

Memorandum



Date: November 16, 2021

Agenda Item No. 8(F)(5)

To: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor

A handwritten signature in blue ink that reads "Daniella Levine Cava".

Resolution No. R-1102-21

Subject: Recommendation for Approval to Award Employee Disability Insurance Program

Recommendation

It is recommended that the Board of County Commissioners (Board) approve a competitive contract award, *Contract No. RFP-01858, Employee Disability Insurance Program*, to Metropolitan Life Insurance Company (MetLife) for the Human Resources Department in the amount of \$11,000,000. The current contract, *RFP835*, was approved by the Board on September 17, 2013 for a four-year term, with two, two-year options to renew via Resolution No. R-736-13

The County issued a competitive Request for Proposals on April 26, 2021. Upon advertisement, over 11,700 vendors were notified, 64 viewed the solicitation, and 10 responses were received, including two "No Bids." While the provisions of the recommended Program mirror the current disability insurance plan, this replacement contract provides several enhancements, including:

- The negotiated rates for the Short-Term Disability Plan yielded savings to employees from the current contract rates. For comparison, an employee currently receiving \$1,000 bi-weekly, is paying \$114.14 per year and would be paying \$113.10 per year under the replacement contract.
- The negotiated rates for the Long-Term Disability Plan yielded savings to employees from the current contract rates. For comparison, an employee currently receiving \$2,000 bi-weekly, is paying \$321.10 per year and would be paying \$236.60 per year under the replacement contract.
- The negotiated rates for the Premier Long-Term Disability Plan yielded savings to employees from the current contract rates, from \$0.397 to \$0.292 (per each \$100).
- Value added enrichment benefits at no additional cost such as financial wellbeing solutions, workshops to address the diverse needs of the County employees, executive resources for County executives, financial wellness workshops and apps.

The contract provides an Insured Employee Short-Term, Long-Term, and Premier Long-Term Disability Insurance Program (Program) and related services. This is a completely voluntary program. Employees elect whether or not to participate during the County's annual benefits "Open Enrollment" period or at their initial eligibility date. Human Resources conducts open enrollment survey annually to access any dissatisfactions with the Program. There are approximately 27,000 employees eligible for this Program; and employees pay the full cost of the benefit.

Scope

The scope of this item is countywide in nature.

Fiscal Impact/Funding Source

The fiscal impact for the initial two-year term is approximately \$11,000,000. Should the County choose to exercise, at its sole discretion, the two, two-year options to renew, the estimated cumulative value will be \$35,000,000. The current contract, *RFP835*, is valued at \$50,000,000 for an eight-year term and expires on December 31, 2021. The annualized allocation under the replacement contract is lower than the current contract due to lower negotiated rates. The Premium for this program is deducted from

participating employees' paychecks by the County on a post-tax basis, and electronically remitted on bi-weekly basis to the Program provider for the prior pay period.

Department	Allocation	Funding Source	Contract Manager
Human Resources	\$11,000,000	Employee Funded	Helena Denham Carter
Total:	\$11,000,000		

Track Record/Monitor

Pearl Bethel 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, renewals or 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. Ten proposals were received in response to the solicitation, including two "No Bids."

Vendor	Principal Address	Local Address*	Number of Employee Residents	Principal
			1) Miami-Dade 2) Percentage*	
Metropolitan Life Insurance Company (MetLife)	200 Park Avenue New York, NY	1144 SW 67 Avenue Miami, FL	25	Michel Khalaf
			1%	

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

Vendors Not Recommended for Award or Did Not Bid

Vendor	Local Address	Reason for Not Recommending
Life Insurance Company of North America	No	Evaluation Scores/Ranking
Reliance Standard Life Insurance Company	No	
Standard Life Insurance Company	No	
American Family Life Insurance Company of Columbus, dba AFLAC	Yes	Deemed non-responsive by the County Attorney's Office (opinion attached)
Hartford Life and Accident Insurance Company	No	
ReliaStar Life Insurance Company	No	
The Prudential insurance Company of America	Yes	
Aflac of Plantation	No	No Bid*
Symetra Life Insurance Company	No	

*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. 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.

Applicable Ordinances and Contract Measures

- The two percent User Access Program provision does not apply as this is an employee-funded program.
- The Small Business Enterprise Selection Factor does not apply as this is an employee-funded program.
- The Local Preference was applied.
- The Living Wage does not apply as the services are not covered by the Ordinance.

Attachment



Edward Marquez
Chief Financial Officer

Memorandum



Date: June 11, 2021

To: Natalya Vasilyeva
Procurement Contracting Officer
Internal Services Department

From: Melanie Spencer
Assistant County Attorney

Subject: Request for Responsiveness Determination on RFP No. 01858-Employee Disability Program

You have asked this office if bids submitted by various vendors submitted in response to RFP-No. 0185- Employee Disability Program (“Solicitation”) are responsive. We rely on the information provided to this office in your June 7, 2021, memorandum and attached materials as related to the bids.

BACKGROUND

The Solicitation sought bids to provide an insured Employee Short-Term Disability (STD) and Long-Term Disability (LTD) Insurance Program and related services. The purpose of the Solicitation was to obtain an insurer who will provide a Program that enhances the quality of the current offerings while minimizing costs. On June 1, 2021, 10 vendors proposals were received in response to the Solicitation.

Because you have asked this office to review bid submitted by 6 vendors for responsiveness, I will address each bid separately even though in some instances the issues raised in your memorandum apply to multiple vendors.

DISCUSSION

A. American Family Life Insurance Company of Columbus, dba AFLAC (“AFLAC”)

i. Price Contingencies

In the General Information Quote Assumption Section of its bid, AFLAC stated that all rates are guaranteed, unless exposure (lives & volume) changes +/- 15%.

The Revised Price Proposal Schedule, included in the Solicitation, noted that:

The Premiums shall be guaranteed for the initial two (2) Plan years. **Rates shall not be contingent upon minimum participation requirements.** Proposers may confirm optional year guaranteed rate commitment as provided for below in Section C. Any extensions pursuant to Article 5 of the Agreement will be at the then current rates, unless the County approves an increase in the rates. 2. Any price proposal that is conditioned may be deemed non-responsive pursuant to Section 1.3.

Section 1.3 of the Solicitation stated that:

In the event that a Proposer wishes to take an exception to any of the terms of this Solicitation, the Proposer shall clearly indicate the exception in its proposal. No exception shall be taken where the Solicitation specifically states that exceptions may not be taken. **Further, no exception shall be allowed that, in the County's sole discretion, constitutes a material deviation from the requirements of the Solicitation.** Proposals taking such exceptions may, in the County's sole discretion, be deemed nonresponsive.

The Proposer's proposal will be considered a good faith commitment by the Proposer to negotiate a contract with the County, in substantially similar terms to the proposal offered and, if successful in the process set forth in this Solicitation and subject to its conditions, to enter into a contract substantially in the terms herein. Proposer proposal shall be irrevocable until contract award unless the proposal is withdrawn. A proposal may be withdrawn in writing only, addressed to the County contact person for this Solicitation, prior to the proposal due date and time, or upon the expiration of 180 calendar days after the opening of proposals. (emphasis added).

Finally, Section 2.2(G) of the Solicitation makes clear that "all premiums, also referred as rates, shall be guaranteed for the initial Plan Years 2022 and 2023 effective January 1, 2022, through December 31, 2023, independent of actual enrollment or any other premium rate contingencies. "

In general, a bid may be rejected or disregarded if there is a material variance between the proposal and the advertisement. A minor variance, however, will not invalidate the proposal. See *Robinson Elec. Co. v. Dade Cnty*, 417 So. 2d 1032, 1034 (Fla. 3d DCA 1982). The determination of whether a variance or irregularity is minor is fact specific and may differ from bid to bid. Florida courts have used a two part test to determine if a specific non-compliance in a bid would constitute a substantial and, thus nonwaivable issue: (1) whether the effect of the waiver would be to deprive the County of the assurance that the contract would be entered into, performed and guaranteed according to its specific requirements; and (2) whether it would adversely affect competitive bidding by placing a proposer in a position of advantage over other proposers. See *Glatstien v. City of Miami*, 399 So. 2d 1005 (Fla. 3d DCA 1981).

AFLAC's bid is non-responsive as AFLAC has stated that its rates are only valid as long as the exposure, in either lives or volume, does not change +/- 15%. AFLAC's bid takes exception with the requirement in the Solicitation that rates shall not be contingent upon minimum participation requirements. The County is asking proposers to assume the risk related to fluctuation in enrollment and AFLAC is attempting to transfer this risk back to the County and are thus materially deviating from the terms of the Solicitation. AFLAC would also be given a material advantage to other bidders as other responsive bidders were forced to factor the participation risk into their bid.

Because AFLAC's bid is non-responsive based upon its material variance in pricing, it is not necessary to analyze whether their bid should be considered non-responsive on another basis.

B. Life Insurance Company of North America

i. Confidential Information

Life Insurance Company of North America included the following language in its Executive Overview portion of its bid:

The information hereby provided by New York Life Group Benefit Solutions (NYL GBS) in responding to your Request for Proposal (the "RFP"), and the information that may subsequently be provided by NYL GBS in connection with the RFP and evaluation process (including information relating to the development of possible technological tools and innovations that NYL GBS may propose for Miami-Dade County), is proprietary and highly confidential. Such information is and shall be provided subject to the following conditions and understandings: (i) it will not be used by Miami-Dade County, its employees, representatives, or consultants for any purpose other than the evaluation of NYL GBS in connection with the services sought by Miami-Dade County in its Request for Proposal; (ii) it will not be disclosed to any person or entity other than Miami-Dade County, its employees, representatives, and consultants, and their respective employees who are directly involved in the evaluation process and who have been made aware of and agree to these limitations upon use and disclosure; and (iii) it is the sole property of NYL GBS.

However, Life Insurance Company of North America also executed the following waiver of confidentiality and trade secrets as provided in Submittal Form included with its bid

WAIVER OF CONFIDENTIALITY AND TRADE SECRET TREATMENT OF PROPOSAL The Proposer acknowledges and agrees that the submittal of the Proposal is governed by Florida's Government in the Sunshine Laws and Public Records Laws as set forth in Florida Statutes Section 286.011 and Florida Statutes Chapter 119. As such, all material submitted as part of, or in support of, the proposal will be available for public inspection after opening of proposals and may be considered by the County or a selection committee in public. By submitting a proposal pursuant to this Solicitation, Proposer agrees 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.

While Life Insurance Company of North America included language asserting that portions of its bid were considered highly confidential, Life Insurance Company of North America “knowingly and expressly” waived all claims that portions of its proposal were confidential. Life Insurance Company’s bid is not considered non-responsive irrespective of the language included in its Executive Overview portion of its bid because it waived any claim to confidential treatment by its execution of the Solicitation’s Confidentiality Waiver.

ii. Price Proposal Schedule Form

In its bid, Life Insurance Company of North America did not fill out the final column of the Price Proposal Schedule labeled “Two Year Premium” on the Price Proposal Schedule. This column is a calculation based upon the Bi-Weekly Rate per \$100 of weekly benefit (provided by the proposer) and the Bi-Weekly Volume (provided by the County in the Solicitation). The Price Proposal form includes the following language in Note 3:

Wherein there may be extension errors in the Premium Totals and/or Total Price, the Bi-weekly Rate Proposed shall prevail and the County maintains the right to correct any Total Proposed Price prepared by the Proposer. Notwithstanding the Proposer’s Total Proposed Price, payment to the selected Proposer shall be based on the actual enrollment of employees and the actual volume of insurance in the Plans.

You have advised me that you were able to calculate the Two-Year Premium provided by Life Insurance Company of North America based upon their Bi-Weekly rate and the failure of Life Insurance Company of North America to complete the extension calculation did not deprive you of the ability to evaluate their bid. As such Life Insurance Company of North America’s failure to complete to the extension calculation for the Two-Year Premium column does not render their bid non-responsive.

iii. Compliance with State Insurance Laws

In its bid, Life Insurance Company of North America responded to the request to confirm Proposed Plan Designs by stating that “[s]tate insurance laws require that the policy of insurance be written on state insurance department approved forms and contain the entire contract. If awarded the business, we will issue policies on state-approved forms that reflect the substantive terms stated in our proposal. While provisions of our proposal will be reflected, where appropriate, in the policy or in other related agreements, we cannot agree to incorporate our proposal in its entirety into the contract.”

Because Life Insurance Company of North America confirms that the substantive terms of their bid will remain the same, but that they intend to follow applicable law and only the format will be different in order to comply with state law, their bid should not be considered non-responsive on this non-material basis.

C. Metropolitan Life Insurance Company

Metropolitan Life Insurance Company marked certain section of their proposal confidential and proprietary.

However, Metropolitan Life Insurance Company also executed the waiver of quoted in Section B (i) above.

While Metropolitan Life Insurance Company marked portions of its bid confidential and proprietary, they “knowingly and expressly” waived all claims that portions of its proposal were confidential. Metropolitan Life Insurance Company’s bid is not considered non-responsive irrespective of the marking of portions of its bid because it waived any claim to confidential treatment by its execution of the Solicitation’s Confidentiality Waiver.

D. The Prudential Insurance Company of America (“Prudential”)

You have raised several issues as related to Prudential’s bid. As any one of them may render their bid non-responsive, and some of the issues are repeated more than once in their bid, it is not necessary to address each issue individually. Prudential included the following language in its bid submittal:

Prudential will guarantee the quoted rates for three years, provided the covered lives or volume does not fluctuate by 10% or more from what has been reported. We may change any premium rates at any time for reasons that affect the risk assumed, including:

- A change in plan design
- The addition or deletion of a division, subsidiary, or associated company
- The enactment of a new law or change in any existing law that applies to the plan Our minimum participation requirement is 25% for voluntary disability coverages. We assume the current participation level will be met.

As described in the analysis in Section A (i) of this opinion, the Solicitation included language related to minimum participation requirements. As with the other bidders who included similar language, Prudential’s bid is non-responsive as Prudential stated that its rates are only valid provided the covered lives or volume does not fluctuate by 10% or more from what has been reported and state that they may change the rates at any time based upon certain occurrences. Prudential’s bid takes exception with the requirement in the Solicitation that rates shall not be contingent upon minimum participation requirements. The County is asking proposers to assume the risk related to fluctuation in enrollment and Prudential is attempting to transfer this risk back to the County and are thus materially deviating from the terms of the Solicitation. Prudential would also be given a material advantage to other bidders as other responsive bidders were forced to factor the participation risk into their bid.

Because Prudential’s bid is non-responsive on this basis, it is not necessary to examine the other issues raised by you in your memorandum.

E. ReliaStar Life Insurance Company (“ReliaStar”)

You have noted in your memorandum that there are several notations in ReliaStar’s bid related to minimum participation requirements. For instance, as part of the Solicitation, ReliaStar was asked to confirm that they would not include a minimum participation

requirement, in response, ReliaStar responded “Not Confirmed. The following minimum participation requirements will apply: Voluntary STD: 50% Voluntary LTD: 50%.” ReliaStar also stated in its bid that “[r]ates may be adjusted with enrollment shifts of 15% or more.”

As outlined in Section A (i) of this opinion, ReliaStar’s bid is non-responsive as ReliaStar included minimum participation rates in its bid. ReliaStar’s bid takes exception with the requirement in the Solicitation that rates shall not be contingent upon minimum participation requirements. The County is asking proposers to assume the risk related to fluctuation in enrollment and Prudential is attempting to transfer this risk back to the County and are thus materially deviating from the terms of the Solicitation. ReliaStar would also be given a material advantage to other bidders as other responsive bidders were forced to factor the participation risk into their bid.

F. Hartford Life and Accident Insurance Company (“Hartford”)

In its bid, Hartford stated that Hartford reserves the right to re-price if the quoted minimum enrollment threshold is not met and that the rates provided may be affected by the actual enrollment.

The analysis of Section A (i) of this opinion is applicable here. Hartford’s bid is non-responsive as Hartford stated that they reserve the right to re-price if the quoted minimum enrollment threshold is not met and that the rates provided may be affected by the actual enrollment. Hartford’s bid takes exception with the requirement in the Solicitation that rates shall not be contingent upon minimum participation requirements. The County is asking proposers to assume the risk related to fluctuation in enrollment and Prudential is attempting to transfer this risk back to the County and are thus materially deviating from the terms of the Solicitation. Hartford would also be given a material advantage to other bidders as other responsive bidders were forced to factor the participation risk into their bid.

Because Hartford’s bid is non-responsive on this basis, it is not necessary to examine the other issues raised by you in your memorandum.



Melanie Spencer



MEMORANDUM

(Revised)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: November 16, 2021

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(F)(5)

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 present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____ to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor Agenda Item No. 8(F)(5)
Veto _____ 11-16-21
Override _____

RESOLUTION NO. R-1102-21

RESOLUTION APPROVING AWARD OF CONTRACT NO. RFP-01858 TO METROPOLITAN LIFE INSURANCE COMPANY (METLIFE) FOR THE PURCHASE OF EMPLOYEE DISABILITY INSURANCE PROGRAM FOR THE HUMAN RESOURCES DEPARTMENT IN A TOTAL AMOUNT NOT TO EXCEED \$35,000,000.00 OVER THE INITIAL TWO-YEAR TERM AND TWO, TWO-YEAR OPTIONS 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, RENEWALS OR EXTENSION PROVISIONS, PURSUANT TO SECTION 2-8.1 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA AND IMPLEMENTING ORDER 3-38

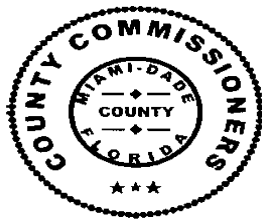
WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

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-01858 to Metropolitan Life Insurance Company (Metlife), in substantially the form attached and made a part hereof, for the purchase of Employee Disability Insurance Program for the Human Resources Department in a total amount not to exceed \$35,000,000.00 over the initial two-year term and two, two-year options to renew term; 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, renewals or 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 **Rebeca Sosa**, who moved its adoption. The motion was seconded by Commissioner **Eileen Higgins** and upon being put to a vote, the vote was as follows:

Jose "Pepe" Diaz, Chairman	aye		
Oliver G. Gilbert, III, Vice-Chairman	aye		
Sen. René García	aye	Keon Hardemon	aye
Sally A. Heyman	absent	Danielle Cohen Higgins	aye
Eileen Higgins	aye	Joe A. Martinez	aye
Kionne L. McGhee	aye	Jean Monestime	aye
Raquel A. Regalado	aye	Rebeca Sosa	aye
Sen. Javier D. Souto	aye		

The Chairperson thereupon declared this resolution duly passed and adopted this 16th day of November, 2021. 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

Melissa Adames

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

mjs

Melanie J. Spencer

Contract Title Employee Disability Insurance Program
Contract No. RFP-01858

THIS AGREEMENT for the provision of Employee Disability Insurance Program, made and entered into as of this ____ day of ____ by and between Metropolitan Life Insurance Company (MetLife), a corporation organized and existing under the laws of the State of New York, having its principal office at 200 Park Avenue, New York, NY 10166 (the "Contractor"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 NW 1st Street, Miami, Florida 33128 (the "County") (collectively, the "Parties").

WITNESSETH:

WHEREAS, the Contractor has offered to provide Employee Disability Insurance Program and related services, on a non-exclusive basis, that shall conform to the Scope of Services (Appendix A), Miami-Dade County's Request for Proposal ("RFP") No. 01858 and all associated addenda and attachments, and the requirements of this Agreement; and

WHEREAS, the Contractor has submitted a written proposal dated May 26, 2021 (the "Contractor's Proposal") which is incorporated herein by reference; and

WHEREAS, the County desires to procure from the Contractor such Employee Disability Insurance Program and related services for the County, in accordance with the terms and conditions of this Agreement;

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

ARTICLE 1. DEFINITIONS

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

- a) The words "Article" or "Articles" to mean the terms and conditions delineated in this Agreement.
- b) The word "Contract" to mean collectively the (i) Articles, (ii) Scope of Services, (iii) Price Schedule, (iv) all other appendices and attachments hereto, and (v) all amendments issued hereto, and Contractor's Proposal.
- c) The words "Contract Manager" to mean the Director, Internal Services Department, or the duly authorized representative designated to manage the Contract.
- d) The word "Contractor" to mean Metropolitan Life Insurance Company (MetLife) 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 Project Manager for review and approval pursuant to the terms of this Agreement.
- g) The words "Developed Works" to mean 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 exclusively for the County.
- h) The words "Licensed Software" to mean the software component(s) provided pursuant to the Contract.
- 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 words "Service" or "Services" to mean the provision of Employee Disability Insurance Program and related services in

accordance with the Scope of Services.

- l) The word "Subcontractor" or "Subconsultant" to mean any person, entity, firm, or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and hired exclusively to perform Work for the County under this Agreement whether or not in privity of Contract with the Contractor.
- m) The word "Work" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.

ARTICLE 2. ORDER OF PRECEDENCE

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) Articles 1 through 45, 2) Appendix A, 3) Appendix B, and 4) Miami-Dade County's RFP No. 01858 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 terms "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 Project Manager.
- e) The terms "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 Project Manager.
- f) 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 the 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 Work 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 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 necessary for the completion of this Contract. All Work shall be accomplished at the direction of and to the satisfaction of the Project Manager.

- e) The Contractor acknowledges that the County shall make all policy decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor shall implement 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 set forth on the first page of this Agreement, and shall continue through the last day of the twenty-fourth month. The County, at its sole discretion, may renew this Contract for an additional 2 (two) 2(two)-year options-to-renew. The County may extend this Contract for up to an additional 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 (the "Board").

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: (i) Registered or Certified Mail, with return receipt requested; (ii) personally by a by courier service; (iii) Federal Express Corporation or other nationally recognized carrier to be delivered overnight; or (iv) via facsimile or e-mail (if provided below) with delivery of hard copy pursuant to (i), (ii), or (iii) in this paragraph. The addresses for such notice are as follows:

(1) **To the County**

to the Project Manager:

Miami-Dade County
Human Resource Department
Attention: Benefits Division Director
Phone: (305) 375-1074
E-mail: Helena.Denham-Carter@miamidade.gov

and

a) to the Contract Manager:

Miami-Dade County
Internal Services Department, Strategic Procurement Division
Attention: Chief Procurement Officer
111 NW 1st Street, Suite 1300
Miami, FL 33128-1974
Phone: (305) 375-4900
E-mail: Namita.Uppal@miamidade.gov

(2) **To the Contractor**

Metropolitan Life Insurance Company (MetLife)
4301 W Boy Scout Boulevard, Suite 570
Tampa, FL, 33607
Attention: Thomas Remus
Phone: (813) 673-3525
E-mail: tremus@metlife.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 to be performed under this Contract. The compensation for all Work performed under this Contract, including all costs associated with such Work and Services, shall be paid in accordance with Appendix B. The County shall have no obligation to pay the Contractor any additional

sum in excess of this amount, except for a change and/or modification to the Contract, which is approved and executed in writing by the County and the Contractor.

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

ARTICLE 8. PRICING

Prices shall remain firm and fixed for the first four insurance Plan Years (January 1, 2022 - 2025). However, the Contractor may offer incentive discounts to the County at any time during the Contract term, including any extension thereof. Prices for subsequent Plan Years shall be negotiated as specified in the Price Schedule (Appendix B).

ARTICLE 9. METHOD AND TIMES OF PAYMENT

The County will remit applicable premiums to the Contractor on a bi-weekly basis for the prior pay period, accompanied by an electronic file of employee salary deductions after the County either deducts the employee contributions through its payroll process or receives payment from employees on an unpaid leave of absence. The County retains the right, at all times, to self-bill. The County will remit premium payments based on its records.

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, Strategic Procurement Division, certificate(s) of insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

1. Worker's Compensation Insurance for all employees of the Contractor as required by Chapter 440, Florida Statutes.
2. Commercial General Liability Insurance in an amount not less than \$300,000 per occurrence, and \$600,000 in the aggregate. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**
3. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage.
4. Professional Liability Insurance in an amount not less than \$1,000,000 per claim.

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 Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

OR

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued by the State of Florida Department of Financial Services and are a member 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 NW 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 certificate of insurance is received within the specified timeframe but not in the manner prescribed in this Agreement, the Contractor shall have an additional five 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 certificate 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 of insurance is scheduled to expire during the term of the Contract, the Contractor shall submit new or renewed certificate of insurance to the County before such expiration. If expired certificate of insurance is/are not replaced or renewed to cover the Contract period, the County may suspend the Contract until the new or renewed certificate is/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 Work 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 Work described herein and to full and prompt cooperation by the Contractor in all aspects of the Work. At the reasonable request of the County, and upon mutual agreement of the Contractor and the County, the Contractor shall promptly remove from the Project any Contractor's employee, Subcontractor, or any other person performing Work 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 all claims, suits, actions, damages, and costs (including attorneys' 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 always agrees that it will employ, maintain, and assign to the performance of the Work 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 Work described herein, in a competent and professional manner.
- e) The Contractor shall always cooperate with the County and coordinate its respective work efforts to maintain the progress most effectively and efficiently in performing the Work.
- 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, 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 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 performed or Services provided pursuant to this Agreement shall always, 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. DISPUTE RESOLUTION PROCEDURE

- a) The Contractor hereby acknowledges that the 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 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 the Parties. Any such dispute shall be brought, if at all, before the County Mayor within ten (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 regarding 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.
- f) This Article will survive the termination or expiration of this Agreement.

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 the 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 such defense or settlement 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 Agreement. The Contractor and its Subcontractors and suppliers shall retain such records, and all other documents relevant to the Work furnished under this Agreement for a period of three years from the expiration date of this Agreement and any extension thereof.

ARTICLE 17. AUDITS

The County, or its duly authorized representatives and governmental agencies, shall until the expiration of three 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. Any audit request shall be requested in writing, at least 30 days in advance and shall include a description of what is being requested.

Pursuant to Section 2-481 of the 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 within five business days of the Commission Auditor's request. 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 needs 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. However, such substitution shall not become effective until the County has approved said 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 causes 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, omissions, 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 Work, will state in writing to the County the name of the proposed Subcontractor, the portion of the Work 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 Work to be performed. Such Work 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 Work 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 Work 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 Subcontractor 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) This Agreement may be terminated for cause by the County for reasons including, but not limited to, (i) the Contractor commits an Event of Default (as defined below in Article 24) and fails to cure said Event of Default (as delineated below in Article 25), or (ii) Contractor attempts to meet its contractual obligations with the County through fraud, misrepresentation, or material misstatement.
- b) This Agreement may also be terminated for convenience by the County. Termination for convenience is effective on the termination date stated in the written notice provided by the County.
- c) If County terminates this Agreement for cause under Article 23(a) above, the County may, in its sole discretion, also 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 pay all direct or indirect costs associated with such termination or cancellation, including attorneys' fees.
- d) The foregoing notwithstanding, if the Contractors attempts to meet its contractual obligations with the County through fraud, misrepresentation, or material misstatement, the Contractor may be debarred from County contracting 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 Code.
- 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
 - vi. reimburse the County a proration of the fees paid annually based on the remaining months of the term per the compensation listed in Appendix B.
- 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.
- h) In the event the Contractor fails to cure an Event of Default timely, the County may terminate this Agreement, and the County or its designated representatives may immediately take possession of all applicable equipment, materials, products, documentation, reports, and data.
- i)

ARTICLE 24. EVENT OF DEFAULT

- a) An Event of Default is a material breach of this Agreement by the Contractor, and includes but is not limited to the following:
- i. the Contractor has not delivered Deliverables and/or Services 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; or
 - viii. the Contractor fails to comply with Article 39.
- b) When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Work 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 Work 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 and/or material breach 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 Work or any part thereof either by itself or through others.

ARTICLE 25. NOTICE OF DEFAULT - OPPORTUNITY TO CURE

If an Event of Default occurs in the determination of the County, the County shall notify the Contractor (the "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 Work upon the Effective Termination Date.

ARTICLE 26. REMEDIES IN THE EVENT OF DEFAULT

If an Event of Default occurs, whether or not the County elects to terminate this Agreement as a result thereof, the Contractor shall be liable for all damages resulting from the default, irrespective of whether the County elects to terminate the Agreement, 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 for 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, provided that Contractor may use non-individual identifiable information for purposes of data compilation, statistical analysis, and other studies. In addition to the foregoing, all County employee information and County financial information shall be considered Confidential Information and shall be subject to all the requirements stated herein. Neither the Contractor nor its employees, agents, Subcontractors, or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the County, except as required by law or as necessary to complete the services.. Additionally, the Contractor expressly agrees to be bound by and to defend, indemnify and hold harmless the County, and their officers and employees from Contractor's 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) In the event of a breach of this Article damages may not be an adequate remedy and the County shall be entitled to seek 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 promptly 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, except as required by law or Contractor's records retention policies. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall be provided to the County 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 the public records laws of the State of Florida (the "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 (the "Computer Software"). All third-party license agreements must also be honored by the Contractor and its 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 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 as Developed Works, 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 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, Strategic Procurement Division, for the duration of this Agreement. In becoming a registered vendor with Miami-Dade County, the vendor's Federal Employer Identification Number (FEIN) must be provided, via submission of Form W-9 and 147c Letter, as required by the Internal Revenue Service (IRS). If no FEIN exists, the Social Security Number of the owner must be provided as the legal entity identifier. 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
- Payments to individual/Contractor for goods and services provided to Miami-Dade County
- Tax reporting purposes
- Provision of unique identifier in the vendor database used for searching and sorting departmental records

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 Code of Miami-Dade County)
2. **Miami-Dade County Employment Disclosure Affidavit**
(Section 2.8.1(d)(2) of the Code of Miami-Dade County)

3. **Miami-Dade County Employment Drug-free Workplace Certification**
(Section 2-8.1.2(b) of the Code of Miami-Dade County)
4. **Miami-Dade County Disability and Nondiscrimination Affidavit**
(Section 2-8.1.5 of the Code of Miami-Dade County)
5. **Miami-Dade County Debarment Disclosure Affidavit**
(Section 10.38 of the Code of Miami-Dade County)
6. **Miami-Dade County Vendor Obligation to County Affidavit**
(Section 2-8.1 of the Code of Miami-Dade County)
7. **Miami-Dade County Code of Business Ethics Affidavit**
(Article I, Section 2-8.1(i) of the Code of Miami-Dade County)
8. **Miami-Dade County Family Leave Affidavit**
(Article V of Chapter 11 of the Code of Miami-Dade County)
9. **Miami-Dade County Living Wage Affidavit**
(Section 2-8.9 of the Code of Miami-Dade County)
10. **Miami-Dade County Domestic Leave and Reporting Affidavit** (Article VIII, Section 11A-60 - 11A-67 of the Code of Miami-Dade County)
11. **Miami-Dade County Verification of Employment Eligibility (E-Verify) Affidavit**
(Section 448.095, of the Florida State Statutes)
12. **Miami-Dade County Pay Parity Affidavit**
(Resolution No. R-1072-17)
13. **Miami-Dade County Suspected Workers' Compensation Fraud Affidavit**
(Resolution No. R-919-18)*
Note: limited to members of the service team assigned to the County
14. **Office of the Inspector General**
(Section 2-1076 of the Code of Miami-Dade County)
15. **Small Business Enterprises**
The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.1.1.1, 2-8.1.1.2 and 2-8.2.2 of the Code of Miami-Dade County and Title 49 of the Code of Federal Regulations.
16. **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 and Code of Ethics**
Section 2-11.1(d) of the 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 Code relating to Conflict of Interest and Code of Ethics. In accordance with Section 2-11.1(y) of the Code, the Miami-Dade County Commission on Ethics and Public Trust 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 No. 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (the "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, 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 in the amount of one quarter of one percent (0.25%) of the total Contract amount shall NOT apply to this contract.

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 Trust contracts, transactions, accounts, records, and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records, and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications, and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General is empowered to retain the services of IPSIGs 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. FEDERAL, STATE, AND LOCAL COMPLIANCE REQUIREMENTS

As applicable, Contractor shall comply, subject to applicable professional standards, with the provisions of 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 clause provided under 41 C.F.R. Part 60-1.3 in accordance with Executive Order 11246, "Equal Employment Opportunity", as amended.
- b) Miami-Dade County Small Business Enterprises Development Participation Provisions.
- c) The Clean Air Act (42 U.S.C. § 7401-7671q.) and the Federal Water Pollution Contract Act (33 U.S.C. §§ 1251-1387), as amended.
- d) The Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by the Department of Labor regulations (29 C.F.R. Part 5).
- e) The Copeland "Anti-Kickback" Act (40 U.S.C. § 3145) as supplemented by the Department of Labor regulations (29 C.F.R. Part 2).
- f) Section 2-11.1 of the Code of Miami-Dade County, "Conflict of Interest and Code of Ethics".
- g) Section 10-38 of the Code of Miami-Dade County, "Debarment of Contractors from County Work".
- h) Section 11A-60 - 11A-67 of the Code of Miami-Dade County, "Domestic Leave".
- i) Section 21-255 of the Code of Miami-Dade County, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.
- j) The Equal Pay Act of 1963, as amended (29 U.S.C. § 206(d)).
- k) Section 448.07 of the Florida Statutes "Wage Rate Discrimination Based on Sex Prohibited".
- l) Chapter 11A of the Code of Miami-Dade County (§ 11A-1 *et seq.*) "Discrimination".
- m) Chapter 22 of the Code of Miami-Dade County (§ 22-1 *et seq.*) "Wage Theft".
- n) Chapter 8A, Article XIX, of the Code of Miami-Dade County (§ 8A-400 *et seq.*) "Business Regulations".
- o) Any other laws prohibiting wage rate discrimination based on sex.

- p) Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).
- q) Executive Order 12549 "Debarment and Suspension", which stipulates that no contract(s) are "to be awarded at any tier or to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs".
- r) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-07) and regulations issued pursuant thereto (24 C.F.R. Part 146).

Pursuant to Resolution No. R-1072-17, by entering into this Contract, the Contractor is certifying that the Contractor is in compliance with, and will continue to comply with, the provisions of items "f" through "k" above.

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), and permit(s) 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, Deliverables 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 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 regarding 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 Work 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 Work, Deliverables or Services provided by the Contractor or such parties has been approved or endorsed by the County.

ARTICLE 37. BANKRUPTCY

The County may 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 in Miami-Dade County.

ARTICLE 39. INTEREST OF MEMBERS, OFFICERS OR EMPLOYEES AND FORMER MEMBERS, OFFICERS OR EMPLOYEES

No member, officer, or employee of the County, no member of the governing body of the locality in which the Project is situated, no member of the governing body in which the County was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this Contract or the proceeds thereof.

ARTICLE 40. LIENS

The Contractor is prohibited from placing a lien on County property. This prohibition shall apply to all Subcontractors.

ARTICLE 41. FIRST SOURCE HIRING REFERRAL PROGRAM

Pursuant to Section 2-2113 of the Code, 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 Career Source South Florida ("CSSF"), the designated Referral Agency, of the vacancy and list the vacancy with CSSF 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 CSSF. 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 CSSF 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 First Source Hiring Referral Program are available at <https://iapps.careersourcesfl.com/firstsource/>.

ARTICLE 42. PUBLIC RECORDS AND CONTRACTS FOR SERVICES PERFORMED ON BEHALF OF MIAMI-DADE COUNTY

The Contractor shall comply with the Public Records Laws, 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) upon request by the County's custodian of public records, providing the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, 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 for the duration of the contract term and following the completion of the Agreement if the Contractor does not transfer the records to the County

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 43. 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 44. VERIFICATION OF EMPLOYMENT ELIGIBILITY (E-VERIFY)

By entering into this Contract, the Contractor becomes obligated to comply with the provisions of Section 448.095 of the Florida Statutes, titled "Verification of Employment Eligibility". This includes but is not limited to utilization of the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of all newly hired employees by the Contractor effective January 1, 2021 and requiring all Subcontractors to provide an affidavit attesting that the Subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply may lead to termination of this Contract, or if a Subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination and the Contractor may be liable for any additional costs incurred by the County resulting from the termination of the Contract. If this Contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of one year after the date of termination. Public and private employers must enroll in the E-Verify System (<http://www.uscis.gov/e-verify>) and retain the I-9 Forms for inspection.

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 last date that the Agreement is executed below,

Contractor

Miami-Dade County

By:

Name:

Title:

Date:

Attest:

Corporate Secretary/Notary Public

By:

Name:

Title:

Date:

Attest:

Daniella Levine Cava

Mayor

Clerk of the Board

Corporate Seal/Notary Seal

Approved as to form
and legal sufficiency



Assistant County Attorney

APPENDIX A – SCOPE OF SERVICES

PROGRAM OVERVIEW

The County will continue to offer two (2) options within the STD and LTD Plans; basic (Low Option) and enhanced (High Option). The Premier LTD Plan must be made available to all benefits eligible employees at their expense as of January 1, 2022. The LTD Disability Plan for County Commissioners must be made available to all eligible County Commissioners. Enrollees in the Premier LTD Plan may not also enroll for a STD plan due to the overlap in elimination periods.

The premiums for the Program shall be paid on a payroll volume basis by the employees who voluntarily elect to take part in the STD Plan, LTD Plan or Premier LTD Plan. Premiums for the LTD Disability Plan for County Commissioners will be paid by the County. The County recognizes the existence of Florida Statutes, Section 624.1275. The Contractor shall administer the Program in accordance with all applicable state and federal laws.

QUALIFICATION REQUIREMENT

The Contractor shall be licensed to conduct business by the State of Florida, Office of Insurance Regulation.

Note: The above requirement is also a continuing condition of award, as the Contractor must maintain this qualification throughout the duration of the contract.

REQUIREMENTS AND SERVICES TO BE PROVIDED

A. Call Intake/Customer Service

The Contractor shall:

1. Accept incoming calls from employees and others (i.e., County representatives, family members, physician, or supervisor).
2. Provide a Call Intake System that has an "automated call distribution" feature with message capability for after hours and return calls shall be made within 24 hours.
3. Provide customer service in English, Spanish and Creole during the County's normal business hours (8:00 a.m. to 5:00 p.m. Eastern Time).

B. Clinical Support Services

The clinical and vocational aspects of disability claims require significant detailed medical data – in addition to discussions with attending physicians. Therefore, the Contractor shall:

1. Provide clinical review by an appropriate medical professional, including initial claim determination approval/denial and determination of levels of impairment;
2. Coordinate with healthcare providers to obtain objective clinical information;
3. Contact and discuss with the County's departmental personnel representative the claimant's job duties and functional requirements, etc.;
4. Provide expert testimony by the appropriate medical professional, when necessary to support claim decisions; and
5. Provide telephone interaction with other appropriate healthcare and vocational vendors.

C. Claims Administration and Management

The Contractor shall:

1. Assume full risk on the STD, LTD, Premier LTD and County Commissioners LTD plans effective date for all lives effective on or after the plans effective date;
2. Pay benefits on a "no loss – no gain" basis as provided in Florida Statutes thereby no one will lose coverage due to a change in vendor (Note: A pre-existing condition clause shall not apply to any employee enrolled for LTD or Premier LTD as of December 31, 2021);
3. Maintain a file to support payments, denials, Social Security activities, appeals, and vocational assistance ;
4. Conduct claimant interviews, if deemed appropriate;
5. Allow an independent claim management audit by a third-party selected by the County, if requested by the County;
6. Maintain an internal audit program;
7. Process payments and negotiate settlements, when appropriate;
8. Provide tax reporting in accordance with the Federal tax code;
9. Provide vocational/occupational and rehabilitation services to claimants, if appropriate;

10. Maintain database for the management of each claimant;
11. Provide implementation assistance to the County including internal training, communication materials, and an administration manual;
12. Administer a written appeals process, for reconsideration of any benefit denial;
13. Resolve all appeals within 30 calendar days of receipt of completed documentation;
14. Maintain all required forms and authorization guidelines such as employer and employee statements, attending physician statements, and authorizations to release information statements;
15. Accept Evidence of Insurability directly from employees through the provision of return envelopes, facsimile or online submission;
16. Provide appropriate level of personnel to attend employee meetings; and
17. Accept the use of the current Miami-Dade County Enrollment Form and/or use of County's on-line enrollment process. If, at some date in the future, it becomes necessary to terminate the contract, the Contractor shall transfer to the County or the County's new Program provider, within 30 days of termination, all data and records necessary to administer the Program.

D. Financial Reporting & Records

At the County's request, the Contractor shall provide to the County, at a minimum, the following reports separately for each of the plans:

1. A quarterly account reconciliation of cost components within 30 days of the close of each quarter. The components should include areas such as the number of new submissions, date tracking to assure initial determination and ongoing medical reviews are occurring at the required times, the number of open files, and the number of closed files. The latter must denote reasons for case termination.
2. A quarterly Utilization Report for each disability income benefit plan with the following year-to-date data, within 30 days of the end of each quarter and plan year reporting periods:
 - a) Earned premium
 - b) Administrative charges
 - c) Paid claims
 - d) Open reported (pending) claims and closed claims
 - e) Change in Incurred But Not Reported (IBNR) reserves
 - f) Cost/premium ratio – Loss Ratio
 - g) Claims denied and why denied
3. An Annual Savings Report including comparison of actual, approved, and benchmark durations by diagnosis within 60 days following the close of the reporting period.
4. A Semi-annual Summary Report of claims activity by reported diagnosis within 60 days following the close of the reporting period.
5. Annual reporting of the status of each claim, within the Social Security process, to the County within 45 days following the close of the reporting period.

E. Fiduciary Protection

In addition to the other insurance requirements stated in the contract, the Contractor shall provide indemnification and liability protection for the clinical and non-clinical administration components of this Program. The Contractor shall indemnify and hold the County harmless from any clinical, professional, or administrative decisions made by the Contractor rendering services including the administration of the appeals process.

F. Performance Standards

The Contractor shall comply with the Performance Standards provisions (see **Attachment D, Performance Guarantees**). Compliance of Performance Standards shall be measured annually at the end of each Plan Year and any non-compliance shall be assessed as liquidated damages. The Performance Standards shall remain in effect for the duration of any contract issued, renewal options exercised, and any extensions thereof.

G. Premium Guarantee

All premiums, also referred as rates, shall be guaranteed for the initial Plan Years 2022 and 2023 effective January 1, 2022 through December 31, 2023, independent of actual enrollment or any other premium rate contingencies. The Contractor shall also guarantee the renewal rates for the first two year option period (Plan Years 2024 and 2025). The Contractor shall provide the renewal rates for the second Option-to-Renew period by May 1st, 2025 (Plan Years 2026 and 2027). The renewal rates are

subject to negotiations and acceptance by the County.

H. Guaranteed Issue

For all plans, the Contractor shall guarantee issue for an employee's first time enrollment in any of the plans (including current enrollees and new enrollees, applying within their initial eligibility period). If an employee wishes to enroll at a subsequent enrollment, the Contractor may require medical underwriting. Medical underwriting shall be performed for subsequent enrollments only.

I. Actively at Work Provision

For all plans, employees must be actively at work with the County in order for their coverage to become effective. However, should the effective date be a non-work day for an employee, insurance will still become effective on that date if the employee is otherwise actively-at-work and performed in his/her customary manner all of the regular duties of his/her employment or occupation on the last preceding scheduled work day and is not disabled.

If an employee is not actively at work with the County on the date when their coverage would otherwise become effective, the coverage would become effective on the date of their return to active work with the County. However, coverage shall be offered on a "no-loss, no-gain" basis, whereby no employee will lose coverage related to the change in insurance carriers.

J. Pre-existing Conditions Clause

For the LTD and Premier Plans, a pre-existing condition means a sickness or injury for which the insured received medical treatment, consultation, care or services including diagnostic measures, or had taken prescribed drugs or medicines for in the three months prior to the effective date of coverage of the insured person. The above pre-existing condition clause shall not apply once the person has been insured under the Plan for 12 consecutive months. The County's STD Plan does not include a pre-existing condition clause.

K. Premium Remittance

The County shall provide a bi-weekly remittance, for the prior pay period, accompanied by an electronic file of employee salary deductions to the Contractor for all Plans.

The Contractor shall take into its underwriting consideration the need for a sixty (60) day grace period for payment. The County provides for the collection of premiums from employees on leave of absence.

The Contractor shall allow retroactive premium adjustments and honor claims that are incurred within 120 days of reporting for eligible employees who are inadvertently and incorrectly excluded from employer remittance files.

L. Master Contracts/Certificates of Coverage

The Contractor shall duplicate the requested benefit plan design provisions. The Certificates of Coverage for all plans shall be provided to the County no later than December 1, 2021. The Contractor shall mail the approved Certificates of Coverage to members' homes within 60 days of the beginning of the initial plan year and to subsequent members upon enrollment.

M. Year-end Accounting

The Contractor shall deliver to the County a final year-end accounting which includes, but is not limited to, premiums, claims and reserves, if applicable no later than 90 days following the close of each calendar year.

VALUE ADDED ENRICHMENT BENEFITS (at no additional cost)

The Contractor shall provide the following value added enrichment benefits to the County at no additional cost through the term of the agreement and any extension thereof:

- **PlanSmart®.** The Contractor shall provide financial wellbeing solution for employees with objective financial education:
- **Topical Workshops.** The Contractor shall provide workshops that address the diverse needs of County employees to help with a successful education program in County's benefit suite. In addition, the Contractor shall offer one hour workshops that cover topics for employees of various ages and career stages.
- **Executive Resources.** The Contractor shall provide solutions for executives as they face unique and complex financial issues, Contractor services shall be flexible and tailored in a way that works best for the County and key employees.

N. Upwise

The Contractor shall provide a financial wellness app that helps employees analyze and make meaningful progress with their finances.

O. MetLife's Disability Health and Wellness Connection

The Contractor shall work closely with your existing disease management, EAP or medical carrier programs to help promote healthier behaviors.

P. MyBenefits

The Contractor shall provide a self-service, fully mobile-enabled website, MyBenefits, to help County employees better understand their benefits programs and claim activities.

Q. MetLife Communications Advantage

The Contractor shall provide support as a standard service at no additional cost and is delivered through a partnership with a dedicated communications and enrollment specialist who is an active member of Miami-Dade County's account team.

APPENDIX B – PRICE SCHEDULE**RATE STRUCTURE**

The rates for providing the Program and all services as stated the Scope of Services (Appendix A), shall be as stipulated below. Rates are provided on a bi-weekly basis.

EMPLOYEE SHORT-TERM DISABILITY (STD), Plan Years 2022-2023 and OTR1 (2024-2025)

Plan Design	Bi-weekly Rate per \$100 of weekly benefit
Option 1 – (\$500 maximum benefit per week)	\$1.450
Option 2 – (\$1,000 maximum benefit per week)	\$1.450

EMPLOYEE LONG-TERM DISABILITY (LTD), Plan Years 2022-2023 and OTR1 (2024-2025)

Plan Design	Bi-weekly Rate per \$100 of covered monthly payroll
Option 1 – (\$2,000 maximum benefit per month)	\$0.175
Option 2 – (\$4,000 maximum benefit per month)	\$0.210

PREMIER LONG-TERM DISABILITY, Plan Years 2022-2023 and OTR1 (2024-2025)

Plan Design	Bi-weekly Rate per \$100 of covered monthly payroll
Option 1 – (\$7,000 maximum benefit per month)	\$0.292

Notes:

- The rates shall be guaranteed for the initial two plan years (2022-2023) and first Option-to-Renew plan years (2024-2025), through December 31, 2025.
- Compensation to the Contractor shall be based on the actual enrollment of employees and the actual volume of insurance in the Plans. The County does not guarantee any enrollment figures of participation.
- Rates shall not be contingent upon minimum participation requirements.
- The rates for the second Option-to-Renew plan year (2026-2027) for the STD, LTD and Premier LTD, shall be negotiated with the following stipulations:
 - OTR No.2 (Plan years 2026-2027) SHORT-TERM DISABILITY OPTION**
 Provided that the aggregate incurred loss ratio for the previous five Plan Years (effective January 1, 2021) of the experience is less than 85%, the rates shall remain the same.
 Provided that the aggregate incurred loss ratio for the previous five Plan Years (effective January 1, 2021) of experience is 85% or greater, the Contractor may recommend a rate increase adjustment capped at the percentage rates listed below:

Incurred Loss Ratio	Rate Increase Cap
Incurred loss ratio of 85% to 90%:	5%
Incurred loss ratio of 90% to 100%:	10%
 - OTR No.2 (Plan years 2026-2027) LONG-TERM DISABILITY OPTION 2 and Premier LTD**
 Provided that the aggregate incurred loss ratio for the previous five Plan Years (effective January 1, 2021) of the experience is less than 85%, the rates shall remain the same.
 Provided that the aggregate incurred loss ratio for the previous five Plan Years (effective January 1, 2021) of experience is 85% or greater, the Contractor may recommend a rate increase adjustment capped at the percentage rates listed below:

Incurred Loss Ratio	Rate Increase Cap
Incurred loss ratio of 85% to 90%:	5%
Incurred loss ratio of 90% to 100%:	10%

CONVERSION

There is no premium rate increment for Premier LTD conversion upon termination of coverage.

APPENDIX C – HIPAA BUSINESS ASSOCIATE ADDENDUM

This HIPAA Business Associate Addendum ("Addendum") supplements and is made a part of the Employee Disability Insurance Program Agreement, where applicable, by and between the Miami-Dade County, Florida ("County"), and Metropolitan Life Insurance Company (MetLife), 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, PHI, 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 1103. [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.
2. **Obligations of Associate.**
 - a. **Permitted Uses and Disclosures.** Associate may use and/or disclose PHI received by Associate pursuant to the Agreement ("County's PHI") solely in accordance with the specifications set forth in the Scope of Services, Appendix A. In the event of any conflict between this Addendum and Appendix A, this Addendum shall control. [45 CFR § 164.504(e)(2)(i)]
 - b. **Nondisclosure.** Associate shall not use or further disclose County's PHI other than as permitted or required by law. [45 CFR § 164.504(e)(2)(ii)(A)]
 - c. **Safeguards.** Associate shall use appropriate safeguards to prevent use or disclosure of County's PHI in a manner other than as provided in this Addendum. [45 CFR § 164.504(e)(2)(ii)(B)] Associate shall maintain a comprehensive written information security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Associate's operations and the nature and scope of its activities. Appropriate safeguards used by Associate shall protect the confidentiality, integrity, and availability of the PHI and ePHI that is created, received,

maintained, or transmitted on behalf of the County. [45 CFR § 164.314(a)(2)(i)(A)] County has at its sole discretion, the option to audit and inspect, the Associate's safeguards at any time during the life of the Agreement, upon reasonable notice being given to Associate for production of documents and coordination of inspection(s).

- d. Reporting of Disclosures. Associate shall report to the County's Project Manager, any use or disclosure of the County's PHI in a manner other than as provided in this Addendum. [45 CFR § 164.504(e)(2)(ii)(c)] Associate shall report to the County through the County's Project Manager, any security incident of which it becomes aware within forty-eight (48) hours of discovery of the incident. [45 CFR § 164.314(a)(2)(i)(C)]
- e. Associate's Agents. Associate agrees and shall ensure that any agents, including subcontractors, to whom it provides PHI received from (or created or received by Associate on behalf of) the County, agrees in writing to the same restrictions and conditions that apply to Associate with respect to such PHI and that such agents conduct their operations within the United States. Associate agrees and shall ensure that any agents, including subcontractors, to whom it provides ePHI received, created, maintained, or transmitted on behalf of the County, agrees in writing to implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of that ePHI. [45 CFR § 164.314(a)(2)(i)(B)] In no case may Associate's Agents reside and operate outside of the United States.
- f. Documentation of Disclosures. Associate agrees to document disclosures of the County's PHI and information related to such disclosures as would be required for the County to respond to a request by an individual for an accounting of disclosures of PHI. Associate agrees to provide the County or an individual, in a time and manner designated by the County, information collected in accordance with the Agreement, to permit the County to respond to such a request for an accounting. [45 CFR § 164.528]
- g. Availability of Information to County. Associate shall make available to the County such information as the County may require to fulfill the County's obligations to provide access to, provide a copy of, and account for, disclosures of PHI pursuant to HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR Sections 164.524 and 164.528. [45 CFR § 164.504(e)(2)(ii)(E) and (G)]
- h. Amendment of PHI. Associate shall make the County's PHI available to the County as may be required to fulfill the County's obligations to amend PHI pursuant to HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR Section 164.526 and Associate shall, as directed by the County, incorporate any amendments to the County's PHI into copies of such PHI maintained by Associate, and in the time and manner designated by the County. [45 CFR § 164.504(e)(2)(ii)(F)]
- i. Internal Practices. Associate shall make its internal practices, books and records relating to the use and disclosure of the County's PHI (or PHI created or received by Associate on behalf of the County) available to the County and to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by the County or the Secretary for purposes of determining Associate's compliance with HIPAA and the HIPAA Regulations. [45 CFR § 164.504(e)(2)(ii)(H) and 45 CFR Part 64, Subpart C.]
- j. Mitigation. Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Associate of a use or disclosure of the County's PHI by Associate in violation of the requirements of this Addendum.
- k. Associate's Insurance. Associate agrees to maintain the insurance coverage provided in the Agreement.
- l. Notification of Breach. Associate shall notify the County within twenty-four (24) hours, and shall provide written notice no later than forty-eight (48) hours of any suspected or actual breach of security, intrusion or unauthorized disclosure of PHI and/or any actual or suspected disclosure of data in violation of any applicable federal or state laws or regulations. Associate shall take (i) prompt corrective action to cure any such deficiencies, and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.
- m. Expenses. Any and all expenses incurred by Associate in compliance with the terms of this Addendum or in compliance with the HIPAA Regulations shall be borne by Associate.
- n. No Third Party Beneficiary. The provisions and covenants set forth in this Agreement are expressly entered into only by and between Associate and the County and are intended only for their benefit. Neither Associate nor the County intends to create or establish any third party beneficiary status or right (or the equivalent thereof) in any other third party nor shall any other third party have any right to enforce or enjoy any benefit created or established by the provisions and covenants in this Agreement.

3. Audits, Inspection and Enforcement.

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

Associate to remedy such breach, constitute acceptance of such practice or a waiver of the County's enforcement rights under this Addendum.

4. Termination.

- a. Material Breach. A breach by Associate of any provision of this Addendum, shall constitute a material breach of the Agreement and shall provide grounds for immediate termination of the Agreement by the County. [45 CFR § 164.504(e)(3) and 45 CFR § 164.314(a)(2)(i)(D)]
- b. Termination for Cause - Reasonable Steps to Cure Breach. If the County recognizes a pattern of activity or practice of Associate that constitutes a material breach or violation of the Associate's obligations under the provisions of this Addendum and does not terminate the Agreement pursuant to Section 4a, above, the County may provide an opportunity for Associate to end the violation or cure the breach within five (5) days, or other cure period as may be specified in the Agreement. If Associate does not cure the breach or end the violation within the time period provided, the County may immediately terminate the Agreement.
- c. Judicial or Administrative Proceedings. The County may terminate the Agreement, effective immediately, if (i) Associate is named as a defendant in a criminal or administrative proceeding for a violation of HIPAA, or (ii) a finding or stipulation that Associate has violated any standard or requirement of the HIPAA Regulations (or other security or privacy law) is made in any administrative or civil proceeding.
- d. Effect of Termination. Upon termination of the Agreement for any reason, Associate shall return or destroy as directed by the County all PHI, including but not limited to ePHI, received from the County (or created or received by Associate on behalf of the County) that Associate still maintains in any form. This provision shall also apply to County PHI that is in the possession of subcontractors or agents of Associate. Associate shall retain no copies of such PHI or, if return or destruction is not feasible, Associate shall provide to the County notification of the conditions that make return or destruction infeasible, and shall continue to extend the protections of this Addendum to such information, and limit further use or disclosure of such PHI to those purposes that make the return or destruction of such PHI infeasible. [45 CFR § 164.504(e)(2)(ii)(I)]

5. Indemnification.

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

6. Limitation of Liability.

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

7. Amendment.

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

Notwithstanding Associate's failure to enter into an amendment, Associate shall comply with all provisions of the HIPAA laws.

- b. Amendment 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.

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.

APPENDIX D – PERFORMANCE GUARANTEES

CATEGORY	STANDARD	MEASUREMENT	AMOUNT AT RISK
Financial Accuracy	98.5% 99%	Dollars in sample paid correctly ÷ dollars in sample.	STD - .20% of annual premium LTD - .15% of annual premium
Decisional Accuracy	97.5% 98.5%	Have accepted proper liability for claim and correct decision made on meeting disability criteria.	STD - .15% of annual premium LTD - .10% of annual premium
Procedural Accuracy	95.0%	Effective application of disability management tools and initiatives, and accuracy of file documentation.	STD - .10% of annual premium LTD - .10% of annual premium
Statistical Coding Accuracy	95.0% 97%	Accuracy in coding date of disability, ICD9 Code, Social Security Number, Hire date, Birth date, Salary, Social Security Code, Claim Status Code, etc.	STD - .10% of annual premium LTD - .10% of annual premium
Claim Acknowledgement	STD - Average of 2 BD LTD - Average of 5 BD	Number of business days from date of claim receipt to first contact with employee/employer.	STD - .10% of annual premium LTD - .10% of annual premium
Initial Decision	STD - Average of 2 BD LTD - Average of 5 BD	STD - Number of BD from receipt of all necessary information to make initial decision. LTD - Number of BD from receipt of all necessary information to make initial decision.	STD - .15% of annual premium LTD - .15% of annual premium
Social Security Initiation	95.0%	LTD - Initiate Social Security pursuit within 14 BD days from claim approval.	.05% of annual premium
Follow up on Social Security Denials or Appeals	95% within 5 days	LTD - Days from receipt of Social Security denial or appeal information to follow-up action.	.05% of annual premium
Any Occupation Decision	95%	LTD - For plans with Own Occupation to Any Occupation transition, decision made on or before transition date.	.10% of annual premium
Telephone Response Time	Answer 80% of calls within 20 seconds	Average speed to answer as measured by our Customer Response Center operation for all MetLife disability claim offices.	STD - .10% of annual premium LTD - .05% of annual premium
Abandonment Rate	No greater than 3% abandonment rate	Call abandonment rate as measured by our Call Center operation for all MetLife disability claim offices.	STD - .10% of annual premium LTD - .05% of annual premium

APPENDIX E – PLAN DESIGN

- The plans shall be fully insured plans.
- The effective date of all benefits shall be January 1, 2022.
- Benefits are 100% employee-paid. Employees are eligible for coverage on the first day of the month following 60 days of employment.
- No minimum participation requirements shall be included. Variations in actual enrolment shall have no effect on the rate.
- At the open enrollment for the Plan Year 2022, all employees will be eligible without evidence of insurability (guaranteed issue).

PLAN BENEFITS	PLAN BENEFITS (2022)
STD Plan Low Option Max Benefit	60% of salary up to \$500 per week
STD Plan High Option Max Benefit	60% of salary up to \$1,000 per week
LTD Plan Low Option Max Benefit	60% of salary up to \$2,000 per month
LTD Plan High Option Max Benefit	60% of salary up to \$4,000 per month
*Premier LTD Plan Max Benefit	66 2/3% of salary up to \$7,000 per month; commissioners get a flat \$7,000 per month.
% of Salary Benefit	Regular STD & LTD = 60% of salary up to the plan maximum benefit listed above. Premier LTD=66 2/3% of salary up to \$7,000 /month. The monthly benefit for Commissioners = \$7,000, no % of salary applied.
Employer Cost	\$0.00
Employee Cost	100% of premium is paid by employee.
STD Low Option - Salary Cap (Biweekly)	\$1,666.67
STD High Option - Salary Cap (Biweekly)	\$3,333.34
LTD Low Option - Salary Cap (Biweekly)	\$1,538.76
LTD High Option - Salary Cap (Biweekly)	\$3,077.52
Premier LTD - Salary Cap (Biweekly)	\$4,846.16
Claim Waiting Period	STD Plans = 14 days, Regular LTD Plans =180 days, Premier LTD= 90 days.
Mandatory Leave Usage	Sick leave accrual must be depleted before STD \LTD payments can begin.
Max Duration	STD Plans = 26 weeks, LTD= to age 65 if disabled prior to age 60, and on a sliding scale if disabled after age 60.
Coord. Of Benefit Offset	Yes, all disability plans.
EOI - New Hires	Guaranteed issued for new enrollees applying for any disability plan during initial eligibility.
EOI- Enroll or Increase Covg After Initial Eligibility	After initial benefits eligibility period expires, evidence of insurability is required for enrollment or upgrade in any disability plan.
Waiver of Premium If Approved?	LTD plans only
Pre-Existing Limitation	No pre-existing condition limitation for STD plans. LTD plans limit benefits if treatment\ consultation\prescription recd 3 months prior to covg effective date.
Actively At-Work Provision	Coverage offered on a "no-loss, no gain" basis; enrollees must not be affected by the change in carriers. Coverage is effective on the group policy effective date, or on the return to work date if employee is on leave of absence.
Exclusions	Applies to all plans = War, terrorist act, participation in riot, self-inflicted injuries, attempted suicide, commission of a felony. Work related injuries are excluded from STD plans only.
Policy Conversion?	No conversion available for STD and regular LTD plans. Conversion policy is available for Premier LTD plan.
Minimum Work Hrs Requirement	Minimum requirement is 60 hrs biweekly.