, Center Supervisor, Community Action Agency
Graciela Laskis, Special Projects Administrator 1, Community Action Agency

**Consensus Statement:**

The Committee has determined that the top five firms are qualified to serve in the Pool. The Committee considered the scoring guidelines in accordance with Implementing Order 3-34 (Formation and Performance of Selection Committees) in making this recommendation. There is a 48 point difference between the score of the highest ranked firm (Hearing and Speech Center of Florida, Inc.) and the fifth ranked firm (Integrated Rehabilitation Center, Inc.). After the fifth ranked firm, there is a significant gap in the scoring of approximately 100 points to the next ranked firm.

Additionally, in their recommendation, the Committee considered 1) services to be provided (i.e., Speech/Occupational/Physical), 2) number of children to be served, and 3) coverage of services required for each of the designated Target Geographic Areas (Hialeah, Northwest, Northeast, Central, West Central and Southwest). The attached chart titled "Recommended Firms by Target Geographic Areas/Service Provided/Numbers Served" provides detailed information on the recommendation, by firm. After the Pool is established, the Head Start Program Disability Services Administrators may adjust the designated Target Geographic Area assignments and/or Services provided by each firm as may be necessary to accommodate Program children served.

The five recommended firms possess the required licenses. These firms have qualified diagnostic and therapeutic service professionals with the capacity to screen, assess, evaluate and provide the Head Start Program's educationally relevant speech, occupational, and/or physical therapy services. These firms specialize in providing diagnostic and therapeutic care services for low-income families and traditionally underserved populations in the targeted geographic areas. Additionally, the recommended firms concentrate on providing services to children from birth to five years of age, and possess a specific knowledge of child development milestones and assessment techniques. The recommendation ensures coverage for all of the target geographic areas and the majority of anticipated

services, with the exception of the Northwest area. The services that are not covered for the Northwest area will be addressed through the negotiations process. The Committee fully expects that the negotiations team will be able to negotiate coverage for this area. Alternatively, Program Administrators can assign services within the other target geographic areas to meet Program needs.

Copies of the score sheets are attached for each Evaluation/Selection Committee member, as well as a composite score sheet.

Approved

Miriam Singer
Director

9/22/11
Date

Not Approved

Miriam Singer
Director

Date

## RFQ 782 - Head Start Program Diagnostic & Therapeutic Services Pool

### Recommended Firms by Target Geographic Area/Service Provided/Numbers Served

| | Proposer Ranking | 1 | 2 | 3 | 4 | 5 | | Total | Current | |
|---|---|---|---|---|---|---|---|---|---|---|
| Target Geographic Area | Service Provided | Hearing and Speech Center of FL, Inc. | Speech Pathology and Educational Center, Inc. | Easter Seals South Florida, Inc. | BioNetworks, Inc. | Integrated Rehabilitation Center Inc. | | Number Able to be Served to Cover Anticipated Needs | Approximate Number Currently Served | |
| Hialeah | Speech | 12 | 15 | | | 15 | | 42 | 46 | 4 HS/SPEC |
| | Occupational | 4 | | | | | | 4 | 4 | |
| | Physical | | | | | 2 | | 2 | 2 | |
| Southwest Miami-Dade | Speech | 24 | 5 | | 47 | | | 76 | 76 | |
| | Occupational | 4 | | | 2 | | | 6 | 6 | |
| | Physical | | | | | | | 0 | 3 | 3 Easter |
| Northwest Miami-Dade | Speech | | | | | 10 | | 10 | 39 | 29 BioNetwork |
| | Occupational | | | | | 7 | | 7 | 7 | |
| | Physical | | | | | 3 | | 3 | 3 | |
| Central Miami-Dade | Speech | 24 | 74 | 50 | 49 | | | 197 | 197 | |
| | Occupational | | | 4 | 8 | | | 12 | 12 | |
| | Physical | | | 2 | | | | 2 | 5 | 3 Easter |
| Northeast Miami-Dade | Speech | | | | 3 | | | 3 | 3 | |
| | Occupational | | | | | | | 0 | 0 | |
| | Physical | | | | | | | 0 | 3 | 3 Easter |
| West Central Miami-Dade | Speech | | 6 | | | | | 6 | 6 | |
| | Occupational | | | | | | | 0 | 0 | |
| | Physical | | | | | | | 0 | 0 | |
| | | 68 | 100 | 56 | 109 | 37 | | 370 | 412 | |

9/16/2011

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RFQ NO. 782

HEAD START PROGRAM DIAGNOSTIC AND THERAPEUTIC SERVICES POOL

EVALUATION OF PROPOSALS

COMPOSITE

| SELECTION CRITERIA ↓ PROPOSERS → | Maximum Points Per Member | Maximum Total Points (5 members) | All-Star Kids Rehab, Inc. | BioNetworks, Inc. | Easter Seals South Florida, Inc. | Hearing and Speech Center of FL, Inc. | Integrated Rehabilitation Center Inc. |
|---|---|---|---|---|---|---|---|
| Proposer's relevant experience, qualifications, and past performance | 30 | 150 | 97 | 138 | 144 | 150 | 139 |
| Relevant experience and qualifications of key personnel, including key personnel of subcontractors, that will provide services, and experience and qualifications of subcontractors | 30 | 150 | 112 | 142 | 134 | 148 | 138 |
| Proposer's approach and commitment to providing the services requested in this Solicitation | 25 | 125 | 93 | 116 | 121 | 125 | 110 |
| Management of services | 15 | 75 | 47 | 70 | 75 | 72 | 60 |
| TOTAL POINTS | 100 | 500 | 349 | 466 | 474 | 495 | 447 |

SIGNATURE:

Chairperson

Reviewed by

PRINT NAME:

Maria Carballeira

Pearl P. Bethel

6/14/2011

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RFQ NO. 782

HEAD START PROGRAM DIAGNOSTIC AND THERAPEUTIC SERVICES POOL

EVALUATION OF PROPOSALS

GRACIELA LASKIS (CAA)

| SELECTION CRITERIA ↓ PROPOSERS → | Maximum Points | All-Star Kids Rehab, Inc. | BioNetworks, Inc. | Easter Seals South Florida, Inc. | Hearing and Speech Center of FL, Inc. | Integrated Rehabilitation Center Inc. |
|---|---|---|---|---|---|---|
| Proposer's relevant experience, qualifications, and past performance | 30 | 20 | 25 | 25 | 30 | 30 |
| Relevant experience and qualifications of key personnel, including key personnel of subcontractors, that will provide services, and experience and qualifications of subcontractors | 30 | 22 | 28 | 30 | 30 | 30 |
| Proposer's approach and commitment to providing the services requested in this Solicitation | 25 | 15 | 20 | 23 | 25 | 25 |
| Management of services | 15 | 12 | 12 | 15 | 15 | 12 |
| TOTAL POINTS | 100 | 69 | 85 | 93 | 100 | 97 |

RFQ NO. 782

HEAD START PROGRAM DIAGNOSTIC AND THERAPEUTIC SERVICES POOL

EVALUATION OF PROPOSALS

FLORREYN VICKERS (CAA)

| SELECTION CRITERIA ↓ PROPOSERS → | Maximum Points | All-Star Kids Rehab, Inc. | BioNetworks, Inc. | Easter Seals South Florida, Inc. | Hearing and Speech Center of FL, Inc. | Integrated Rehabilitation Center Inc. |
|---|---|---|---|---|---|---|
| Proposer's relevant experience, qualifications, and past performance | 30 | 15 | 28 | 30 | 30 | 30 |
| Relevant experience and qualifications of key personnel, including key personnel of subcontractors, that will provide services, and experience and qualifications of subcontractors | 30 | 20 | 28 | 25 | 30 | 30 |
| Proposer's approach and commitment to providing the services requested in this Solicitation | 25 | 18 | 23 | 25 | 25 | 22 |
| Management of services | 15 | 10 | 15 | 15 | 15 | 15 |
| TOTAL POINTS | 100 | 63 | 94 | 95 | 100 | 97 |



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RFQ NO. 782

HEAD START PROGRAM DIAGNOSTIC AND THERAPEUTIC SERVICES POOL

EVALUATION OF PROPOSALS

MICHAELA DOHERTY (OGC)

| SELECTION CRITERIA ↓ / PROPOSERS → | Maximum Points | All-Star Kids Rehab, Inc. | BioNetworks, Inc. | Easter Seals South Florida, Inc. | Hearing and Speech Center of FL, Inc. | Integrated Rehabilitation Center Inc. |
|---|---|---|---|---|---|---|
| Proposer's relevant experience, qualifications, and past performance | 30 | 20 | 30 | 30 | 30 | 26 |
| Relevant experience and qualifications of key personnel, including key personnel of subcontractors, that will provide services, and experience and qualifications of subcontractors | 30 | 20 | 30 | 28 | 30 | 26 |
| Proposer's approach and commitment to providing the services requested in this Solicitation | 25 | 20 | 25 | 25 | 25 | 23 |
| Management of services | 15 | 10 | 15 | 15 | 12 | 12 |
| TOTAL POINTS | 100 | 70 | 100 | 98 | 97 | 87 |

9/14/2011

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RFQ NO. 782

HEAD START PROGRAM DIAGNOSTIC AND THERAPEUTIC SERVICES POOL

EVALUATION OF PROPOSALS

TERRELL THOMAS ELLIS (HT)

| SELECTION CRITERIA ↓ PROPOSERS → | Maximum Points | All-Star Kids Rehab, Inc. | BioNetworks, Inc. | Easter Seals South Florida, Inc. | Hearing and Speech Center of FL, Inc. | Integrated Rehabilitation Center Inc. |
|---|---|---|---|---|---|---|
| Proposer's relevant experience, qualifications, and past performance | 30 | 22 | 27 | 29 | 30 | 28 |
| Relevant experience and qualifications of key personnel, including key personnel of subcontractors, that will provide services, and experience and qualifications of subcontractors | 30 | 25 | 28 | 26 | 28 | 27 |
| Proposer's approach and commitment to providing the services requested in this Solicitation | 25 | 20 | 23 | 23 | 25 | 20 |
| Management of services | 15 | 5 | 13 | 15 | 15 | 11 |
| TOTAL POINTS | 100 | 72 | 91 | 93 | 98 | 86 |

9/14/2011

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RFQ NO. 782

HEAD START PROGRAM DIAGNOSTIC AND THERAPEUTIC SERVICES POOL

EVALUATION OF PROPOSALS

RICHARD SIGNORI (DHS)

| SELECTION CRITERIA ↓ / PROPOSERS → | Maximum Points | All-Star Kids Rehab, Inc. | BioNetworks, Inc. | Easter Seals South Florida, Inc. | Hearing and Speech Center of FL, Inc. | Integrated Rehabilitation Center Inc. |
|---|---|---|---|---|---|---|
| Proposer's relevant experience, qualifications, and past performance | 30 | 20 | 28 | 30 | 30 | 25 |
| Relevant experience and qualifications of key personnel, including key personnel of subcontractors, that will provide services, and experience and qualifications of subcontractors | 30 | 25 | 28 | 25 | 30 | 25 |
| Proposer's approach and commitment to providing the services requested in this Solicitation | 25 | 20 | 25 | 25 | 25 | 20 |
| Management of services | 15 | 10 | 15 | 15 | 15 | 10 |
| TOTAL POINTS | 100 | 75 | 96 | 95 | 100 | 80 |

# Memorandum

MIAMI-DADE COUNTY

**Date:** May 24, 2011

**To:** Those Listed Below

**From:** Alina T. Hudak
County Manager

**Subject:** Evaluation/Selection Committee for the Community Action Agency Request for Qualifications for Head Start Program Diagnostic and Therapeutic Services Pool – RFQ No. 782

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In accordance with Administrative Order 3-34, I am hereby appointing those listed below as the Evaluation/Selection Committee for the Community Action Agency Request for Qualifications for Head Start Program Diagnostic and Therapeutic Services Pool – RFQ No. 782:

Selection Committee
Maria Carballeira, DPM (Non-Voting Chairperson)
Graciela Laskis, CAA
Florreyn Vickers, CAA
Michaela Doherty, OGC
Terrell Thomas Ellis, HT
Richard Signori, DHS
Jesus Hernandez, HCD (Alternate)

The Selection Committee will meet to review written or printed material regarding the qualifications of each of the certified firms as it relates to the requirements defined in the advertised document. If required, the Selection Committee will select several candidate firms meeting the published criteria to make oral presentations at a properly noticed public hearing to the full Selection Committee.

The Selection Committee shall be responsible for evaluating, rating and ranking the proposals by each Committee member, based on the criteria and procedure contained in the advertised document. The Evaluation/Selection Committee will first evaluate and rank responsive proposals on the Technical (Quality) criteria. If responsive proposers are invited to make oral presentations, the Committee may re-rate and re-rank the proposals based upon the written documents combined with the oral presentation. You may utilize staff of the issuing department and the using agency to conduct a preliminary review of the proposals for responsiveness to the technical requirements. All requests for specific determinations shall be made in writing to the County Attorney's Office.

You are directed to assist me in the selection process considering the factors delineated in the advertised document. These factors may include methodology and management approach, qualifications and experience of principals and staff, financial stability, proposer's past performance of similar scope and size, proposer's detailed plans to meet the objectives of each task, activity, etc., pursuant to any schedule, proposer's previous County experience, history and experience of the firm or individual(s), understanding of the project and the County's objectives, responsiveness to the established requirements, and Cost/Revenue (normally separate and sealed). When the document requires the proposer to provide cost/revenue in a separate sealed envelope, cost/revenue will be considered separately and after the other criteria have been evaluated.

If you are unable to participate in the Selection process, contact this office through the Department of Small Business Development (SBD) by memorandum documenting the reason why you cannot participate. Only in cases of **dire** urgency may you be excused from participation.

The alternate committee member will serve only in the event of an approved substitution. No substitution of committee members shall be allowed after the first official meeting of the committee. The Department of Procurement Management (DPM) RFP Unit may substitute the chairperson to ensure the appropriate level of staffing expertise as deemed necessary to accommodate the needs of this solicitation.

Following the oral presentation, or upon completion of the review process, the Committee shall prepare and submit a memorandum to include a narrative of the evaluation and justification of the top recommended firm(s) based upon the reasoning and mathematical formula, if utilized, and attach supporting documentation and a summary sheet which MUST include the following information:

Name of firm(s)
Quality Rating Score
Price
Adjusted Score (if applicable)
Committee's Overall Ranking

This report should be submitted to me through DPM for review and consideration for further recommendation to the Board of County Commissioners.

As a matter of administrative policy and to maintain a fair and impartial process, all individuals appointed to the Selection Committee (including the Chairperson) and staff are instructed to refrain from discussing the solicitation with prospective lobbyists and/or consultants. Committee members are reminded that in accordance with the Cone of Silence Ordinance 98-106, they are prohibited from having any communication with potential respondents and/or their representatives. Violation of this policy could lead to termination.

All questions must be directed to the staff contact person(s) designated by the issuing department.

c: Julie Edwards, Executive Director, CAA
Daniel Wall, Director, OGC
Miriam Singer, Director, DPM
Rowena Crawford, Assistant Director, HCD
Phyllis Tynes-Saunders, Director, DHS
David Raymond, Director, HT
Penelope Townsley, Director, SBD

Selection Committee
Maria Carballeira, DPM (Non-Voting Chairperson)
Graciela Laskis, CAA
Florreyn Vickers, CAA
Michaela Doherty, OGC
Terrell Thomas Ellis, HT
Richard Signori, DHS
Jesus Hernandez, HCD (Alternate)

**EVALUATION/SELECTION COMMITTEE**
**COMMUNITY ACTION AGENCY**
**REQUEST FOR QUALIFICATIONS FOR HEAD START PROGRAM**
**DIAGNOSTIC & THERAPEUTIC SERVICES POOL**

**RFQ NO. 782**

| Committee Member/ Title | Department | Start Year With County | Ethnicity/ Gender | Education | Professional Licenses | Telephone # |
|---|---|---|---|---|---|---|
| Maria Carballeira<br>Non-Voting Chairperson | DPM | --- | --- | --- | --- | (305) 375-5866 |
| Graciela Laskis<br>Special Projects Administrator 1 | CAA | 1976 | Hispanic Female | Bachelor of Science in Education/Exceptional Education | None | (786) 469-4668 |
| Florreyn Vickers<br>T.I.P.P. Center Supervisor 2 | CAA | 1985 | Black Female | Pursuing Masters in Special Education, Bachelor of Science in Elementary Education - Early Childhood | Certification in Exceptional Student Education, State of Florida Certification for Exceptional Student Education (ESE) and Elementary Education | (786) 469-4699 |
| Michaela Doherty<br>Special Projects Administrator 1 | OGC | 1989 | White Female | Master of Science in Psychology | License Mental Health Counselor | (305) 375-2108 |
| Terrell Thomas Ellis<br>Sup, Contract Monitoring & Mgt | HT | 1992 | Black Male | Bachelors in Sociology | None | (305) 375-3388 |
| Richard Signori<br>Special Projects Administrator | DHS | 1988 | White Male | Bachelors Degree in Business Administration majoring in Accounting | None | (305) 514-6196 |
| Jesus Hernandez<br>Project Manager (Alternate) | HCD | 1987 | Hispanic Male | Bachelors Degree in Business Administration | None | (786) 469-2131 |