

Memorandum



Date: June 5, 2018

To: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Agenda Item No. 8(F)(9)

Subject: Recommendation for Approval to Award: Emergency Medical Services (EMS) Billing

Recommendation

It is recommended that the Board of County Commissioners (Board) approve a competitive contract award, *Contract No. RFP-00567, Emergency Medical Services (EMS) Billing*, for the Miami-Dade Fire Rescue Department. Fire Rescue transports patients to health care facilities in emergency medical transport vehicles. This contract will be used to continue obtaining emergency medical billing and accounts receivable services.

Information collected from patients at the scene of incidents, hospitals, and other sources is used for billing transported individual patients, Medicare, Medicaid, and insurance companies. This contract allows for real-time interface with various systems, such as the County's Computer Aided Dispatch, records and maintenance, online payment gateway, and the SafetyPad Enterprise systems. The contract provides the built-in safeguard of continuously monitoring performance, thereby ensuring maximum possible collections.

Scope

The scope of this item is countywide in nature.

Fiscal Impact/Funding Source

The fiscal impact for the five-year term is \$6,000,000. Should the County choose to exercise, at its sole discretion, the one, five-year option to renew, the estimated cumulative value will be \$12,000,000. The current contract, *CBW600-0/15*, is valued at \$8,504,000 for a six-year and 10-month term and expires on July 31, 2018. The annual allocation under the replacement contract is lower than the current contract due to lower negotiated service rates.

Department	Allocation	Funding Source	Contract Manager
Fire Rescue	\$6,000,000	Fire District	Maria Reyes
Total:	\$6,000,000		

Track Record/Monitor

Fredrick Taylor of the Internal Services Department is the Procurement Contracting Manager.

Delegated Authority

If this item is approved, the County Mayor or County Mayor's designee will have the authority to exercise all provisions of the contract, including any cancellation, renewal and extension provisions, pursuant to Section 2-8.1 of the County Code and Implementing Order 3-38.

Vendor Recommended for Award

A Request for Proposals was issued under full and open competition. Four proposals were received in response to the solicitation, including one "No Bid."

Awardee	Principal Address	Local Address*	Number of Employee Residents	Principal
			1) Miami-Dade 2) Percentage*	
Advanced Data Processing, Inc.	6451 N Federal Highway, Suite 1000, Fort Lauderdale, FL	7900 Miami Lakes Drive W Miami Lakes, FL	79	Doug Shamon
			4%	

*Provided pursuant to Resolution No. R-1011-15. Percentage of employee residents is the percentage of vendors' employees who reside in Miami-Dade County as compared to the vendor's total workforce.

Vendors Not Recommended for Award

Vendor	Reason for Not Recommending
MDAssociates, Inc.	Deemed non-responsive by the County Attorney's Office (opinion attached)
PST Services, LLC	Evaluation Scores/Ranking
Sunset Survival & First Aid, Inc.	No Bid*

*A "No Bid" means the vendor responded indicating that it will not be providing an offer.

Due Diligence

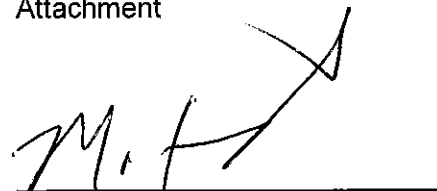
Pursuant to Resolution No. R-187-12, due diligence was conducted in accordance with the Internal Services Department's Procurement Guidelines to determine vendor responsibility, including verifying corporate status and that there are no performance and compliance issues through various vendor responsibility lists. The lists that were referenced included convicted vendors, debarred vendors, delinquent contractors, suspended vendors, and federal excluded parties. There were no adverse findings relating to vendor responsibility.

Pursuant to Resolution No. R-140-15, prior to re-procurement, a full review of the scope of services was conducted to ensure the replacement contract reflects the County's current needs. The review included conducting market research, posting a draft solicitation for industry comment, and holding meetings and drafting sessions with the user department. The scope of services was updated to include real-time interface with the County's Computer Aided Dispatch, online payment gateway and SafetyPad Enterprise systems.

Applicable Ordinances and Contract Measures

- The two percent User Access Program provision applies.
- The Small Business Enterprise Selection Factor and Local Preference were applied.
- The Living Wage does not apply.

Attachment



 Maurice Kemp
 Deputy Mayor

Memorandum



Date: November 28, 2017
To: Natalya Vasilyeva
ISD – Procurement Contracting Officer II
From: Eduardo W. Gonzalez
Assistant County Attorney
Subject: Request for Responsiveness Determination on RFP No. 00567 -- Emergency Medical Services Billing

You have asked this office if proposals submitted by Advanced Data Processing, Inc. a subsidiary of Intermedix Corporation (“Intermedix”) and PST Services LLC (“PST”) in response to RFP No. 00567 -- Emergency Medical Services Billing (the “RFP”) are responsive where both PST and Intermedix marked significant portions of their proposals “confidential and proprietary. Although both Intermedix and PST marked significant portions of their proposals confidential and proprietary PST properly signed and executed the RFP’s form that expressly and explicitly waived any claim to confidentiality while Intermedix did not.

You have also asked whether the proposal submitted by MDAssociates, Inc. (“MDAssociates”) is non-responsive for MDAssociates’ failure to submit its proposal in response to the RFP through “BidSync”, the County’s electronic proposal submittal portal. Instead, MDAssociates mailed an envelope to the County purporting to respond to the RFP even though the instructions to proposers for the subject RFP required such proposals to be submitted electronically through BidSync.

We will initially address the issues related to Intermedix and PST together. Next, we will address the issue related to MDAssociates’ failure to submit its proposal electronically through BidSync.

Intermedix and PST

The RFP contains a “Waiver of Confidential and Trade Secret Treatment of Proposal” form (the “Confidentiality Waiver”) which provides:

By submitting a proposal pursuant to this solicitation, you agree that all such materials may be considered to be public records. The Proposer shall not submit any information in response to this Solicitation which the Proposer considers to be a trade secret, proprietary or confidential.

In the event that the proposal contains a claim that all or a portion of the Proposal submitted contains confidential, proprietary or trade secret information, the Proposer, by signing below, knowingly and expressly waives all claims made that the Proposal, or any part thereof no matter how indicated, is confidential, proprietary or a trade secret and authorizes the County to release such information to the public for any reason.

(emphasis in original). Both Intermedix and PST submitted proposals where significant portions of the proposals were marked “confidential and proprietary.”

PST, however, signed the Confidentiality Waiver. By doing so, PST "knowingly and expressly" waived all claims that any part of its proposal is confidential, proprietary or trade secret. Accordingly, the County may fully evaluate PST's proposal and is not required to return part of such proposal. PST's proposal is responsive irrespective of its "confidentiality" markings because it expressly waived any claim to confidential treatment by its execution of the RFP's Confidentiality Waiver.¹

Intermedix, however, failed to execute the Confidentiality Waiver. By submitting a proposal where significant portions of same are marked confidential and proprietary and failing to execute the RFP's Confidentiality Waiver, Intermedix violated the RFP's prohibition on submitting confidential, proprietary or trade secret information with its proposal. Consistent with the previous opinions of this office which have been repeatedly upheld in bid protest proceedings, the County must return and not evaluate the entirety of Intermedix's proposal that is marked confidential and proprietary. If after doing so, there is insufficient information for the County to evaluate, Intermedix's proposal is nonresponsive.

MDAssociates and the Failure to Submit Through BidSync

For the reasons set forth below, we conclude that the County may consider any paper submission of a proposal or bid, such as MDAssociates' proposal here, non-responsive.

A. The County and E-commerce

The Board of County Commissioners has directed that the policy of Miami-Dade County is to pursue e-commerce. Section 2-8.1(j) of the County Code authorizes the Mayor to "to pursue electronic commerce and on-line procurement of goods and services through the use of electronic means" which includes the advertisement and receipt of competitive sealed bids and proposals through electronic means. In furtherance of that policy, in 2013 the County awarded a contract for the purchase of an electronic bid management system, BidSync.

The vendor and the County adapted the system to meet the County's competitive solicitation policies, procedures and practices. BidSync, as an electronic medium for responses, provides significant protections to the integrity and transparency of the process. For example, BidSync provides a uniform system for the advertisement, receipt and processing of bids and proposals. Bids and proposals received electronically prior to the opening date remain securely locked in the system until the opening date and time and no person is able to view any portion of a response until the opening date and time. Moreover, the system does not allow for late filed responses: at the opening date and time, BidSync's receiving capabilities are locked out and no further bids or proposals are capable of being submitted. No person is allowed to remove any document filed in BidSync, preserving the documents for public records purposes. If a bidder or proposer wishes to withdraw a bid, they must submit a subsequent written withdrawal request to the system prior to bid opening date. BidSync also contains other protections for the County and the potential vendor: it keeps track of addenda issued and no bidder or proposer can submit a response without first electronically verifying receipt and consideration of addenda issued which modify the terms and conditions of the solicitation. For bids based solely on price, BidSync allows the County to create locked bid forms which automatically calculate unit prices to arrive at a total

¹ Additionally, PST failed to provide information and reports relating to the RFP's qualification requirements. PST's failure to submit information and reports relating to qualification requirements are seemingly issues of proposer responsibility, not responsiveness. However, the memorandum to this office does not specify which information PST failed to submit.

bid, eliminating any potential miscalculations on the part of the bidder, or the potential to submit incomplete bids, reducing uncertainty in the actual price bid. Finally, BidSync maintains an automated and verifiable audit trail of all electronic transactions.

As such, moving to an electronic solicitation system affords the competitive solicitation process greater security, transparency and consistency. It makes County operations more efficient and less costly. For example, because of the security of the system, there is no longer the need to implement complex protocols for receiving, stamping, handling and opening paper responses. Bid or proposal "opening" is now accomplished with the simple push of a button. The handling of bid addenda is also simplified eliminating any uncertainty regarding the version of the solicitation a potential vendor is responding to.

The County has provided training on the use of the system to both County personnel and vendors. As with all new systems, there were initial complaints about the ease of its use, but with the passage of time the system has been generally well received by the vendor community. It is almost uniformly used, specifications allowing for paper submissions being reserved for only those voluminous proposals for which uploading of material would present a substantial burden to both the County and the vendors.

B. The RFP

The County issued a RFP on July 10, 2017 for emergency medical services billing. The RFP provided in its cover page:

Electronic proposal responses to this RFP are to be submitted through a secure mailbox at BidSync until the date and time as indicated in this document. It is the sole responsibility of the Proposer to ensure its proposal reaches BidSync before the Solicitation closing date and time . . . All proposals received and time stamped through the County's third party partner, BidSync, prior to the proposal submittal deadline shall be accepted as timely submitted.

(emphasis in original).

The RFP contains no provisions for paper or envelope submittals of any kind. Instead, and to emphasize the provisions in the RFP's cover page, Addendum No 1, issued on July 12, 2017 in response to a bidder's question regarding whether the proposal could be submitted by e mail, the County responded in no uncertain terms: "*All submittals must be submitted through BidSync without exception.*" (emphasis added).

Contrary to these clear and unambiguous instructions, MDAssociates attempted to mail a proposal to the County through the United States Postal Service. An envelope labeled with the RFP number was sent to the County by a firm named MDAssociates. The envelope was received by a vendor services office clerk and delivered to the procurement contract manager three days before the response deadline. The procurement manager did not open the envelope.

You now seek an opinion as to whether the proposal from MD Associates can be deemed non-responsive to the solicitation for failing to comply with the County's submission requirements.

C. Legal Analysis

Because of the protections to the process and the efficiencies for the County afforded by BidSync, the County's exercise of its discretion to consider all paper submittals non-responsive is reasonable and should be upheld by the Courts. Two reasons support this conclusion. First, the submittal of bids and proposals electronically through BidSync serves a compelling governmental interest. Second, the failure to submit a bid or proposal through BidSync is a material nonwaivable deviation from the terms of the RFP.

As a starting point, the County's exercise of discretion is entitled to great deference. The Florida Supreme Court established the standard for measuring a government agency's decision on competitive bids for a public contract in *Liberty County v. Baxter's Asphalt & Concrete, Inc.*, 421 So. 2d 505 (Fla. 1982). There the Court announced that "[A] public body has wide discretion in soliciting and accepting bids . . . and its decision, when based on an honest exercise of this discretion, will not be overturned by a court even if it may appear erroneous and even if reasonable persons may disagree." 421 So.2d at 507 (emphasis added). When government's decision is based on the honest exercise of its discretion, its decision cannot be overturned absent a finding of "illegality, fraud, oppression or misconduct". *Id.*

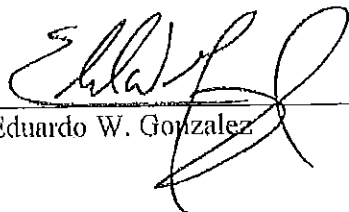
There are no cases in Florida evaluating a government's enforcement of a specification requiring electronic submittals. Florida case law, however, clearly supports the government's right to make bid decisions which, like the instant one, safeguard the integrity of the process and are made in support of a compelling government interest. In *Intercontinental Properties, Inc. v. State*, 606 So. 2d 380 (Fla. 3d DCA 1992), for example, the Court recognized that while "there is . . . strong public policy against disqualifying the low bidder for technical deficiencies which do not confer an economic advantage on one bidder over another," such technical deficiencies must be limited to "a variation from the bid invitation or proposal terms and conditions which . . . does not adversely impact the interests of the [government]." *Id.* at 386 (citing Rule 10-13.012, Fla.Admin.Code). Where, as here, a bidder commits a mistake, the government is not required to correct the mistake to the detriment of its interests, particularly where the correction would compromise the integrity and transparency of public contracting. See *Department of Transportation v. Ronlee, Inc.*, 518 So. 2d 1326 (Fla. 3d DCA 1987) (prohibiting the reformation of a public contract where bidder has committed a mistake in its bid because "[a] government unit is not required to act for the protection of a contractor's interest"). Here, MDAssociates clearly made a mistake and violated the explicit terms of the RFP requiring, with no exceptions, that all proposals are to be submitted through BidSync. MDAssociates also acted contrary to the compelling governmental interest and County's express policy to pursue e-commerce.

Furthermore, MDAssociates' deviation from the RFP's terms by its submittal of a paper proposal instead of the required electronic proposal through BidSync is material and non-waivable. In determining whether a specific noncompliance to a solicitation "constitutes a substantial and hence nonwaivable irregularity, the courts have applied two criteria—first, whether the effect of a waiver would be to deprive the municipality of its assurance that the contract will be entered into, performed and guaranteed according to its specified requirements, and second, whether it is of such a nature that its waiver would adversely affect competitive bidding by placing a bidder in a position of advantage over other bidders or by otherwise undermining the necessary common standard of competition." *Robinson Elec. Co. v. Dade County*, 417 So. 2d 1032 (Fla. 3d DCA 1982).

MDAssociates' submittal fails both prongs of the *Robinson* test. First, submittal of documents electronically through BidSync ensures that proposals received are actually in conformance with the County's requirements. For example, Bidsync guarantees that proposers acknowledge addenda, many of which alter the County's contractual requirements; a paper submittal may or may not reflect an acknowledgement of addenda. BidSync, in other words, provides "assurances" that a paper submittal does not, and acceptance of a paper submittal when BidSync is available would be a material deviation. Similarly, under the second prong of *Robinson*, BidSync provides for a "common standard of competition" by minimizing the potential for human error and/or human judgment. For example, as discussed above, BidSync can be used to prevent issues formerly common in paper bids such as bid prices being illegible, inconsistent as between words and numbers, or incomplete. A paper submittal, which as history indicates will suffer from these errors, requires County staff to make contingent judgments as to pricing issues. Use of BidSync helps eliminate these issues. Accepting bids submitted outside of Bidsync, by definition, undermines a common standard of competition. In short, submittal through BidSync provides what is the County's estimation of the best way to ensure that a procurement will in fact result in an effective contract and will be based on a common standard of competition. Accordingly, acceptance of bids outside BidSync would constitute a material deviation from the RFP.

This opinion is in line with precedent from the federal government, which now also relies heavily on electronic bid submittals. The Comptroller General has repeatedly held that electronic submittal requirements are reasonable and should be enforced, upholding the agency's determination that electronic submittals would promote efficiency and economy. See *Matter of Industrial Commonwealth Specialties, Inc.*, B-277833 (Comp. Gen. 1997); *Matter of Arcy Mfg. Company, Inc.*, B-261566 (Comp. Gen. 1995). The Comptroller General has also consistently upheld decisions to reject proposals which are not in strict conformance with the requirements for submittals. In *Johnson Controls Government Systems, LLC*, B-411862.2 (Comp. Gen. 2015), for example, the Comptroller General denied a protest that an agency improperly rejected a proposal as late where the protester failed to strictly follow the solicitation's instructions for electronic submittal of the proposal through the FedConnect system. The federal government has also upheld as reasonable decisions made by an agency solely on the basis of the agency's reasonable interests in promoting its efficiency and economy. Thus, for example, the Comptroller General has rejected protests where the bidder has exceeded an express page limitation finding that the protester violated a reasonable agency condition. See *Matter of Propagation Research Associates, Inc.*, B-405362 (Comp. Gen. 2011).

Although this is a matter of first impression in Florida case law, for the reasons set forth above, we conclude that the County's enforcement of its e-commerce policy and RFP terms requiring submittal of proposals through BidSync should be upheld by Florida courts if challenged. Accordingly, the County may reject MDAssociates' proposal as non-responsive.


Eduardo W. Gonzalez

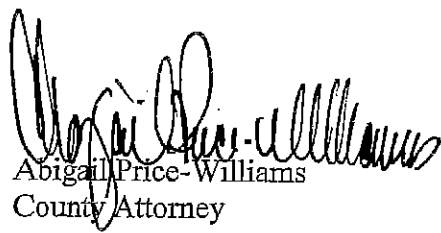


MEMORANDUM

(Revised)

TO: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

DATE: June 5, 2018

FROM: 
Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 8(F)(9)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(F)(9)
6-5-18

RESOLUTION NO. _____

RESOLUTION APPROVING AWARD OF CONTRACT NO. RFP-00567 FOR PURCHASE OF EMERGENCY MEDICAL SERVICES BILLING FOR THE FIRE RESCUE DEPARTMENT IN A TOTAL AMOUNT NOT TO EXCEED \$12,000,000.00 OVER THE INITIAL FIVE-YEAR TERM AND ONE, FIVE-YEAR OPTION TO RENEW TERM; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SAME FOR AND ON BEHALF OF MIAMI-DADE COUNTY AND TO EXERCISE ALL PROVISIONS OF THE CONTRACT, INCLUDING ANY CANCELLATION, RENEWAL AND EXTENSION PROVISIONS PURSUANT TO SECTION 2-8.1 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA AND IMPLEMENTING ORDER 3-38

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

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves award of Contract No. RFP-00567 for purchase of emergency medical services billing for the Fire Rescue Department, in substantially the form attached and made a part hereof, in a total amount not to exceed \$12,000,000.00 for the initial five-year term and one, five-year option to renew, and authorizes the County Mayor or County Mayor's designee to execute same for and on behalf of Miami-Dade County and to exercise all provisions of the contract, including any cancellation, renewal and extension provisions pursuant to 2-8.1 of the Code of Miami-Dade County and Implementing Order 3-38.

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

- | | |
|-------------------------------------|-------------------|
| Esteban L. Bovo, Jr., Chairman | |
| Audrey M. Edmonson, Vice Chairwoman | |
| Daniella Levine Cava | Jose "Pepe" Diaz |
| Sally A. Heyman | Barbara J. Jordan |
| Joe A. Martinez | Jean Monestime |
| Dennis C. Moss | Rebeca Sosa |
| Sen. Javier D. Souto | Xavier L. Suarez |
| District 5 - Vacant | |

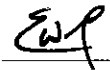
The Chairperson thereupon declared the resolution duly passed and adopted this 5th day of June, 2018. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

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

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



Eduardo W. Gonzalez

Emergency Medical Services (EMS) Billing
Contract No. RFP00567

THIS AGREEMENT made and entered into as of this _____ day of _____ by and between Advanced Data Processing, Inc., a corporation organized and existing under the laws of the State of Florida, having its principal office at 6451 N. Federal Highway, suite 1000, Fort Lauderdale, FL, 33308 (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 Emergency Medical Services Billing and Collection services, on a non-exclusive basis, that shall conform to the Scope of Services (Appendix A); Miami-Dade County's Request for Proposals (RFP) No. 00567 and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the Contractor has submitted a written proposal dated August 1, 2018, 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 Emergency Medical Services Billing and Collection 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 "Agreement" to mean collectively these terms and conditions, the Scope of Services (Appendix A), all other appendices and attachments hereto, all amendments issued hereto, RFP No. 00567 and all associated addenda, and the Contractor's Proposal.
- b) The words "Contract Date" to mean the date on which this Agreement is effective.

- c) The words "Contract Manager" to mean Miami-Dade County's Director, Internal Services Department, or the duly authorized representative designated to manage the Contract.
- d) The word "Contractor" to mean Advanced Data Processing, Inc., and its permitted successors.
- e) The word "Days" to mean Calendar Days.
- f) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the County's Project Manager for review and approval pursuant to the terms of this Agreement.
- g) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the County's Project Manager; and similarly the words "approved", "acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the County's Project Manager.
- h) The words "Extra Work" or "Additional Work" to mean 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 Mayor or the duly authorized representative designated to manage the Project.
- j) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Contractor.
- k) The word "subcontractor" or "subconsultant" to mean any person, entity, firm or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.
- l) The words "Work", "Services" "Program", or "Project" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.
- m) The words "Notice to Proceed" to mean written approval by MDR to allow the Contractor to begin the work defined in the Scope of Services.
- n) The abbreviation "MDFR" to mean Miami-Dade Fire Rescue Department.
- o) The words "Actual Collection" to mean the total amount of money collected by a Contractor in one Contract Year.
- p) The words "Average Dollar Collection" to mean the dollar average obtained by dividing the Monthly Revenue by the Monthly Transports for any specific month.
- q) The word "Bonus" to mean the sum payable to the Contractor each month in accordance with the provisions below, intended by the parties as a bonus for extraordinary collection efforts during that month.
- r) The words "Contract Year" to mean the one year period beginning on the effective date of the initial one year period and ending on last day of the 12th month from the effective date. Each subsequent one-year period shall begin on the first day of the month following the previous

one year period.

- s) The words "Emergency Medical Services" to mean transport of patients and other services rendered by MDFR during the transport of patient to a hospital.
- t) The words "Liquidated Returns" to mean the sum payable to the County each month in accordance with the provisions below, calculated as the parties' reasonable estimate of the damages suffered by the County as a result of the Contractor's failure to abide by the collection standards for that month.
- u) The words "Medicaid Fee" to mean the fee charged by a Contractor for each Medicaid account.
- v) The words "Monthly Revenue" to mean the total revenue derived from transports entered into the Contractor's Billing System, inclusive of Medicare, self-pay, and insurance but exclusive of Medicaid payments, occurring in a specific calendar month as computed on the Reconciliation Date.
- w) The words "Monthly Transports" to mean the number of transports, entered into the Contractor's Billing System in a specific calendar month, inclusive of Medicare, self-pay, and insurance but exclusive of Medicaid (as primary payer), as determined on the Reconciliation Date.
- x) The words "Percentage Fee charge by Contractor Fee" to mean the percentage charged by a Contractor as Fee to collect the money on County's behalf.
- y) The words "Reconciliation Date" to mean the date the County determines the Average Dollar Collection, which shall begin sometime in the thirteenth month after the Notice to Proceed Date.
- z) The words "Residents", "Patients" or "Individuals" to mean those persons that are transported, or attended to by MDFR emergency medical personnel.
- aa) The words "Work", "Services", "Program", or "Project" to mean all matters and things that will be required to be done by the Proposer in accordance with the Scope of Services and the terms and conditions of this Solicitation.

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) Price Schedule (Appendix B), 4) the Miami-Dade County's RFP No. 00567 and any associated addenda and attachments thereof, and 5) the Contractor's Proposal.

ARTICLE 3. RULES OF INTERPRETATION

- a) References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.
- b) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.
- c) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.

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

ARTICLE 4. NATURE OF THE AGREEMENT

- a) This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto or their authorized representatives.
- b) The Contractor shall provide the services set forth in the Scope of Services, and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.
- c) The Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.
- d) The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract. All Work and Services shall be accomplished at the direction of and to the satisfaction of the County's Project Manager.
- e) The Contractor acknowledges that the County shall be responsible for making all policy decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the County. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the County with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

ARTICLE 5. CONTRACT TERM

The Contract shall become effective on the date specified on the first page of this agreement and shall continue through the last day of the sixty (60) month term. The County, at its sole discretion, reserves the right to exercise the option to renew this Contract for an additional sixty (60) months. 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
Attention: Maria Reyes
Phone: (786) 331-5253
E-mail: Maria.Reyes@miamidade.gov

and,

b) to the Contract Manager:

Miami-Dade County
Internal Services Department, Procurement Management Division
111 N.W. 1st Street, Suite 1375
Miami, FL 33128-1974
Attention: Chief Procurement Officer
Phone: (305) 375-1574
Fax: (305) 375-4407
E-mail: Namita.Uppal@miamidade.gov

(2) To the Contractor

Advanced Data Processing, Inc.
Attention: Brad Williams
6451 N Federal Highway, Suite 1000
Fort Lauderdale, FL, 33308
Phone: (954) 308-8700
Fax: (954) 308-8725
E-mail: Brad.Williams@intermedix.com

Copy to:
Advanced Data Processing, Inc.
Attention: Darryl.Hartung@intermedix.com
7900 NW 154th Street, Suite 201
Miami Lakes, FL, 33016
Phone: (305) 954-2280
Fax: (305) 428-5380
E-mail: Darryl.Hartung@intermedix.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 according to the terms detailed in Appendix B - Price Schedule. The County shall have no obligation to pay the Contractor any additional sum in excess of fees detailed in Appendix B, except for a change and/or modification to the Contract, which is approved and executed in writing by the County and the Contractor. The Contractor shall pay to the County the "Liquidated Returns" according to the

Appendix B - Price Schedule. The County shall pay to Contractor the "Bonus" according to the Appendix B - Price Schedule.

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

ARTICLE 8. PRICING

Prices shall remain firm and fixed for the term of the Contract, including any option or extension periods; however, the Contractor may offer incentive discounts to the County at any time during the Contract term, including any renewal or extension 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. All firms, including Small Business Enterprises, providing goods and services to the County, shall receive payment to maintain sufficient cash flow. In accordance with Florida Statutes, Section 218.74 and Section 2-8.1.4 of the Miami-Dade County Code, the time at which payment shall be due from the County or the Public Health Trust shall be forty-five (45) days from receipt of a proper invoice. Billings from prime Contractors under services and goods contracts with the County or Public Health Trust, that are Small Business Enterprise contract set-aside, bid preference or contain a subcontractor goal, shall be promptly reviewed and payment made by the County or Trust on those amounts not under dispute within fourteen (14) calendar days of receipt of such billing by the County or the Trust pursuant to Sections 2-8.1.1.1.1 and 2-8.1.1.1.2 of the Miami-Dade County Code. All payments due from the County or the Public Health Trust, and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Mayor, or his or her designee(s), not later than sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust.

In accordance with Miami-Dade County Implementing Order 3-9, Accounts Receivable Adjustments, if money is owed by the Contractor to the County, whether under this Contract or for any other purpose, the County reserves the right to retain such amount from payment due by County to the Contractor under this Contract. Such retained amount shall be applied to the amount owed by the Contractor to the County. The Contractor shall have no further claim to such retained amounts which shall be deemed full accord and satisfaction of the amount due by the County to the Contractor for the applicable payment due herein.

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

Miami-Dade County
Fire Rescue Department
9300 NW 41 Street
Doral, FL 33178
Attention: Finance Bureau

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

ARTICLE 10. INDEMNIFICATION AND INSURANCE

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

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

- A. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440.
- B. Commercial General Liability Insurance on a comprehensive basis, in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**
- C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage.
- D. Professional Liability Insurance in an amount not less than \$1,000,000.
- E. Cyber Liability Insurance to include privacy, media Liability and coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expense in an amount not less than \$1,000,000 per occurrence.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations 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 "A-" as to management, and no less than "Class VII" as to financial strength by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

OR

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

The mailing address of Miami-Dade County as the certificate holder must appear on the certificate of insurance as follows:

**Miami-Dade County
111 N.W. 1st Street
Suite 2340
Miami, Florida 33128-1974**

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

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

The Contractor shall assure that the Certificates of Insurance required in conjunction with this Section remain in full force for the term of the Contract, including any renewal or extension periods that may be exercised by the County. If the Certificate(s) of Insurance is scheduled to expire during the term of the Contract, the Contractor shall submit new or renewed Certificate(s) of Insurance to the County a minimum of ten (10) calendar days before such expiration. In the event that expired Certificates of Insurance are not replaced or renewed to cover the Contract period, the County may suspend the Contract until the new or renewed certificates are received by the County in the manner prescribed herein. If such suspension exceeds thirty (30) calendar days, the County may, at its sole discretion, terminate the Contract for cause and the Contractor shall be responsible for all direct and indirect costs associated with such termination.

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 OF THE CONTRACTOR

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

ARTICLE 13. INDEPENDENT CONTRACTOR RELATIONSHIP

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

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

ARTICLE 14. AUTHORITY OF THE COUNTY'S PROJECT MANAGER

- a) The Contractor hereby acknowledges that the County's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Contractor's Proposal; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.
- b) The Contractor shall be bound by all determinations or orders and shall promptly comply with every order of the Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Contractor agrees with the Project Manager's determination or order. Where orders are given orally, they will be issued in writing by the Project Manager as soon thereafter as is practicable.
- c) The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Contractor and the Project Manager are unable to resolve their difference, the Contractor may initiate a dispute in accordance with the procedures set forth in this Article. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.
- d) In the event of such dispute, the parties to this Agreement authorize the County Mayor 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 Mayor's purview as set forth above shall be conclusive, final and binding on parties. Any such dispute shall be brought, if at all, before the County Mayor within 10 days of the occurrence, event or act out of which the dispute arises.
- e) The County Mayor 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 Mayor 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 Mayor 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 Mayor 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 Mayor, 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 appendices to the Agreement, shall constitute the entire Agreement between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of both parties.
- b) Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.
- c) In those situations where this Agreement imposes an indemnity obligation on the Contractor, the County may, at its expense, elect to participate in the defense if the County should so choose. Furthermore, the County may at its own expense defend or settle any such claims if the Contractor fails to diligently defend such claims, and thereafter seek indemnity for costs from the Contractor.

ARTICLE 16. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING

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

ARTICLE 17. AUDITS

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

Pursuant to Section 2-481 of the Miami-Dade County Code, the Contractor will grant access to the Commission Auditor to all financial and performance related records, property, and equipment purchased in whole or in part with government funds. The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

ARTICLE 18. SUBSTITUTION OF PERSONNEL

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

ARTICLE 19. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT

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

ARTICLE 20. SUBCONTRACTUAL RELATIONS

- a) If the Contractor will cause any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.
- b) The Contractor, before making any subcontract for any portion of the services, will state in writing to the County the name of the proposed Subcontractor, the portion of the Services which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the County may require. The County will have the right to require the Contractor not to award any subcontract to a person, firm or corporation disapproved by the County.
- c) Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed. Such Services performed by such Subcontractor will strictly comply with the requirements of this Contract.
- d) In order to qualify as a Subcontractor satisfactory to the County, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the satisfaction of the County that it has the necessary facilities, skill and experience, and ample financial resources to perform the Services in a satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the County that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.
- e) The County shall have the right to withdraw its consent to a subcontract if it appears to the County that the subcontract will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the County's and County's proprietary and confidential information. Contractor shall furnish to the County copies of all subcontracts between Contractor and Subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the County in the event the County finds the Contractor in breach of this Contract, permitting the County to request completion by the Subcontractor of its performance obligations under the subcontract. The clause shall include an option for the County to pay the Subcontractor directly for the performance by such Subcontractor. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County to any subcontractor hereunder as more fully described herein.

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

The Contractor understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the County were provided to the Contractor for evaluation purposes only. However, since these assumptions, parameters, projections, estimates and explanations represent predictions of future events the County makes no representations or guarantees; and the County shall not be responsible for the accuracy of the assumptions

presented; and the County shall not be responsible for conclusions to be drawn therefrom; and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Contractor. The Contractor accepts all risk associated with using this information.

ARTICLE 22. SEVERABILITY

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

ARTICLE 23. TERMINATION AND SUSPENSION OF WORK

- a) The County may terminate this Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the County through fraud, misrepresentation or material misstatement.
- b) The County may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the County and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.
- c) The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be debarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.
- d) In addition to cancellation or termination as otherwise provided in this Agreement, the County may at any time, in its sole discretion, with or without cause, terminate this Agreement by written notice to the Contractor.
- e) In the event that the County exercises its right to terminate this Agreement, the Contractor shall, upon receipt of such notice, unless otherwise directed by the County:
 - i. stop work on the date specified in the notice ("the Effective Termination Date");
 - ii. take such action as may be necessary for the protection and preservation of the County's materials and property;
 - iii. cancel orders;
 - iv. assign to the County and deliver to any location designated by the County any non-cancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services;
 - v. take no action which will increase the amounts payable by the County under this Agreement; and
- f) In the event that the County exercises its right to terminate this Agreement, the Contractor will be compensated as stated in the payment Articles herein for the:

- i. portion of the Services completed in accordance with the Agreement up to the Effective Termination Date; and
 - ii. non-cancelable Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement, but not incorporated in the Services.
- g) All compensation pursuant to this Article are subject to audit.

ARTICLE 24. EVENT OF DEFAULT

- a) An Event of Default shall mean a breach of this Agreement by the Contractor. Without limiting the generality of the foregoing, and in addition to those instances referred to herein as a breach, an Event of Default shall include the following:
- i. the Contractor has not delivered Deliverables on a timely basis;
 - ii. the Contractor has refused or failed to supply enough properly skilled staff personnel;
 - iii. the Contractor has failed to make prompt payment to subcontractors or suppliers for any Services;
 - iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;
 - v. the Contractor has failed to obtain the approval of the County where required by this Agreement;
 - vi. the Contractor has failed to provide "adequate assurances" as required under subsection b below;
 - vii. the Contractor has failed in the representation of any warranties stated herein.
- b) When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the County may request that the Contractor, within the timeframe set forth in the County's request, provide adequate assurances to the County, in writing, of the Contractor's ability to perform in accordance with the 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 timeframe, the County may:
- i. treat such failure as a repudiation of this Agreement; and
 - ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.
- c) In the event the County shall terminate this Agreement for default, the County or its

designated representatives may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.

ARTICLE 25. NOTICE OF DEFAULT - OPPORTUNITY TO CURE

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

ARTICLE 26. REMEDIES IN THE EVENT OF DEFAULT

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

- a) lost revenues;
- b) the difference between the cost associated with procuring Services hereunder and the amount actually expended by the County for re-procurement 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 shall not infringe on any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third party proprietary rights in the performance of the Work.
- b) 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 copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third party proprietary rights.
- c) 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.

- d) 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).
- e) 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.

ARTICLE 28. CONFIDENTIALITY

- a) All Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County in connection with the Services performed under this Agreement, made or developed by the Contractor or its subcontractors in the course of the performance of such Services, or the results of such Services, or which the County holds the proprietary rights, constitute Confidential Information and may not, without the prior written consent of the County, be used by the Contractor or its employees, agents, subcontractors or suppliers for any purpose other than for the benefit of the County, unless required by law. In addition to the foregoing, all County employee information and County financial information shall be considered Confidential Information and shall be subject to all the requirements stated herein. Neither the Contractor nor its employees, agents, subcontractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the County. Additionally, the Contractor expressly agrees to be bound by and to defend, indemnify and hold harmless the County, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.
- b) The Contractor shall advise each of its employees, agents, subcontractors and suppliers who may be exposed to such Confidential Information of their obligation to keep such Information confidential and shall promptly advise the County in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.
- c) It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the County shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Services performed hereunder, the Contractor shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors or suppliers without the prior written consent of the County. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall accompany such materials.

ARTICLE 29. PROPRIETARY INFORMATION

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

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

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

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

ARTICLE 30. PROPRIETARY RIGHTS

- a) The Contractor hereby acknowledges and agrees that the County retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the County to the Contractor hereunder or furnished by the Contractor to the County and/or created by the Contractor for delivery to the County, even if unfinished or in process, as a result of the Services the Contractor performs in connection with this Agreement, including all copyright and other proprietary rights therein, which the Contractor as well as its employees, agents, subcontractors and suppliers may use only in connection with the performance of Services under this Agreement. The Contractor shall not, without the prior written consent of the County, use such documentation on any other project in which the Contractor or its employees, agents, subcontractors or suppliers are or may become engaged. Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the County's copyrights or other proprietary rights.
- b) All rights, title and interest in and to certain inventions, ideas, designs and methods, specifications and other documentation related thereto developed by the Contractor and its subcontractors specifically for the County, hereinafter referred to as "Developed Works" shall become the property of the County.
- c) Accordingly, neither the Contractor nor its employees, agents, subcontractors or suppliers shall have any proprietary interest in such Developed Works. The Developed Works may

not be utilized, reproduced or distributed by or on behalf of the Contractor, or any employee, agent, subcontractor or supplier thereof, without the prior written consent of the County, except as required for the Contractor's performance hereunder.

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

ARTICLE 31. VENDOR REGISTRATION/CONFLICT OF INTEREST

a) Vendor Registration

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

- | | |
|--|--|
| 1. Miami-Dade County Ownership Disclosure Affidavit
(Section 2-8.1 of the County Code) | |
| 2. Miami-Dade County Employment Disclosure Affidavit
(Section 2-8.1(d)(2) of the County Code) | (Section 2-8.1(f) 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) |
| 3. Miami-Dade Employment Drug-free Workplace Certification
(Section 2-8.1.2(b) of the County Code) | 8. Miami-Dade County Family Leave Affidavit
(Article V of Chapter 11 of the County Code) |
| 4. Miami-Dade Disability and Nondiscrimination Affidavit

(Section 2-8.1.5 of the County Code) | 9. Miami-Dade County Living Wage Affidavit
(Section 2-8.9 of the County Code) |
| 5. Miami-Dade County Debarment Disclosure Affidavit
(Section 10.38 of the County Code) | 10. Miami-Dade County Domestic Leave and Reporting Affidavit
(Article 8, Section 11A-60 11A-67 of the County Code) |
| 6. Miami-Dade County Vendor Obligation to County Affidavit

(Section 2-8.1 of the County Code) | 11. Subcontracting Practices
(Ordinance 97-35) |
| 7. Miami-Dade County Code of Business Ethics Affidavit | 12. Miami-Dade County E-Verify Affidavit
(Executive Order 11-116) |
| | 13. Subcontractor /Supplier Listing
(Section 2-8.8 of the County Code) |

14. **Environmentally Acceptable Packaging**
(Resolution R-738-92)
15. **W-9 and 8109 Forms**
(as required by the Internal Revenue Service)
16. **FEIN Number or Social Security Number**
In order to establish a file, the Contractor's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. This number becomes Contractor's "County Vendor Number". To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:
- Identification of individual account records
 - To make payments to individual/Contractor for goods and services provided to Miami-Dade County
17. **Office of the Inspector General**
(Section 2-1076 of the County Code)
18. **Small Business Enterprises**
The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.2, 2-8.2.3 and 2-8.2.4 of the County Code and Title 49 of the Code of Federal Regulations.
19. **Antitrust Laws**
By acceptance of any contract, the Contractor agrees to comply with all antitrust laws of the United States and the State of Florida.

b) **Conflict of Interest/Code of Ethics**

Section 2-11.1(d) of Miami-Dade County Code requires that any County employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, competing or applying for a contract, must first request a conflict of interest opinion from the County's Ethics Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County. Any such contract or business engagement entered in violation of this subsection, as amended, shall be rendered voidable. All autonomous personnel, quasi-judicial personnel, advisory personnel, and employees wishing to do business with the County are hereby advised they must comply with the applicable provisions of Section 2-11.1 of the Miami-Dade County Code relating to Conflict of Interest and Code of Ethics. In accordance with 2-11.1 (y), the Miami Dade County Commission on Ethics and Public Trust (Ethics Commission) shall be empowered to review, interpret, render advisory opinions and letters of instruction and enforce the Conflict of Interest and Code of Ethics Ordinance.

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 apply to the Contractor, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Contractor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

Miami-Dade County Inspector General Review

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

Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-38; (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 shall have the power 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) "Conflicts of Interest" Section 2-11.1 of the County Code, and Ordinance 01-199.
- e) Miami-Dade County Code Section 10-38 "Debarment".
- f) 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.
- g) Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

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

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

ARTICLE 34. NONDISCRIMINATION

During the performance of this Contract, Contractor agrees to not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity or gender expression, status as victim of domestic violence, dating violence or stalking, or veteran status, and on housing related contracts the source of income, and will take affirmative action to ensure that employees and applicants are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

By entering into this Contract, the Contractor attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If the Contractor or any owner, subsidiary or other firm affiliated with or related to the Contractor is found by the responsible enforcement agency or the County to be in violation of the

Act or the Resolution, such violation shall render this Contract void. This Contract shall be void if the Contractor submits a false affidavit pursuant to this Resolution or the Contractor violates the Act or the Resolution during the term of this Contract, even if the Contractor was not in violation at the time it submitted its affidavit.

ARTICLE 35. CONFLICT OF INTEREST

The Contractor represents that:

- a) No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the award of this Agreement.
- b) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:
 - i) Is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or
 - ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.
- c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.
- d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.
- e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the County's Project Manager. Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

ARTICLE 36. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

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

- a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and
- b) Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and
- c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the County.

ARTICLE 37. BANKRUPTCY

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

ARTICLE 38. GOVERNING LAW

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

ARTICLE 39. COUNTY USER ACCESS PROGRAM (UAP)

a) User Access Fee

Pursuant to Section 2-8.10 of the Miami-Dade County Code, 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 the solicitation referenced on the first page of this Contract, 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. Contractor 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 three (3) business 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 40. FIRST SOURCE HIRING REFERRAL PROGRAM

Pursuant to Section 2-2113 of the Code of Miami-Dade County, for all contracts for goods and services, the Contractor, prior to hiring to fill each vacancy arising under a County contract shall (1) first notify the South Florida Workforce Investment Board ("SFWIB"), the designated Referral Agency, of the vacancy and list the vacancy with SFWIB according to the Code, and (2) make good faith efforts as determined by the County to fill a minimum of fifty percent (50%) of its employment needs under the County contract through the SFWIB. If no suitable candidates can be employed after a Referral Period of three to five days, the Contractor is free to fill its vacancies from other sources. Contractor will be required to provide quarterly reports to the SFWIB indicating the name and number of employees hired in the previous quarter, or why referred candidates were rejected. Sanctions for non-compliance shall include, but not be limited to: (i) suspension of contract until Contractor performs obligations, if appropriate; (ii) default and/or termination; and (iii) payment of \$1,500/employee, or the value of the wages that would have been earned given the noncompliance, whichever is less. Registration procedures and additional information regarding the FSHRP are available at <https://iapps.careersourcesfl.com/firstsource/>.

ARTICLE 41. PUBLIC RECORDS AND CONTRACTS FOR SERVICES PERFORMED ON BEHALF OF MIAMI-DADE COUNTY

The Contractor shall comply with the Public Records Laws of the State of Florida, including by not limited to, (1) keeping and maintaining all public records that ordinarily and necessarily would be required by the County in order to perform the service; (2) providing the public with access to public records on the same terms and conditions that the County would provide the records and at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law; (3) ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (4) meeting

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all requirements for retaining public records and transferring, at no cost, to the County all public records in possession of the Contractor upon termination of the contract and destroying any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements upon such transfer. In addition, all records stored electronically must be provided to the County in a format that is compatible with the information technology systems of the County. Failure to meet any of these provisions or to comply with Florida's Public Records Laws as applicable shall be a material breach of this Agreement and shall be enforced in accordance with the terms and conditions of the Agreement.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (305) 375-5773, ISD-VSS@MIAMIDADE.GOV, 111 NW 1st STREET, SUITE 1300, MIAMI, FLORIDA 33128

ARTICLE 42. INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION and/or PROTECTED HEALTH INFORMATION

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

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

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

ARTICLE 43. DISPOSAL OF DATA

Upon termination, or completion of this contract, the Contractor shall return to the County, all data collected, copied, created, or otherwise acquired during the performance of this Contract.

ARTICLE 44. ACQUISITION OF OTHER SERVICES

While the County has listed services within the scope of this contract (Appendix A) which will be utilized by the County, it is hereby agreed and understood that additional/optional services may be added on as needed and when needed basis. The County will contact the Contractor to obtain a price quote for these additional/optional services. The County reserves the right to add these additional/optional services should received quotes are determined to be fair and reasonable.

ARTICLE 45. SURVIVAL

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

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

Contractor
By: [Signature]
Name: Ian Kyle Wailes
 CFO
Title: _____
Date: March 21, 2018
Attest: [Signature]
 Corporate Secretary/Notary Public

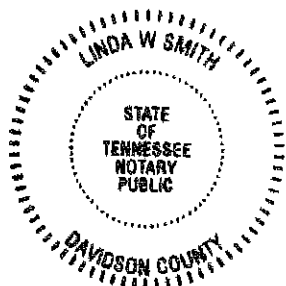
Miami-Dade County
By: _____
Name: Carlos A. Gimenez
Title: Mayor
Date: _____
Attest: _____
 Clerk of the Board

Corporate Seal/Notary Seal

Approved as to form and legal sufficiency

Assistant County Attorney

[Signature]
Linda W. Smith
Notary Public
State of Tennessee
County of Davidson



**Appendix A
Scope of Services**

1. INTRODUCTION

Miami-Dade Fire Rescue (MDFR) transports patients from incidents to health care facilities in its emergency medical transport vehicles. The Contractor will use the information collected from MDFR's Electronic Patient Care Report (ePCR) report, hospitals, and other sources as the basis for billing the transported patients, Medicare, Medicaid, and insurance companies. The Contractor will make every effort to bill other appropriate third party payers for services provided to patients. The Contractor must assess service levels prior to billing and classifying services into levels that meet Medicare and Medicaid transport criteria. These service levels may, in a limited number of cases, differ from what is indicated on internal documents based upon interpretation and must be brought to MDFR's attention on a monthly basis to determine if changes may be necessary.

Patient billing is performed through different payer categories (Financial Classes), such as; Self-pay accounts, Medicaid, Medicare, and Private Insurance. Emergency medical services currently provided by MDFR include: Advanced Life Support (ALS) and Basic Life Support (BLS) and. The current transport fees and related fees for each service are as follows. These fees are subject to change upon approval by the Board of County Commissioners.

MIAMI-DADE FIRE RESCUE DEPARTMENT Emergency Medical Services Rate Schedule	
Transport/Service	Fee
Basic Life Support (BLS) (A0429)	\$800.00
Advanced Life Support 1 (ALS1) (A0427)	\$800.00
Advanced Life Support 2 (ALS2) (A0433)	\$900.00
Specialty Care Transport (A0434)	\$900.00
Ground Mileage (per transport mile or fraction thereof) (A0425)	\$15.00
Oxygen (per tank or fraction thereof)	\$30.00
IV/IO Solutions	\$25.00
Cardiac Monitoring	\$25.00
Cervical Collar	\$25.00
Backboard	\$25.00

2.1 GENERAL REQUIREMENTS AND RESPONSIBILITIES

Contractor will be required provide complete medical billing and accounts receivable management services for County's emergency medical services billing in accordance with Contractor's responsibilities outlined below.

1. The Contractor will provide timely and accurate billing services utilizing information provided by the County and information obtained from other reliable sources.
2. Contractor will adhere to all applicable Federal, State and Local regulations, laws, and codes pertaining to emergency medical services billing and collections while performing as the County's emergency medical services billing and collections organization.
3. Contractor shall provide Health Insurance Portability and Accountability Act of 1996 (HIPAA) privacy practices and other applicable regulatory requirements to all transported patients in invoice mailings.

4. Contractor shall serve as an industry advocate on behalf of the County and MDR, actively participating in national and state initiatives, legislation, industry groups, etc. that impact ambulance reimbursement.
5. Contractor shall comply with all applicable Federal, State and local laws as they apply to the services being provided and conform to the spirit of the Federal Debt Collection Practices Law. This further includes all requirements to maintain confidentiality for all medical and patient information as related to HIPAA, Health Information Technology for Economic and Clinical Health Act (HITECH), Payment Card Industry (PCI) standards, insurance and local laws or rules and regulations.
6. Contractor shall execute the County's a Business Associate Agreement (BAA) compliant with HIPAA and PCI requirements. Contractors agrees to incorporate any changes in HIPAA and PCI effective after award of the Contract into the BAA.
7. The BAA must cover any other business associate that the Contractor uses to process HIPAA protected data. Proof of Business Associate agreement will be required for the contract award.
8. Contractor shall participate in a yearly audit conducted by MDR consistent with Generally Accepted Accounting Principles (GAAP). This audit will cover the common set of accounting principles, standards and procedures used to compile annual financial statements.
9. Contractor shall maintain accounts receivable management with full managerial reporting system. Maintain all books of accounts in accordance with GAAP standards and other applicable laws.
10. Contractor will provide, on a monthly basis, a copy of all monthly financial activity, billing, and receivable reports, consistent with GAAP to MDR.
11. Contractor shall make all related records available and assist the County in the instance the County wishes to audit activities associated with this Agreement.

2.2 FUNCTIONAL REQUIREMENTS

1. Contractor will integrate MDR's SafetyPad devices and/or other electronic data collection devices to ensure that the Contractor's system electronically receives incident information collected through MDR SafetyPads (Open Inc.) and ability to integrate with any other electronic data collection devices. At minimum daily, Contractor will provide a reconciliation between Contractor billing system and SafetyPad Enterprise (Open Inc.) of number of MDR ePCR transport reports transmitted.
2. Contractor will be required to maintain real-time interfaces between the Contractor's billing system and Miami-Dade County's on-line payment gateway to ensure that the payment gateway reflects the most current patient account information when payments are being recorded and to ensure that payments remitted through the County's payment gateway are updated to the Contractor's electronic patient account record.
3. Contractor will receive multiple times during the day, a csv file containing patient payment data through the SFTP (Secure File Transfer Protocol) transmission from the Miami-Dade County Information Technology Department (ITD) to be used to update a patient's account for any payment made through Miami-Dade County's on-line payment gateway. This will be accomplished by sending it to the Contractor's SFTP server. Key generation and interchange is required. This protocol assumes that it is over a secure channel, that the server has already authenticated the client, and that the identity of the client user is available to the protocol.

4. On a daily basis, Contractor will send multiple times during the day, via an SFTP transmission, patient account information such as the account number (accounts that have unpaid balances) and Incident number to update the account information reflected on Miami-Dade County's on-line payment gateway. Appropriate system controls should be in place to ensure the accuracy of data transmission and posting.
5. Contractor shall provide system flexibility to allow the queuing of accounts based on type, such as Auto Carrier, etc.
6. Contractor shall have the ability to integrate with SafetyPad Enterprise (Open Inc.) and/or other electronic data collection devices requirements including, but not limited to:
 - i. Capture of the NEMESIS clinical data set into the billing platform.
 - ii. Capture of both transport and first responder records into the billing platform.
 - iii. Capture of the actual patient, patient representative, facility, and crew signatures in the billing platform.
 - iv. Automated billing-extract and file transmission to the billing application.
 - v. First responder record information will be available for reporting purposes.
 - vi. First responder records will be available with the transport record to facilitate coding, and patient insurance and demographic information capture.
 - vii. First responder image capture of insurance, identification or other information.
7. Contractor shall utilize a system that suggests coding data elements (levels of service, ICD-10, emergency, and medical necessity) to the coder for review and confirmation.
8. Contractor will work with MDFR to bill fractional mileage to governmental payers per federal regulations and provide flexible system options for the billing of fractional or rounded up mileage for non-- governmental payers.
9. Contractor shall provide ability to set mileage outliers at the client level in the system that will identify bill processors of possible mileage data capture mistakes.
10. Contractor shall have the ability to integrate with any commercial available tool (e.g.: - MapQuest) for the correct capture of mileage when needed.
11. Contractor shall have the ability integrate with any commercial available tool (e.g.: - MapQuest) upon import of all medical records for verification of patient city, state, and zip code, as well as United States Postal Service (USPS) standardization.
12. Contractor invoicing and reporting systems shall be automated to fulfill scheduled and on-demand reporting needs of MDFR.
13. Contractor shall provide Electronic Claims Processing for Medicare, Medicaid and larger commercial payers.
14. Contractor shall receive a daily electronic report batch containing patient data and billing information through a File Transfer Protocol (FTP) transmission from MDFR to a secure Contractor website. If the electronic Batch submission is selected, the vendor shall accept the electronic Reports in TIFF format. Field data provided by MDFR via electronic transfer shall have an agreed upon encryption scheme to protect that data from casual interception and inspection by unauthorized person(s). In the event that a daily electronic report batch containing patient data and billing information through a File Transfer Protocol (FTP) transmission from MDFR to a secure Contractor website fails and subsequent retransmission is not feasible, Contractor shall pick-up the paper batch reports at mutually agreed times from the MDFR Central Records Bureau.
15. Contractor shall provide a secure electronic portal, such as HTTPs or FTPs, to exchange collections related information.

2.3 PERFORMANCE/SERVICE LEVELS

1. Contractor shall assess service levels prior to billing and classify services into levels that meet Medicare and Medicaid transport criteria. These service levels may, in a limited number of cases, differ from what is indicated on internal documents based upon interpretation and must be brought to MDFR's attention to determine if changes may be necessary. The awarded Contractor shall assume all responsibility for Medicaid and/or Medicare audits.
2. Contractor will work with the County's contracted third-party vendor and/or the County in completing the County's annual cost report for submittal to the State of Florida Certified Expenditure Program for Emergency Medical Services for Medicaid services paid on a Medicaid Fee-for-service basis, and any expansion of the program for managed care or otherwise.
3. Contractor will use reasonable business efforts to ensure accuracy of all claims prior to submission. In the event a claim is denied, Contractor's analyst may take any/all of the following actions:
 - i. obtain additional information and re-file the claim.
 - ii. contact payers via telephone to determine appropriate course of resolution.
 - iii. follow a formal appeals process with appropriate payer.
 - iv. request assistance from the Reimbursement Department of the appropriate payer.
 - v. reclassify account as patient's responsibility and bill as a self-pay.
4. Contractor will handle each claim individually. If a claim has not been paid, denied, or rejected, Contractor will review each account following the guidelines listed below.
 - a. Medicare-14 days after filing.
 - b. Medicaid-14 days after filing.
 - c. Third party/Commercial Insurance: 14 -45 days after filing.
5. Contractor will advise the County of any changes necessary by virtue of statutory requirements at least 30 days in advance of the effective date.
6. Contractor shall maintain automated systems necessary for providing services to MDFR, including accounts receivable. Contractor will be responsible for all systems analysis and software design, software modification, customization, software maintenance, and system upgrade as needed.
7. Contractor must file a clean claim within 48 hours of receipt of all necessary claim filing information.
8. Contractor will electronically file as many third party payees as possible.

2.4 CUSTOMER SERVICE

Contractor shall be responsible for pursuing appeals of denials, partial denials and rejections, when deemed appropriate by the County. Contractor shall conduct appropriate follow-up required to obtain the necessary insurance information and demographic information to process invoices for payment. Contractor will provide procedures documenting their process.

1. Contractor shall establish a toll free telephone number for billing inquiries. Contractor shall provide an adequate number of Customer Service Representatives (CSRs), during MDFR normal business hours to ensure that callers via the toll free telephone number have a wait time of no more than 60 seconds at any time of day. CSRs must be able to read, write and speak fluently in English, Spanish, and Creole. These CSRs shall be able to assist patients and/or other third party payees in all billing inquiries in a timely fashion. The toll free telephone number and business hours must appear on all invoices.

2. Contractor shall provide timely and effective response to payer's complaint, denial or request for additional information.
3. Return envelopes provided by the Contractor shall be addressed as designated by MDFR.
4. Contractor shall mail all invoices, forms, and patient surveys at its own expense.
5. Contractor shall advise and assist transported patients regarding insurance and other third party payer benefits. Mail copies of reports to Medicare, Medicaid, insurance companies, or third party payers, when requested to obtain payment, with proper confidentiality.
6. Contractor shall provide web-site access to patients to provide and gather insurance information.
7. Contractor shall mail proper insurance forms or electronically process forms to third party payers as required or requested by the patient. Either method shall include information on how and where to remit payments to MDFR.
8. Contractor shall promptly respond to all written or verbal patient complaints, requests and inquiries within three business days. This communication needs to be in a format that can be tracked by both Contractor and County upon request.
9. Contractor shall maintain a working relationship/arrangement with all of MDFR serviced hospitals and request that hospitals provide a copy of patient fact sheets, or be provided with demographic and insurance information as well as patient outcome information, including primary diagnoses code.
10. Contractor shall include in patient invoice and/or statement mailing a patient satisfaction survey provided by MDFR and a return, self-addressed and postage paid envelope, which will be provided by MDFR. Said survey is expected to be no more than one page in length and of a size not to exceed 8 1/2 by 11 inches.
11. Contractor shall provide training to Miami-Dade Fire Rescue personnel regarding the gathering of necessary information and proper completion of Rescue Patient Records.
12. Contractor shall designate a dedicated contract coordinator for MDFR who will be available to MDFR at all times and respond to inquiries promptly, but no later than 24 hours after an inquiry is made. Coordinator will be knowledgeable and responsible for all Contract related activities for MDFR.
13. Contractor shall provide real time, 24 hour, seven days a week, 365 days a year web access for designated MDFR resources to patient billing accounts, and images of documents received, including explanations of benefits (EOBs), checks, patient mail, insurance correspondence, etc.
14. Contractor shall provide all necessary copying, faxing, mailing, calling, and other related services to fulfill the requirements of this agreement.
15. Contractor shall maintain records of current fees, industry approved billing codes and description files. Contractor will maintain up-to-date knowledge of laws applicable to emergency medical services billing and collections from patients for transports and maintain knowledge of nationwide and local trends in transport fee schedule.

16. Contractor shall provide company and EMS billing industry updates via variety of mediums, including but not limited to: weekly status meetings, bi-monthly newsletters, periodic webinars, and an annual client meeting.
17. Contractor will provide professional assistance to the County in evaluating billing policies and fee schedules from time to time. Provide professional assistance to the County via performance reviews, policy discussions, updates on industry trends, fee schedule recommendations, collection opportunity discussions, etc. at a minimum on a quarterly basis.
18. Contractor shall provide feedback to the County on opportunities to improve documentation, revenue, collection, and compliance.
19. Contractor shall maintain a dedicated EMS billing and collection office in Miami-Dade County.

2.5 BILLING AND COLLECTION REQUIREMENTS

1. Contractor will perform all billing functions within the territorial United States.
2. Contractor shall be responsible for the timely invoicing, collecting, and generating any and all insurance forms and filings, record maintenance and preparing standard and/or custom reports, as requested, or required by MDR.
3. Contractor shall invoice patients, or other responsible third party, at the current prevailing rate on the approved fee schedule for payment of services rendered.
4. Contractor shall have the ability to automatically capture all itemized charges.
5. Prior to invoicing for patient transport, Contractor will:
 - a. ensure the patient transport has been properly coded and priced with medical necessity determination, thus, resulting in the maximum allowable reimbursement for all services provided by MDR.
 - b. ensure all patient transports billed to Medicaid and Medicare are medically necessary and comply with the respective Medicaid and Medicare reimbursement requirements.
 - c. create clean claims resulting in fee recovery in the fastest possible manner.
 - d. place insurance carriers as the primary guarantor and patients as the secondary.
 - e. ensure proper signature collections on ePCR reports as required by law.

If no insurance information is available for a patient, Contractor will bill the patient on a timely basis, but no later than 30 days after the patient transport date.

6. Contractor shall create solutions to obtain a valid patient signature for purposes of filing a claim to Medicare when a signature is missing. Contractor will provide procedures documenting their process.
7. Contractor will make reasonable business efforts to locate and correct any incorrect billing address for billable patients.
8. Contractor will accommodate flexible patient billing cycles to produce maximum collections, including monthly payment arrangements. After initial billing, Contractor may attempt to contact the patient via phone if there has been no activity on the account. Contractor will follow a "soft" collection approach that focuses primarily on obtaining additional insurance information and providing a gentle reminder of the patient's obligation to pay the account. Contractor is encouraged to offer various online payment methods (credit card, check) to patients.

Contractor will be responsible for any payment denied by Medicare, Medicaid and/or a third party/commercial insurance payer for failure to bill on a timely basis, when accurate/complete information was provided within 30 days of the insurance company timely filing period. The Contractor will reimburse the average overall collection per account by payer type/class on the County's next invoice.

9. Contractor will share proportionality (based on compensation to the Contractor for accounts audited) on an account billed by the Contractor with the County in any sanction or other cost assessment imposed by a regulatory agency as a result of a Medicare or Medicaid compliance audit.
10. Contractor will negotiate and arrange modified payment schedules for those patients who cannot pay the full amount at the time of initial billing.
11. Contractor will provide the required Request for Hardship Write-off procedures provided by MDFR to those patients requesting a write-off and notate the patient account accordingly.
12. Contractor shall recommend settlements and partial, or complete write offs where appropriate, and submit documentation to include the MDFR requirements. All settlements will be made in compliance with applicable County policies and procedures. Contractor must obtain written consent of the County prior to negotiating a final settlement, or, before otherwise compromising any account.
13. Contractor shall transfer any accounts back to the County upon demand, at no cost. The County will be diligent in its review of any accounts transferred back to determine if the account is truly uncollectible, or, if not collected based upon insufficient efforts on the part of the Contractor.
14. Contractor shall accept the hard copy or electronic information pertaining to patients' payment or billing documentation from the County for all patients transported by MDFR.
15. Contractor shall post all payments directly to a designated Lockbox as the payments are received but no later than 24 hours after receipt. MDFR will provide the lockbox service. Contractor will maintain an accurate record of customer payments posted from lockbox collections.
16. Contractor shall provide automated payment posting for Medicare, Medicaid, and the larger commercial payers.
17. Contractor will design a transport fee invoice and submit to MDFR for approval.
18. Contractor will design a transport fee statement which lists all invoices for a unique account and submit to MDFR for approval.
19. Contractor will provide all invoices and related insurance forms with remittance advice. Invoices for services rendered shall contain the following information:
 - Account number - Contractor will establish a unique account number per patient
 - Invoice number and date - sequential invoice number, which can be associated with patient unique account number
 - Name of transported patient
 - Name of responsible party, if different from patient
 - Complete patient address
 - Date of transport
 - Cost of transport including itemized breakdown for each component of transport cost
 - Incident number ("Run" number provided by MDFR)

- Transport "From" and Transport "To" (if applicable)
 - Insurance coverage and instructions (if applicable)
 - Billing inquiry telephone number
 - Note referencing Miami-Dade County's web portal gateway for payment of transport fees
 - "...all checks be made payable to the Board of County Commissioners - Miami-Dade Fire Rescue Department"
 - "...this is an invoice for services provided by Miami-Dade Fire Rescue". (Contractor shall provide sample)
20. Contractor shall be responsible for sending first notice to the patient within fourteen (14) days of record receipt, a second notice thirty (30) days from sending the first, and the third at thirty (30) days from sending the second and a fourth at thirty (30) days from sending the third notice.
21. If Patient has multiple invoices, Contractor shall be responsible for sending first notice to the patient within fourteen (14) days of record receipt and incorporating this invoice into a statement detailing invoice numbers and transport dates at thirty (30) days, a second statement at sixty (60) days, and a third statement at ninety (90) days, and monthly statements thereafter until account balance is paid or transferred to Miami-Dade County Finance Department's Credit and Collection Section..
22. Contractor shall file all insurance claim forms for patients electronically, or through other communication means, based on information received from the patient, or obtained by other means, such as; research conducted at health care facilities or other appropriate research available to the Contractor to obtain billing information. Perform automatic (wherever applicable) filing of secondary insurance, reject billing, balance billing, and completing and submitting insurance of third party payer forms, where necessary.
23. Contractor shall limit the use of confidential records of care, or treatment of patients solely for the purpose of processing and collecting claims and shall not release any such information in any legal action, business dispute, or competitive bidding process other than disputes with the County over billing services.
24. Contractor shall submit all invoices and related insurance forms at a monthly scheduled time with remittance advice to MDRF staff.
25. Contractor will review all accounts receivable monthly no later than the 30th of each month. Accounts deemed non-collectible, inactive, and self-paid will be turned over by Contractor to the County at twelve (12) months, if not before, for further collection efforts. Returned mail deemed non-collectible will be turned over immediately to the County for further action. Accounts deemed active or self-paid will not be turned over at twelve months; Contractor will continue to collect on behalf of the County for these accounts. The County, at its sole discretion, may leave selected accounts with the Contractor for a longer period of time.
26. Contractor will reconcile collections with monthly billings for the prior month no later than the first of the following month and produce required reports to MDRF.
27. Contractor shall analyze credit balance overpayments, process refund requests, provision of refund requests, and report to the County.
28. Contractor shall record contraindication codes to assist with medical necessity determination on all accounts.

2.6 REPORTING

The Contractor will maintain a computerized database of all accounts and will provide the County with management and financial information reports. The Contractor at a minimum will provide all reports provided to MDFR by the current Contractor. MDFR will provide samples of all current reports to the Contractor. The format of reports required under this contract will be determined by MDFR. Contractor will provide all custom reports at the request of MDFR in a reasonable time at no cost. All text, format, and color of printing is subject to approval by MDFR. Contractor shall submit the following reports electronically no later than the fifth day of the following month, or upon request, in Microsoft Excel or Word format as requested by MDFR:

1. *Monthly Management Summary Report –*
This monthly report serves as a reconciliation or presents a summary of account activity for a month. It includes a summary of the billing activity (as detailed in a report below) as well as the collection activity posted to patient accounts (as detailed in a report below) for the month less and any adjustments to collections such as refunds and accounts adjustments (as detailed in a report below).
2. *Billing Activity Summary Report-*
This monthly report list all transports billed by Financial Class, as well as by type, i.e. ALS1, ALS2, BLS, etc., including any voided or non-billable accounts for the month and year-to-date.
3. *Collection Activity Summary Report –*
This monthly report list all transport collections by Financial Class including any unidentified payments for the month and year-to-date.
4. *Report of Transports Billed*
This monthly report will list all billings by Financial Class for a month. The report shall be sorted by Financial Class and have subtotals for each Financial Class within the report. The report will identify patient account, Fire incident number, invoice transaction ID, number date of transport, patient name, incident date, invoice date, level of service, Financial Class billed and invoice transaction amount.
5. *Report of Transports Billed and Received*
The report will reconcile transport data sent to the Contractor with transports billed. A grand total of billed and not billed for the month of transport must also be computed. The report shall identify date of transport, date received from MDFR, date billed, Fire incident number, patient number, patient name, complete patient address, incident date, invoice date, number of transports billed, procedures billed, dollars billed, the number of transports not billed, and the dollar value of accounts not billed. Additionally, the report must summarize the monthly billing activity.
6. *Summary Report of Collections/Deposits*
This weekly report, which will be updated through the end of each month, will list collections for each day of the month, including number of transactions lock box collections posted, credit card payments posted through the Payment Gateway to patient accounts, electronic transfers received from third party payers, etc. as well as any payments returned for Non-Sufficient Funds (NSF) and payments received at the LockBox for Credit and Collections or payments that could not be identified with a patient account. The report should be updated weekly for each day of the month through grand total of all monthly payments.
7. *Lock Box Detail Report of Collections*
This weekly report, which will be updated through the end of each month, will verify and reconcile lock box batch deposit activity by day with collection posting activity. The report should identify the

patient number, patient name, patient complete address, payment amount, type, batch #, batch total, and date and provide a subtotal for each day as well as grand total of all monthly payments.

8. *Report of Payments deposited in LockBox that could not be Identified as a Patient Transport Account*

This weekly report, which will be updated through the end of each month, will list all deposits that could not be identified to a patient account. The detailed report will list payee name, date received, amount of check, check number, date, etc.

9. *Report of Payments deposited in LockBox that were transferred to Credit and Collection*

This weekly report, which will be updated through the end of each month, will list all deposits that were transferred to credit and collection to be posted to written off accounts. The detailed report will list patient name, account number, financial class payor, payee name, date received, amount of check, check number, date, etc.

10. *Detail Report of Adjustments and Write-offs by Financial Class*

This monthly report will list all adjustments by Financial Class for a month. The report shall be sorted by Financial Class and have subtotals for each Financial Class within the report. The report will identify patient account, Fire incident number, invoice transaction ID, number date of transport, patient name, incident date, invoice date, Financial Class adjustment billed and adjustment transaction amount.

11. *Detail Report of New Charges Billed*

This monthly report lists by invoice and or account number Incident Charge ID, Fire incident number, date of service, date billed, level of service, primary insurance type, primary insurance name, each itemized charge under each invoice.

12. *Insurance Activity Report*

This report will show the portion of actual collections and the accounts receivable, detailed by self, Medicaid, Medicare, and private insurance, by type of transport (ALS and BLS). A combined grand total for each column will be provided.

13. *Monthly Collection Summary Report*

This report will list monthly payments in item (6) above by original transport month, incident month and amount collected in the month.

14. *Total Billings by Incident Month Report*

This report will list cumulative number of gross billings for each incident (transport) month by type of transport (ALS and BLS). A combined grand total for each column will be provided.

15. *Accounts Receivable Aged Trial Balance Report*

This report is intended to be a summary report which depicts the account receivable balance by age category (Current, 30 days, 60 days, etc.) as well as the Percentage of Accounts Receivable in each aging category as of each month.

16. *Accounts Receivable by Level of Service Report*

This report will show the amount owed by all transported patients for each level of service, including the number of accounts, gross charges, adjustments, net charges, receipts, write-off, and balance for each level of service by aging category as well as the gross and net collection percentage for each and the Average Dollar Collection for each.

17. *Accounts Receivable by Financial Class Report*

This report will show the amount owed by all transported patients by Financial Class, including the number of accounts, gross charges, adjustments, net charges, receipts, write-off, and balance for each Financial Class by aging category as well as the gross and net collection percentage for each and the Average Dollar Collection for each.

18. *Accounts Receivable by Patient Report*

This report will show the amount owed by all transported patients by patient last name at the end of the month and will include: gross billing since inception, payments since inception, MDRF approved adjustments and write-offs since inception, Medicaid and Medicare adjustments, and ending balance of accounts receivable, by type of transport (ALS and BLS). A combined grand total for each column will be provided.

19. *Accounts Receivable by Aging Category Report*

This report will show the detail for each invoice amount owed by all transported patients by aging category. The total for each category should agree with the summary provided in Report 15 above of Aged Trial Balance.

20. *Report of Accounts Receivable greater than or equal \$2,500 per Patient Account and 90 or more days Past Due*

This report lists all accounts and related invoices under each account meeting the report criteria and identifies any account transferred to County's credit and Collection area but not authorized as a Hardship Write-off.

21. *Report of Transports Billed and Collected by Transport Type*

This report lists by month number of accounts and corresponding invoices billed and number of number of accounts and corresponding collections and percentage collected based on date of service regardless of billed or collection date by transport type. This report will be updated monthly for the life of the Contract.

22. *Report of Transports Billed and Collected by Financial Class*

This report lists by month number of accounts and corresponding invoices billed and number of number of accounts and corresponding collections and percentage collected based on date of service regardless of billed or collection date by financial class. This report will be updated monthly for the life of the Contract.

23. *Report of Accounts Transferred to Credit and Collections*

This report lists all accounts and related invoices under each account meeting transferred to County's credit and Collection area but not authorized as a Hardship Write-off. MDRF will work with the Contractor to identify the best solution to identify a flag within the Contractor's system until the account is written-off by the County.

24. *Payment Percentages Report*

This report will show the percentage of patients who have made a payment by type of Transport, by transport month and year, and includes: total patients transported in month under each type of transport, total amount due, number not making a payment, number making partial payment and amount of payment, total patients making full payment and amount of payment, total amount due, total amount billed, total amount paid, and percentage paid.

25. *Credit Balance Report*

This report will list all accounts having a credit balance at the end of the month. This report would show: patient number, patient's name, incident date, amount billed, amount paid by payer, and credit balance amount.

26. *Refund Listing Report*

This report will list accounts requiring a refund due to overpayment and must show: patient number, patient name, patient address, incident date, amount originally billed, total amount paid on account detailed by date, amount and related lockbox batch number, related on-line payment gateway transaction number, refund amount, and payer due refund. Two copies of detailed supporting documentation is required for each duplicate payment to be refunded. MDRR will work with the Contractor to identify the best solution for this requirement.

27. *Number of Days between Incident Date and Billing Date Report*

This report will list all incidents billed during the month, and the number of days between the incident date and the first billing date. The report would show: patient number, patient's name, incident date, first billing date, and number of days between incident and billing date sorted by rescue unit number. Also shows subtotals for each unit and average number of days between incident and billing. Report may also include date report received.

28. *Collection Summary Inception To-Date by Month Report*

This report will list total charges by transport month without write-offs or reductions, total payments to date, gross collection rate, amount paid to Contractor based upon collections by billing month, and gross effective collection rate.

29. *Class Listing Report*

This report will lists accounts with mail returns, deceased patients, accounts in bankruptcy cases, probate cases, insurance responsibility and self-pay accounts.

30. *Unbilled Patient Transports Not Medically Necessary*

This report to lists all ePCR transports not billed due to lack of medical necessity. Report includes MDRR Incident number, date of transport, total charge, patient name, as well as reason for not medically necessary.

31. *Unbilled Patient Transports Medically Necessary*

This report lists all ePCR transports unbilled which were medical necessity as well as reflect the reason not billing to date, the number of days the transport has been unbilled, MDRR Incident number, date of transport, total charge, and patient name.

32. *Report of Transports by Rescue Unit*

This report will track bills by type, by unit, as well as collections by type of insurance.

33. *Detailed Report of Fees Charged by Type of Service Report*

This will include type of transport, associated fees billed, type of insurance billed, amount collected as compared to items billed.

34. *Patient Outcome Report*

MDRR shall work with the Contractor to transfer Patient outcome information electronically to the County on a daily basis. MDRR will work with the vendor to identify the best solution for this requirement. The vendor shall supply the following information:

- Incident Number
- Incident Date
- Report ID (Case Number)
- Patient Outcome

35. *Number of ALS*

Number of ALS billings with amount billed, including details for mileage, oxygen and all other billable services. Number of BLS billings with amount billed, number of mileage and amount billed, including details for mileage, and all other billable services. The report will also include other transport categories, such as number of billings and amount billed. This report must summarize the number of billings and amounts by type of transport, and item billed, such as number of miles billed, dollar value of miles billed, number of oxygen billings and all other billable services.

36. *Other statistical and management reports*

Additional reports may be requested by the County as needed. The Contractor will provide all requested reports in a reasonable time.

37. The Contractor shall provide:

- a) Access to MDRF's information on 24 hours a day, 7 days a week via the internet and secured servers.
- b) Provide ability to create ad-hoc reports via an easy-to-use interface.
- c) Provide ability to export to various formats, including excel and adobe formats.
- d) Provide the ability to schedule both running and distribution of reports.
- e) Provide training for County employees on usage of the online reporting tools.

38. Contractor shall provide standard monthly management reports and such other informational reports as reasonably required by the County.

39. Contractor shall provide MDRF ability to print on-demand patient statements via online access to patient accounts.

2.7 RECORDS MANAGEMENT

1. Contractor will maintain all Miami-Dade County Patient Care Report (PCR) and payment records for the duration of the Contract. Copies of specific documents will be provided to the County upon request. All records are considered Miami-Dade County property and will be returned upon completion or termination of the contract, unless destroyed with prior approval from the County in accordance with all applicable laws.
2. Contractor shall maintain multiple dedicated EMS billing operation centers throughout the country to support disaster recovery and business continuity.
3. Contractor shall provide daily replication of data between collocation centers.
4. All patient data collected by the Contractor, provided by MDRF, will be the property of MDRF and shall be returned to the Department upon the expiration of the contract.
5. Contractor shall state where patient data will be stored (locally, or out of state) and in what format/media.
6. Contractor shall maintain all documentation, records and patient information in a safe and secure manner that will allow inspection and audit by MDRF or its agents upon reasonable and proper notification.
7. Contractor will maintain all books, records, data, and other relevant documentation in accordance with the Federal and State retention requirements.

8. Contractor shall maintain electronic records for all billing related services and maintain proper physical and virtual security of all medical records as required by HIPAA, PCI and other applicable laws.
9. In the event daily electronic report batch containing patient data and billing information through a File Transfer Protocol (FTP) transmission fails Contractor shall state whether they:
 - Entered any billing/coding data on the green copies?
 - Used the green copies for audits.
 - How long after billing do they refer to the green copies?
 - How/where are the green copies stored?

Appendix B
PRICE SCHEDULE

The Contractor will perform Emergency Medical Services Billing and Collections on behalf of the County. All monies collected by Contractor shall be deposited in the designated lockbox. At the end of each calendar month, Contractor will send an invoice to the County with collection details of all Miami-Dade County transports entered in the Contractor's billing system from the preceding month. Payments to Contractor shall be made by the County after satisfactory reconciliation of the invoice. The invoice shall be based on the following processing fee schedule. For Liquidated Returns, the County will invoice the Contractor immediately upon the determination that Liquidated Returns are due. The Bonus will be paid by the County following the determination that Collections for any Calendar month qualify for Bonus:

1. Processing Fee Schedule

The following rates will apply for all billing and collection services performed under this contract

Item #	Description	
1	Percentage Fee charged by Contractor for all collections except Medicaid	2.45%
2	Flat Fee charge by Contractor for each Medicaid eligible account	\$12.25
3	Liquidated Returns	\$30,000
4	Bonus	\$30,000

2. Provisions to Determine Liquidated Returns/Bonus

1. A Notice to Proceed, will be issued to the Contractor by the County after the execution of the Contract.
2. Calculations of the Collection Average shall start during the thirteenth (13th) month after the Notice to Proceed (Reconciliation Date) and once per month for every month thereafter for the duration of the Contract (and any extension that may follow) and for a period of twelve (12) months after the expiration of the Contract, the County will calculate the Collection Average to determine if any Liquidated Returns/Bonus is appropriate. Three (3) months after the Reconciliation Date the County will recalculate the Collection Average to determine if any Liquidated Returns/Bonus requires adjustment.
3. The Contractor shall pay to the County Liquidated Returns for any given calendar month when the Collection Average is less than **Two Hundred and Ninety Five Dollars (\$295)**. The Liquidated Returns shall be invoiced and paid in accordance with the terms of the contract.
4. The County shall pay to the Contractor a Bonus for any given calendar month when the Collection Average exceeds **Three Hundred and Twenty Dollars (\$320)**. The Bonus shall be invoiced and paid in accordance with the terms the contract.
5. The County or the Contractor may request a change in the Liquidated Returns/Bonus thresholds. Such request must be made in writing and shall be supported by collection

data. The parties shall have up to ninety days from the date of the written request to reach an agreement on such adjustment ("Negotiation Period"). In the event no agreement is reached during the Negotiation Period, either party may cancel this Contract. Should the Contract be cancelled, the Contractor shall remain obligated to faithfully perform all required services for a period of nine months after the completion of the Negotiation Period. No Liquidated Returns/Bonus shall apply from the start of the Negotiation Period through completion of all service requirements.

Appendix C

HIPAA BUSINESS ASSOCIATE ADDENDUM

This HIPAA Business Associate Addendum ("Addendum") supplements and is made a part of the Agreement by and between the Miami-Dade County, Florida ("County"), and Advanced Data Processing, Inc., Business Associate ("Associate").

RECITALS

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

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

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

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

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

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

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

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

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

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

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

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2. Obligations of Associate.

- a. Permitted Uses and Disclosures. Associate may use and/or disclose PHI received by Associate pursuant to the Agreement ("County's PHI") solely in accordance with the specifications set forth in the Scope of Services, Appendix A. In the event of any conflict between this Addendum and Appendix A, this Addendum shall control. [45 CFR § 164.504(e)(2)(i)]
- b. Nondisclosure. Associate shall not use or further disclose County's PHI other than as permitted or required by law. [45 CFR § 164.504(e)(2)(ii)(A)]
- c. Safeguards. Associate shall use appropriate safeguards to prevent use or disclosure of County's PHI in a manner other than as provided in this Addendum. [45 CFR § 164.504(e)(2)(ii)(B)] Associate shall maintain a comprehensive written information security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Associate's operations and the nature and scope of its activities. Appropriate safeguards used by Associate shall protect the confidentiality, integrity, and availability of the PHI and ePHI that is created, received, maintained, or transmitted on behalf of the County. [45 CFR § 164.314(a)(2)(i)(A)] County has at its sole discretion, the option to audit and inspect, the Associate's safeguards at any time during the life of the Agreement, upon reasonable notice being given to Associate for production of documents and coordination of inspection(s).
- d. Reporting of Disclosures. Associate shall report to the County's Project Manager, any use or disclosure of the County's PHI in a manner other than as provided in this Addendum. [45 CFR § 164.504(e)(2)(ii)(c)] Associate shall report to the County through the County's Project Manager, any security incident of which it becomes aware within forty-eight (48) hours of discovery of the incident. [45 CFR § 164.314(a)(2)(i)(C)]
- e. Associate's Agents. Associate agrees and shall ensure that any agents, including subcontractors, to whom it provides PHI received from (or created or received by Associate on behalf of) the County, agrees in writing to the same restrictions and conditions that apply to Associate with respect to such PHI and that such agents conduct their operations within the United States. Associate agrees and shall ensure that any agents, including subcontractors, to whom it provides ePHI received, created, maintained, or transmitted on behalf of the County, agrees in writing to implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of that ePHI. [45 CFR § 164.314(a)(2)(i)(B)] In no case may Associate's Agents reside and operate outside of the United States.
- f. Documentation of Disclosures. Associate agrees to document disclosures of the County's PHI and information related to such disclosures as would be required for the County to respond to a request by an individual for an accounting of disclosures of PHI. Associate agrees to provide the County or an individual, in a time and manner designated by the County, information collected in accordance with the Agreement, to permit the County to respond to such a request for an accounting. [45 CFR § 164.528]
- g. Availability of Information to County. Associate shall make available to the County such information as the County may require to fulfill the County's obligations to provide access to, provide a copy of, and account for, disclosures of PHI pursuant to HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR Sections 164.524 and 164.528. [45 CFR § 164.504(e)(2)(ii)(E) and (G)]
- h. Amendment of PHI. Associate shall make the County's PHI available to the County as may be required to fulfill the County's obligations to amend PHI pursuant to HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR Section 164.526 and Associate shall, as directed by the County, incorporate any amendments to the County's PHI into copies of such PHI maintained by Associate, and in the time and manner designated by the County. [45 CFR § 164.504(e)(2)(ii)(F)]
- i. Internal Practices. Associate shall make its internal practices, books and records relating to the use and disclosure of the County's PHI (or PHI created or received by Associate on behalf of the County) available to the County and to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by the

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

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

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

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

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

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

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

4. Termination.

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

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

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

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

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

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

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

7. **Amendment.**

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

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

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

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

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10. **Interpretation.** This Addendum and the Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA Regulations and applicable Florida laws. The parties agree that any ambiguity in this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA Regulations.

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