

Employee Benefits Consulting Services  
Contract No. 631

THIS AGREEMENT made and entered into as of this 1st day of Jan. 2009 by and between Deloitte Consulting LLP, a limited liability partnership organized and existing under the laws of the State of Delaware, having an office at 200 South Biscayne Boulevard, Suite 400, Miami, FL 33131 (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 Employee Benefits Consulting Services, that shall conform to the Scope of Services (Appendix A); Miami-Dade County's Request for Proposals (RFP) No. 631 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 June 18, 2008, 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 Consulting 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), RFP No. 631 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, Department of Procurement Management, or the duly authorized representative designated to manage the Contract.
- d) The word "Contractor" to mean Deloitte Consulting LLP and its permitted successors and assigns.

- e) The word "Days" to mean Calendar Days.
- f) The word "Deliverables" to mean all tangible documentation and any tangible 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 "Change Order" or "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.
- k) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Contractor.
- l) 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.
- m) 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.
- n) The word "Contractor Technology" to mean the various concepts, ideas, methods, methodologies, procedures, processes, know-how, and techniques (including, without limitation, function, process, system and data models); templates; generalized features of the structure, sequence and organization of software, user interfaces and screen designs; general purpose consulting and software tools, utilities and routines; and logic, coherence and methods of operation of systems that the Contractor has created, acquired or otherwise has rights in, and may, in connection with the performance of the Services hereunder, employ, provide, modify, create, acquire or otherwise obtain rights in.

## **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) the Scope of Services (Appendix A), 3) the Price Schedule (Appendix B) 4) Business Associate Agreement (Appendix C) 5) the Miami-Dade County's RFP No. 631 and any associated addenda and attachments thereof, and 6) 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 in accordance with this Contract at the direction 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 the date first set forth above and shall be for the duration of three (3) years. 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  
GSA Risk Management Division  
111 N.W. 1<sup>st</sup> Street, Suite 2340  
Miami, FL 33128-1989  
Attention: GSA Risk Management Division Director  
Phone: (305) 375-4281  
Fax: (305) 375-4255

and,

b) to the Contract Manager:

Miami-Dade County  
Department of Procurement Management  
111 N.W. 1<sup>st</sup> Street, Suite 1375  
Miami, FL 33128-1974  
Attention: Director  
Phone: (305) 375-5548  
Fax: (305) 375-2316

**(2) To the Contractor**

Deloitte Consulting LLP  
200 South Biscayne Boulevard, Suite 400  
Miami, FL 33131  
Attention: John C. Erb  
Phone: (305) 372-3270  
Fax: (305) 960-1570  
E-mail: jerb@deloitte.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 pursuant to Appendix B, Price Schedule. The County shall have no obligation to pay the Contractor any additional sum in excess of this amount, except for a change

and/or modification to the Contract, which is approved and executed in writing by the County and the Contractor.

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

With respect to travel costs and travel related expenses, 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 8. PRICING**

Prices shall remain firm and fixed for the initial term of the Contract as stipulated in Appendix B. The Contractor may offer incentive discounts to the County at any time during the contractual term and any renewals or extensions thereof.

**ARTICLE 9. METHOD AND TIMES OF PAYMENT**

The Contractor agrees that under the provisions of this Agreement, as reimbursement for those actual, reasonable and necessary costs incurred by the Contractor, which are directly attributable or properly allocable to the Services, the Contractor may bill the County periodically, but not more than once per month, upon invoices certified by the Contractor pursuant to Appendix B, Price Schedule. 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 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 hereunder shall be concluded by final written decision of the County Manager, or his or her designee(s), in accordance with Article 14 hereof 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  
GSA Risk Management Division  
11 N.W. 1<sup>st</sup> Street, Suite 2340  
Miami, FL 33128-1989  
Attention: Hazel Grace-Dansoh

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**

a) 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 bodily injury, death or physical damage to real or tangible personal property, to the extent directly and proximately caused by the negligence or willful misconduct of the Contractor while engaged in the performance of the Services under this Contract; provided, however, that if there also is fault on the part of the County or any entity or individual indemnified hereunder or any entity or individual acting on County's behalf, the foregoing indemnification shall be on a comparative fault basis. 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.

b) As a condition to this indemnity obligation, the County shall provide the Contractor with prompt notice of any claim for which indemnification shall be sought hereunder and shall cooperate in all reasonable respects with the indemnifying party in connection with any such claim. The Contractor shall be entitled to control the handling of any such claim and to defend or settle any such claim, in its sole discretion, with counsel of its own choosing.

c) Upon County's notification, the Contractor shall furnish to the Department of Procurement Management, 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 Liability Insurance in an amount not less than \$300,000 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. Professional Liability Insurance in an amount not less than \$1,000,000 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, according to the latest edition of Best's Insurance Guide published 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 Insurance 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 adversely 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 fifteen (15) calendar days after County notification to Contractor to comply before the award is made. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Contractor shall be verbally notified of such deficiency and shall have an additional five (5) calendar 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 twenty (20) calendar days after County notification to comply, the Contractor shall be in default of the contractual terms and conditions and award of the Contract will be rescinded, unless such time frame 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 fifteen (15) 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, partner, fiduciary 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, on behalf of the County, 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 Proposal; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.
- b) The Contractor shall fully cooperate with 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, unless the Contractor pursues resolution pursuant to subsection 'c' below. 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, unless the Contractor exercises its right to pursue remedies available under law as provided for in subsection 'e' below. Any such dispute shall be brought, if at all, before the County Manager within 30 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 termination or expiration of this Agreement and any extension thereof, shall 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 pursuant to (i) Section 2-481 of the Code of Miami-Dade County, entitled Commission Auditor (ii) County Ordinance No. 03-2 creating the Office of Commission Auditor; and iii) any other current or future applicable legislation. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, as applicable, and shall only address those transactions related to this Agreement.

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, except in the cases of death, illness, disability, termination or other severance of association.

**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**

Subsections (b) and (d) below shall not apply to the entities and personnel listed in the Contractor's Proposal.

- 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.

Notwithstanding the above, the Contractor may reasonably rely on information provided by the County in connection with performing the Services hereunder, except to the extent that the County indicates otherwise with respect to said information. The County shall be responsible for the performance of its personnel and agents and for the accuracy and completeness of all data and information provided to the Contractor for the purposes of the Contractor's performance of the Services hereunder.

**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 FOR CONVENIENCE 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 under this Agreement with the County through fraud, misrepresentation or willful 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.

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 and in such event:

- d) 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
- e) In the event that the County exercises its right to terminate this Agreement pursuant to this Article 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.

- f) 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 time frame 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 /TERMINATION**

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 longer 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 reprourement 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 or applicable professional standards. 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 except as required by law or applicable professional standards. 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.
- d) The County agrees that all Services and Deliverables shall be solely for the County's internal use, and are not intended to be and should not be used by any person or entity other than the County, except as may be provided for by law (e.g., Florida Public Records Law). Notwithstanding the foregoing, the County may make the applicable report, certification or statement of actuarial opinion issued by the Contractor hereunder available to applicable state insurance regulatory authorities who shall use such statement or report solely in connection with the discharge of their regulatory oversight responsibilities of the County and for no other purpose. Notwithstanding the foregoing, the County may make a benefit calculation prepared by the Contractor hereunder with respect to an individual's benefit available to such individual. Notwithstanding the foregoing, the County may make the actuarial valuation report issued by the Contractor hereunder with respect to the County's self insured property and casualty program and employee benefit plan available to its independent accountants solely in connection with their audit of the County's financial statements or the financial statements of such plan, provided that the County shall ensure that (i) such access does not create privity between the Contractor and such independent accountants

and (ii) such independent accountants shall not further circulate, quote, disclose, distribute, or refer to, such report.

**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 acknowledge 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 as Deliverables hereunder, 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 Deliverables developed by the Contractor and its subcontractors specifically for the County as a result of the Services the Contractor performs in connection with this Agreement, hereinafter referred to as "Developed Works" shall become the property of the County. For the avoidance of doubt, the "Developed Works" shall not include any Contractor Technology contained in any Deliverable.
- 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, to the extent that any Contractor Technology is contained in any of the Deliverables, the Contractor hereby grants to the County, and shall require that its subcontractors grant, if the County so desires, upon full and final payment to the Contractor hereunder, a perpetual, irrevocable and unrestricted right and license to use, duplicate, disclose all such Contractor Technology (subject to the restrictions set forth in Article 28(d) in connection with the Deliverables) for the operations of the County or entities controlling, controlled by, under common control with (collectively, the "County Affiliates"), or organizations which may hereafter become a County Affiliate.
- e) To the extent that the Contractor utilizes any of its property (including, without limitation, the Contractor Technology or any hardware or software of Contractor) in connection with the performance of the Services hereunder, such property shall remain the property of the Contractor and, except for the license expressly granted in the preceding paragraph, the County shall acquire no right or interest in such property. Notwithstanding anything herein to the contrary, the parties acknowledge and agree that (a) the Contractor shall own all right, title, and interest, including, without limitation, all rights under all copyright, patent and other intellectual property laws, in and to the Contractor Technology and (b) the Contractor may employ, modify, disclose, and otherwise exploit the Contractor Technology (including, without limitation, providing services or creating programming or materials for other clients).

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

### a) Vendor Registration

The Contractor shall be a registered vendor with the County – Department of Procurement Management, 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, solely to the extent required by applicable law, with the following as included in the Contractor's Business Entity Registration:

- |  |  |
|--|--|
| 1. <b>Miami-Dade County Ownership Disclosure Affidavit</b><br>(Section 2-8.1 of the County Code)             | (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) |
| 2. <b>Miami-Dade County Employment Disclosure Affidavit</b><br>(Section 2-8-1(d)(2) of the County Code)      | 8. <b>Miami-Dade County Family Leave Affidavit</b><br>(Article V of Chapter 11 of the County Code)                                   |
| 3. <b>Miami-Dade Employment Drug-free Workplace Certification</b><br>(Section 2-8.1.2(b) of the County Code) | 9. <b>Miami-Dade County Living Wage Affidavit</b>  |
| 4. <b>Miami-Dade Disability and Nondiscrimination Affidavit</b><br>(Section 2-8.1.5 of the County Code)      | 10. <b>Miami-Dade County Domestic Leave and Reporting Affidavit</b><br>(Article 8, Section 11A-60 11A-67 of the County Code)         |
| 5. <b>Miami-Dade County Debarment Disclosure Affidavit</b><br>(Section 10.38 of the County Code)             | 11. <b>Subcontracting Practices</b><br>(Ordinance 97-35)   |
| 6. <b>Miami-Dade County Vendor Obligation to County Affidavit</b><br>(Section 2-8.1 of the County Code)      | 12. <b>Subcontractor /Supplier Listing</b><br>(Section 2-8.8 of the County Code)   |
| 7. <b>Miami-Dade County Code of Business Ethics Affidavit</b>  | 13. <b>Environmentally Acceptable Packaging</b><br>(Resolution R-738-92)   |

(Section 2-1076 of the County Code)

**14. FEIN Number or Social Security Number**

- In order to establish a file, the Contractor's Federal Employer Identification Number (FEIN) must be provided

**16. Antitrust Laws** of the United States and the State of Florida**15. Office of the Inspector General**

(Section 2-8.9 of the County Code)

**b) Conflict of Interest**

Section 2-11.1(d) of Miami-Dade County Code as amended by Ordinance 00-1, requires 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 from competing or applying for any such contract as it pertains to this solicitation, 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 and that any such contract, agreement or business engagement entered in violation of this subsection, as amended, shall render this Agreement 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, as amended by Ordinance No. 99-63, 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; (l) 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.

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 with the County, 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 (as defined by the conflict of interest provisions of the American Institute of Certified Public Accountants) 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.

#### **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 all local, state and federal laws concerning patient confidentiality applicable to Contractor in the performance of the Services and the HIPAA Business Associates Addendum as agreed to by both parties and incorporated herein as Appendix C. The Health Insurance Portability and Accountability Act (HIPAA) of 1996 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.
9. PHI shall maintain its protected status regardless of the form and method of transmission (paper records, and/or electronic transfer of data).

- 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.

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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.
9. PHI shall maintain its protected status regardless of the form and method of transmission (paper records, and/or electronic transfer of data).

**ARTICLE 40. COUNTY USER ACCESS PROGRAM (UAP)****a) User Access Fee**

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

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

**b) Joint Purchase**

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

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

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

**c) Contractor Compliance**

If a Contractor fails to comply with this Article, that Contractor may be considered in default by the County in accordance with Article 24 of this Contract.

**ARTICLE 41. 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.

**ARTICLE 42.           LIMITATION ON DAMAGES**

The County agrees that the Contractor and its personnel shall not be liable to the County for any claims, liabilities, or expenses relating to this Contract for an aggregate amount in excess of \$1,000,000, except (i) to the extent finally judicially determined to have resulted primarily from the bad faith or intentional misconduct of the Contractor, or (ii) for the Contractor's indemnification obligations set forth in Article 10(a) hereof. In no event shall the Contractor or its personnel be liable to the County consequential, special, indirect, incidental, punitive or exemplary loss, damage, or expense relating to this Contract, the Scope of Services, any project assignment or the services, except (i) to the extent finally judicially determined to have resulted primarily from the bad faith or intentional misconduct of the Contractor, or (ii) for the Contractor's indemnification obligations set forth in Article 10(a) hereof or, (iii) for the Contractor's obligations under Article 27. The provisions of this Article 42 shall apply to the fullest extent of the law, whether in contract, statute, tort (such as negligence), or otherwise.

**ARTICLE 43.           FORCE MAJEURE**

Except as otherwise expressly provided herein, neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that such performance is prevented or delayed by any cause, existing or future, which is not within the reasonable control of such party including, but not limited to, acts of God or the public enemy, fires, explosions, riots, strikes (not including strikes of the Contractor's staff personnel), or war. Notwithstanding the foregoing, the failures of any of the Contractor's subcontractor(s) or the like shall not excuse the Contractor's performance except to the extent that such failures are due to any cause without the fault and reasonable control of such subcontractor(s), or the like including, but not limited to acts of God or the public enemy, fires, explosions, riots, strikes (not including strikes of the Contractor's staff personnel), or war.

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

Contractor

By: Lee H. Resnick

Name: Lee H. Resnick

Title: Principal

Date: 10/16/08

Attest: Connie P. Vetusch  
Corporate Secretary/Notary Public

Miami-Dade County

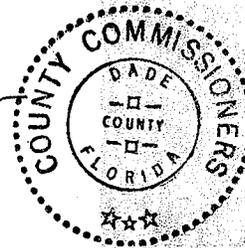
Miriam Singer for George M. Burgess

Name: Miriam Singer

Title: DPM Director

Date: 2/25/09

Attest: [Signature]  
Clerk of the Board



Corporate Seal/Notary Seal

Approved as to form and legal sufficiency

Edward J. Hafer  
Assistant County Attorney

**Connie P. Vetusch**  
**Notary Public of New Jersey**  
**My Commission Expires February 25, 2012**  
**I.D. Number: 2284468**

**Appendix A****SCOPE OF SERVICES****1. Introduction/Background**

Miami-Dade County, herein referred to as the "County", as represented by the General Services Administration Department (GSA), in contracting for employee benefits consulting services. The County offers medical, dental, vision and group life insurance coverage to over 40,000 Miami-Dade County and Jackson Health System/Public Health Trust employees and retirees. In addition, the County provides IRS Section 125 Flex Benefits, short-term and long-term disability income protection, group legal, deferred compensation and pension benefits to approximately 30,000 Miami-Dade County employees.. The County recently consolidated medical plan offerings from one self-funded Point of Service (POS) Plan and four fully insured HMOs to three self-funded medical plans (POS, High Option HMO and Low Option HMO) administered by one vendor effective January 1, 2008. In addition, the County continues to offer the fully insured JMH Health Plan (High Option HMO and Low Option HMO). Medicare eligible retirees may elect to participate in one of three self-funded Medicare Supplements.

One of the County's bargaining units (firefighters) offers its own medical, dental and basic life insurance plan. Their members may participate in the Union's plans or one of the County's health plans. The contribution to the Union's plan is established in the bargaining agreements. Therefore, the Contractor shall have expertise in consulting on these Group Benefits and other types of employee benefits programs.

**2. Requirements and Services to be Provided****A. Requirements**

1. The Contractor should have experience consulting on self-funded and fully insured medical, dental, vision, life insurance, IRS Section 125 plans, 457 deferred compensation and 401a plans, group legal plans, disability income protection, executive benefits, retirement plans and other types of employee benefits programs.

**B. Assignment of Projects**

The Contractor shall have a staff of consultants who will perform the work requested by the County. The Contractor shall assign one lead consultant to the Contract. The Contractor shall give the County's projects top priority and personnel must be available on short notice to serve the County's needs.

The County shall assign projects, as needed, to the Contractor through telephone discussions and/or personal consultations, at the County's discretion. After the scope of a project has been defined by the County with the assistance of the Contractor, the County may request a written estimate from the Contractor, which shall include the following:

- a) description of the project;
- b) description of the project's scope;
- c) staff performing the work, each person's job title, hourly rate and estimated number of hours each will spend on the project;
- d) estimated date of project completion;
- e) estimated cost per staff person;
- f) estimated out-of-pocket costs, if any; and
- g) a "not-to-exceed" cost for the project.

The written estimate, including the not-to-exceed cost, must be provided no later than ten days after request. After the County reviews the cost estimate, the County will either formulate changes to the project, approve the project as submitted, or cancel the project. All costs associated with estimating a project shall be borne by the Contractor; and the Contractor shall not have any claim, financial or otherwise, against the County as a result of the County modifying or canceling a project. The County, in its sole discretion, may modify the scope of a project at any time, at no cost and shall only pay for work actually performed by the Contractor.

### **C. Tasks**

The Contractor's responsibilities may include, but not be limited to, the following services:

#### **Task 1: Assistance with Solicitations**

Provide technical assistance to the County in developing the scope of services, questionnaire, evaluation criteria and pricing for Requests for Proposals (RFP) to secure vendors to provide group medical, dental, vision and life insurance, Section 125 Flexible Benefits and 457 deferred compensation and 401a plans, group legal plans and other proposed benefits for eligible employees and retirees including:

- a) Determine possible future requirements based on market trends.
- b) Assistance with the development of the scope of services, technical questionnaire and pricing schedule for RFPs for existing and new benefits.
- c) Participate in Evaluation/Selection Committee meetings to provide technical support. Activities may include attending oral presentations/negotiations and assisting in analyzing the proposals received. Utilize benefits software to test the adequacy of provider networks, analyze hospital and physician discounts, perform geo-access and medical provider/prescription disruption analyses.
- d) Recommend requirements for management data and reports for the self-funded medical plans.
- e) Assist in the formulation of responses to questions from proposers to be issued via addenda to an RFP.

#### **Task 2: Actuarial Services**

Provide actuarial services for the self-funded medical plans and supplemental retirement benefits. Determine justification for vendor's proposed rates on all plans including:

- a) Provide financial forecasting for the self-funded POS, HMO medical plans and Medicare Supplement plans to assist in rate development.
- b) Prepare annual actuarial filing of the self-funded POS and HMO medical plans with the State's Department of Insurance.
- c) Negotiate rate renewals with fully-insured HMO plans and justify proposed rates based on underwriting methodology.
- d) Analyze financial data for self-funded and fully-insured plans.
- e) Conduct various financial studies including those required by the Governmental Accounting Standards Board (GASB).
- f) Present rate analyses to the County's Executive Insurance Committee to justify annual rate renewals.

#### **Task 3: Self-funded Plan Performance Monitoring**

Monitor the level of performance of the self-funded plans in relation to the contractual standards specified including:

- a) Annually, as requested by the County, conduct onsite claims audit of self-funded medical plans and present written findings to include compliance to contractually established performance standards. The claims audit includes, but is not limited to, review of claims paid for financial accuracy, claims coding accuracy, claims turnaround time, compliance with benefit guidelines, eligibility rules etc. All errors discovered must be classified as financial or non-financial. All findings must be presented, in writing, to the Risk Management Division.
- b) Secure statistical reports, etc. from plans to evaluate compliance. Ascertain financial penalties for non-compliance to performance standards established contractually.
- c) Conduct statistically valid annual employee benefits satisfaction survey, as requested by the County. Evaluate survey result details and provide written reports and analysis to the County.

**Task 4: Plan Design Reviews**

Recommend changes in plan design, based on market availability, to better meet employees' needs and enhance cost containment including:

- a) Participate in meetings with bargaining units and management to discuss benefit contract issues.
- b) Provide technical assistance in redesigning group medical, dental, vision, life and other benefits offered to employees.
- c) Provide legal counsel to review recommended changes and amendments to plan documents and for other benefits-related matters, as needed to assure compliance to state and federal legislation.

**Task 5: Legal and Research Services**

Provide legal and research services and communication materials, upon request by the County including:

- a) Provide timely updates regarding proposed and actual changes in the legal environment that affect employee benefits (ex. COBRA, HIPAA, IRS Section 125, 457, 401a), including tax law, through newsletters or special advisories. Research legal matters and sign off on legal opinions regarding interpretation of legislation.
- b) Review plan documents for self-funded plan and IRS Section 125 and 457 plans for compliance to applicable laws governing benefits.
- c) Obtain Internal Revenue Service (IRS) private letter rulings, where applicable.

(Note: Contractor's personnel performing these services must possess knowledge of Florida law as it pertains to employee benefits for political subdivisions of the State.)

**Task 6: Other Related Duties**

Perform other related services including:

- a) Provide ongoing support, review and interpretation of plan provisions and IRS regulations for Section 125 plan.
- b) Develop and generate employee benefit statements, including delivery, if requested by the County.
- c) Provide ongoing support, review and interpretation of plan provisions and IRS regulations for Section 457 deferred compensation plan and 401(a) plan.
- d) Assist with annuity placement for upper level management, as needed.
- e) Provide special actuarial studies for supplemental retirement benefits.

**Appendix B**

**Price Schedule**

The hourly rates for providing the Employee Benefits Consulting Services as stated in Appendix A, for the term of the Contract, shall be as follows:

<b>Position</b>	<b>Hourly Rate</b>
Principal	\$ 365.00
Lead Managing Consultant	\$ 334.00
Consultant	\$ 253.00
Associate (Junior Consultant)	\$ 187.00
Actuary	\$ 334.00
Legal Consultant (Florida licensed attorney)	\$ 334.00

Notwithstanding the above, compensation to the Contractor shall be based on the projects assigned. The Contractor shall use the hourly rates to calculate the not-to-exceed cost statement required for each project.

# Deloitte.

## Appendix C

### BUSINESS ASSOCIATE AGREEMENT MIAMI DADE COUNTY

If and to the extent, and so long as, required by 42 U.S.C. §§ 1320d through 1320d-8 and the regulations issued thereunder (hereinafter referred to as "HIPAA") and not otherwise, Deloitte Consulting LLP ("Deloitte Consulting") and Miami-Dade County ("Client") hereby agree to the following with respect to "Protected Health Information" (as such term is defined in 45 CFR § 160.103) from Client obtained by Deloitte Consulting in connection with its performance of services under the attached engagement letter (such engagement letter is incorporated into this Business Associate Agreement):

- (A) Deloitte Consulting may use and disclose such Protected Health Information as reasonably required or contemplated in connection with the performance of services under this Business Associate Agreement, excluding the use or further disclosure of such Protected Health Information in a manner that would violate the requirements of 45 CFR Part 164; provided, however, Deloitte Consulting may use and disclose such Protected Health Information for the proper management and administration of Deloitte Consulting as provided in 45 CFR § 164.504(e)(4), including without limitation use and disclosure as required for Deloitte Consulting to comply with applicable professional standards and obligations;
- (B) Deloitte Consulting will not use or further disclose such Protected Health Information other than as permitted or required by this Business Associate Agreement or as required by applicable law;
- (C) Deloitte Consulting will use appropriate safeguards to prevent use or disclosure of such Protected Health Information other than as provided for by this Business Associate Agreement;
- (D) Deloitte Consulting will report to Client any use or disclosure of such Protected Health Information not provided for by this Business Associate Agreement of which Deloitte Consulting becomes aware;
- (E) Deloitte Consulting will ensure that any subcontractors or agents to whom Deloitte Consulting provides such Protected Health Information agree to the same restrictions and conditions that apply to Deloitte Consulting with respect to such Protected Health Information;
- (F) Deloitte Consulting will make available such Protected Health Information in accordance with 45 CFR §164.524;
- (G) Deloitte Consulting will make available such Protected Health Information for amendment and incorporate any amendments to such information in accordance with 45 CFR §164.526;
- (H) Deloitte Consulting will make available the information required to provide an accounting of disclosures in accordance with 45 CFR §164.528;
- (I) Deloitte Consulting will make its internal practices, books, and records relating to the use and disclosure of such Protected Health Information available to the United States Health and Human Services Secretary for purposes of determining Client's compliance with 45 CFR Part 164;

- (J) Deloitte Consulting will, at termination of this Business Associate Agreement, if feasible, return or destroy all such Protected Health Information that Deloitte Consulting still maintains in any form and retain no copies of such Protected Health Information or, if such return or destruction is not feasible (such as in the event that the retention of such Protected Health Information by Deloitte Consulting is required by law, regulation, professional standards, or reasonable business practice to evidence Deloitte Consulting's services), extend the protections of this Business Associate Agreement to such Protected Health Information and limit further uses and disclosures to those purposes that make the return or destruction of such Protected Health Information infeasible;
- (K) Client will have the right to terminate this Business Associate Agreement by the delivery of written notice of termination to Deloitte Consulting if Client determines that Deloitte Consulting has violated a material term of this Business Associate Agreement and Deloitte Consulting fails to cure such violation within 30 days of Deloitte Consulting's receipt of written notice of such violation;
- (L) Client will not disclose any Protected Health Information or other information to Deloitte Consulting, if such disclosure would violate HIPAA or any applicable state law;
- (M) Client has not adopted and will notify Deloitte Consulting if Client adopts any privacy policies that would restrict Deloitte Consulting's ability to provide services contemplated under this Business Associate Agreement or otherwise restrict Deloitte Consulting's ability to use and disclose Protected Health Information for the proper management and administration of Deloitte Consulting as permitted under this Business Associate Agreement;
- (N) Client has not sought any patient consents or authorizations or agreed to any restrictions requested by patients, and will notify Deloitte Consulting if Client seeks any patient consents or authorizations or agree to any such restrictions in the future, that would restrict Deloitte Consulting's ability to provide services contemplated under this Business Associate Agreement or otherwise restrict Deloitte Consulting's ability to use and disclose Protected Health Information for the proper management and administration of Deloitte Consulting as permitted under this Business Associate Agreement;
- (O) Without limiting clause (N) above, Client shall notify Deloitte Consulting of any change in, or the withdrawal of, the consent or authorization of an individual regarding the use or disclosure of Protected Health Information to the extent that such change or withdrawal may affect Deloitte Consulting's use or disclosure of Protected Health Information;
- (P) Client shall not request Deloitte Consulting to use or disclose Protected Health Information in any manner that would not be permissible under HIPAA if done by Client; and
- (Q) Nothing contained in this Business Associate Agreement is intended to confer upon any person (other than the parties hereto) any rights, benefits, or remedies of any kind or character whatsoever, whether in contract, statute, tort (such as negligence), or otherwise, and no person shall be deemed a third-party beneficiary under or by reason of this Business Associate Agreement.