



**AGREEMENT
FOR
PROFESSIONAL MEDICARE COST REPORTING
CONSULTING SERVICES**

Between

THE COUNTY OF VOLUSIA

AND

PUBLIC CONSULTING GROUP LLC

County of Volusia
Purchasing & Contracts Division
123 West Indiana Avenue, Suite 302
DeLand, Florida 32720-4608
386-736-5935

AGREEMENT FOR PROFESSIONAL MEDICARE COST REPORTING CONSULTING SERVICES

This Agreement for Professional Medicare Cost Reporting Consulting Services (hereinafter "Agreement") made and entered by and between PUBLIC CONSULTING GROUP LLC, which is duly authorized to conduct business in the State of Florida, and whose principal place of business is located at 148 State Street, 10th Floor, Boston, MA 02109-2589 ("Consultant") and COUNTY OF VOLUSIA, a body corporate and politic and a subdivision of the State of Florida, whose address is County of Volusia, 123 West Indiana Avenue, DeLand, Florida 32720 ("County").

RECITALS:

WHEREAS, the County desires to retain the services of a competent and qualified Consultant to provide Medicare Cost Reporting Consulting Services; and

WHEREAS, the County issued Request for Statement of Qualifications 21-SQ-119BB (the "RSQ") seeking a qualified firm to perform Medicare cost reporting and Medicaid reimbursement consulting services, and has received a response from the Consultant; and

WHEREAS, the County has determined that it is in the best interest of the County to award only the Medicare Cost Reporting portion of the solicitation; and

WHEREAS, the County has determined that Consultant is fully qualified to render the required service; and

WHEREAS, in reliance on Consultant's response to the RSQ, the County determined that the execution of this Agreement is beneficial to the people of County of Volusia, Florida.

NOW, THEREFORE, in consideration of the foregoing recitals which are incorporated herein by reference, and other specific consideration set forth in this Agreement, the receipt and sufficiency of which is acknowledged by Consultant and County, the parties agree and stipulate as follows:

1 DEFINITIONS

For this Agreement and any incorporated exhibits, certain terms, phrases, words and their respective derivations shall have the meaning set forth and defined therein and shall be applicable in both. Definition of terms in the Agreement shall first be governed by this Agreement, second by the incorporated Scope of Services (Exhibit A), third by the incorporated Fee Schedule (Exhibit B) and fourth by the Business Associate Agreement (Exhibit D). In the event of any conflict among the foregoing, the conflict shall be resolved in the order of priority set forth in the preceding sentence.

- 1.1. **Agreement:** This Agreement for Medicare cost reporting consulting services, including its articles, exhibits, addenda, and attachments.
- 1.2. **Amendment:** An amendment to this Agreement in writing, approved by the Director of Purchasing and Contracts, and signed by the County and Consultant authorizing a modification or revision to one or more terms or conditions of this Agreement.
- 1.3. **Change Order:** A written change or modification to this Agreement approved by the County's Project Manager and Consultant, which is signed by the County and

Consultant authorizing an addition, deletion, or revision in the Scope of Services, or an adjustment in the Agreement price or time, without change to any other terms or conditions of the Agreement.

- 1.4. **Compensation:** The amount paid by the County to Consultant for Services regardless of whether stated as compensation or stated as hourly rates, overhead rates, or other figures or formulas from which compensation can be calculated which includes the total monies payable to Consultant, under the terms of this Agreement, for all Services, labor, materials, supplies, travel, training, profit, overhead, costs, expenses, and any other costs necessary to complete work under the Scope of Services.
- 1.5. **Consultant:** Public Consulting Group LLC, who is the contractor providing Services/Work pursuant to the Scope of Services under this Agreement to the County.
- 1.6. **Contract Administrator:** The Director of Purchasing and Contracts or his/her designee responsible for addressing any concerns within this Agreement.
- 1.7. **County:** Shall mean the County of Volusia (a body corporate and politic and a subdivision of the State of Florida) including its districts, authorities, separate units of government established by law (constitutional), ordinance or resolution, partners, elected and non-elected officials, employees, agents, volunteers, and any party with whom the County has agreed by contract to provide additional insured status.
- 1.8. **County Project Manager:** The person designated by the County to review, approve and make decisions regarding the Scope of Services in this Agreement.
- 1.9. **Deliverable(s):** The products or services provided through the Scope of Services for this Agreement including but not limited to: other services, reports, written documentation, training, systems or processes.
- 1.10. **Effective Date:** The date that this Agreement is fully executed by Consultant and the County.
- 1.11. **Key Personnel:** Consultant's personnel who are responsible for Consultant's day-to-day Project operations as described in Consultant's Proposal.
- 1.12. **Proposal:** The document submitted by Consultant in response to a formal solicitation (RSQ No. 21-SQ-119BB), which is used to determine if Consultant is highly qualified.
- 1.13. **Scope of Services:** The Services defined in this Agreement under the Scope of Services at (Exhibit A), which are hereby agreed to by the parties in writing, and which includes Consultant's responsibility for performing and complying with all incidental matters pertaining thereto.
- 1.14. **Services:** Those services defined in the Scope of Services to be performed by Consultant pursuant to this Agreement and its attached exhibits, including: the work, duties and obligations to be carried out and performed by Consultant under the Agreement and pursuant to Exhibits A – D, attached hereto and made a part of this Agreement.
- 1.15. **State:** State of Florida.
- 1.16. **Subconsultant:** A third party other than a material man or laborer who enters into an Agreement with a Consultant for the performance of any part of the basic agreement.

- 1.17. **Warranty:** The warranty or warranties as set forth in this Agreement including any warranties required by State Law or regulation.

2 EXHIBITS

- 2.1 The exhibits listed below are incorporated into and made a part of this Agreement.

- 2.1.1 Exhibit A – Scope of Services,
- 2.1.2 Exhibit B – Fee Schedule
- 2.1.3 Exhibit C – Insurance Requirements
- 2.1.4 Exhibit D – Business Associate Agreement

3 ORDER OF PRECEDENCE

- 3.1 If Consultant finds any potential or possible inconsistency, conflict, error, or discrepancy in the Agreement, the order of precedence, Consultant shall immediately call it to the County Project Manager's attention, in writing, and request the County Project Manager's interpretation and direction before proceeding with the Services affected thereby.

In the event of any conflicts or inconsistencies between any exhibit to the Agreement and the Agreement itself, such conflict or inconsistency shall be resolved by giving precedence in the following order:

- 3.1.1 In the event of any conflicts or inconsistencies between Exhibit A – Scope of Services and any other exhibit of this Agreement in regard to the Scope of Services, Project specifications, performance criteria, or management metrics, Exhibit A – Scope of Services shall be controlling.
- 3.1.2 In the event of any conflicts or inconsistencies between Exhibit B – Fee Schedule and any exhibit in regard to the types of services to be provided under this Contract, Exhibit B – Fee Schedule shall be controlling.
- 3.1.3 In the event of any conflicts or inconsistencies between the Agreement and any exhibit to the Agreement in regard to all terms and conditions addressed in the Agreement, the Agreement shall be controlling.

- 4 **SCOPE OF SERVICES.** Consultant shall provide Services under this Agreement and act as Consultant to the County in accordance with the Scope of Services as specifically set forth in this Agreement and its exhibits.

- 4.1 Consultant shall provide Medicare cost reporting consulting services in accordance with the Scope of Services attached as Exhibit A.

- 4.2 **Performance Criteria:**

- 4.2.1 All services shall be performed in accordance with the Agreement and carried out under the direction of the County's Project Manager.

- 4.2.2 All labor necessary to complete the Scope of Services shall be performed in a professional manner, in accordance with industry standards and to the satisfaction of the County.
- 4.2.3 **Changes to Scope of Services.** The County may, at any time, by written change order, make changes within the general Scope of Work to be performed under this Agreement; unless otherwise allowed by the County in the written change order, such changes to the Scope of Work (or Consultant's claim for adjustment, described below) shall not allow, permit, or excuse any delay in the performance of the Work. Except as otherwise stated herein, if any such change causes an increase or decrease in Consultant's cost of the Services or the time required for performance of the Services, the County may make an equitable adjustment by amending this Agreement and stating the equitable adjustment in such amendment. Determination of whether an increase or decrease in cost was caused by the change to the scope of work shall be in the County's sole discretion. Any claim by Consultant for adjustment under this article must be asserted in writing within thirty (30) days from the date of the County's notification to Consultant (whether made orally or in writing) of the change that caused the claim for adjustment; otherwise, the claim shall be deemed waived. Except as otherwise provided in this Agreement, no charge for any extra work or materials shall be allowed or approved by the County. No additional Work shall be performed or extra materials purchased until a written Change Order has been approved by Consultant and County.
- 4.2.4 **Time is of the Essence.** Time is of the essence for all Services performed under this Agreement and all Projects performed in accordance herewith.
- 4.2.5 **Authority to Act on Behalf of County.** County's Purchasing and Contracts Director, or such other proper authority pursuant to County policies and procedures, shall have the authority to approve, award, and execute all documents or other instruments required to effectuate changes, modifications, or additional service, so long as the then cumulative financial obligation of County for such additional items does not exceed the Director of Purchasing and Contracts' authority under the County Code of Ordinances or policies and procedures. Any change, modification or additional service that causes the cumulative financial obligation of County for such additional items to exceed the Purchasing Director's or County Manager's authority under the Procurement Code shall be presented to the Volusia County Council for approval.

5 RESPONSIBILITY OF CONSULTANT

- 5.1 Where questions exist as to the Scope of Services to be provided, Consultant shall promptly confer with the Project Manager to ascertain the functional criteria of the Scope of Services. The Services of Consultant shall also include the following:
- 5.1.1 Consultant shall keep the County informed of any changes or advancements in technology occurring any time prior to or during actual implementation of the Services to the extent that such changes and advancements may increase efficiency or otherwise allow for better services or reductions in costs to the County.

5.1.2 Consultant covenants and agrees as follows:

- 5.1.2.1 That there are no obligations, commitments, or impediments of any kind that shall limit or prevent Consultant's performance of the Services.
- 5.1.2.2 That its allegations and representations regarding its special talent, training, and experience caused the County to select Consultant to be the prime professional;
- 5.1.2.3 That Consultant possesses the special skills to recognize material errors or omissions that would result in failures to appropriately perform in accordance with the Scope of Services;
- 5.1.2.4 That Consultant shall adhere to the standard of care applicable to a consultant with the degree of skills and diligence normally employed by a licensed professional in its field or practice performing the same or similar Services in compliance with all applicable federal, state, and municipal laws, regulations, codes, and ordinances;
- 5.1.2.5 That Consultant shall provide any Project data, summaries, reports, or studies, pursuant to Subsection 5.1.2.4 above, accurately with regard to the information contained therein. County's acceptance, approval, or reliance on any such documentation shall not release Consultant from any liability if such information is incorrect or inaccurate, it being understood that the County is relying on Consultant's status as an industry professional in accepting such documentation.

5.2 **Supervision.** Subject to Subsection 5.1.2.4, Consultant shall direct and supervise competent and qualified personnel and shall devote time and attention to the direction of the operation to ensure performance of obligations and duties as set forth herein. Consultant shall hire, compensate, supervise, and terminate members of its work force, and Consultant shall direct and control the manner in which Services are performed including conditions under which individuals shall be assigned duties, how individuals shall report, and the hours individuals shall perform. Consultant shall be responsible for all income tax, social security and Medicare taxes, federal unemployment taxes, and any other withholdings from the company's employees' and/or Subconsultants' wages or salaries. Benefits, if any, for Consultant's employees and/or Subconsultants shall be the responsibility of Consultant including, but not limited to, health and life insurance, retirement, liability/risk coverage, and worker's and unemployment compensation. Consultant shall be solely responsible for the means, methods, techniques, sequences and procedures in delivering Services pursuant to this Agreement. Further, Consultant shall be responsible for assuring the County that finished or completed Deliverables comply with the requirements of this Agreement and the Scope of Services contained therein.

5.3 **Assurance.** Subject to Subsection 5.1.2.4, Consultant gives the County its assurance that all Services performed under this Agreement shall be timely performed in a competent and workmanlike manner and in accordance with the specifications and requirements of the Agreement and any approvals required under the Agreement. All Services not conforming to the specifications and requirements of the Scope of

Services shall be considered materially defective and constitute a breach of this Agreement.

5.4 **Accuracy of Reports / Summaries.** Consultant shall be responsible for the professional and technical accuracy and the coordination of all data, reports, summaries, and any other Services furnished by Consultant under this Agreement. Consultant shall, without additional cost to the County, correct or revise any errors or deficiencies in its Services for which it is responsible.

5.5 **Services to Comply with Specifications and Law.** All Services performed by Consultant including all general provisions, special provisions, job specifications, drawings, addendum, amendments to the basic Agreement, written interpretations, and written orders for minor changes in Services, shall comply with the Scope of Services and all applicable local laws, codes, ordinances and statutes.

5.6 **Subconsultants.**

5.6.1 **Employment or Substitution of Subconsultants.** Consultant shall not employ any Subconsultant, other person, or organization of against whom the County may have reasonable objection, nor shall Consultant be required to employ any Subconsultant against whom it has reasonable objection. Consultant shall not make any substitution for any Subconsultant who has been accepted by the County without the County's approval.

5.6.2 **Disapproval of Subconsultants.** County's disapproval or requirement of removal or replacement of Consultant's employee or Subconsultant shall be deemed for lawful reasons if in County's reasonable judgment, such Consultant's employee or Subconsultant poses a threat or causes harm to the health, welfare, or safety, or morale of the County or its agencies, personnel or property or who fails any drug test administered in connection with this Agreement, or who has been convicted of a felony or a misdemeanor involving "moral turpitude" or has been released or dishonorably discharged or separated under conditions other than honorable from any of the Armed Forces of the United States.

5.6.3 **Consultant Responsible for Subconsultants.** Consultant shall be fully responsible for all negligent acts and omissions of its Subconsultant and of persons directly or indirectly employed by them and of persons for whose negligent acts any of them may be liable to the same extent that it is responsible for the negligent acts and omissions of persons directly employed by it. Nothing in the Agreement shall create any contractual relationship between any Subconsultant and the County or any obligation on the part of the County to pay or to see to the payment of any monies due any Subconsultant, except as may otherwise be required by law. County may furnish to any Subconsultant to the extent practicable, evidence of amounts paid to Consultant on account of specific Services done in accordance with the schedule of values.

5.6.4 **Subconsultants to Act Pursuant to this Agreement.** Consultant agrees to bind specifically every Subconsultant to the applicable terms and conditions of the Agreement for the benefit of the County, and shall require all Subconsultants or other outside associates employed in connection with this Agreement to comply fully with the terms and

conditions of this Agreement as such may apply to the Services being performed for Consultant.

6 TERM OF AGREEMENT

- 6.1 The term of this Agreement shall commence on the Effective Date of this Agreement or when it is fully executed by all parties, whichever is later, and shall terminate three (3) years from the Effective Date. Two (2) subsequent one (1) year renewals are permissible upon mutual written agreement between the parties and County Council approval.
- 6.2 The Services to be rendered by Consultant shall be commenced, as specified in this Agreement or as may be requested by the County and shall be completed within the time specified therein.

7 AGREEMENT PRICE AND COMPENSATION

- 7.1 **Payment Pursuant to Fee Schedule.** Consultant shall be paid Compensation for all Services. Compensation listed in Exhibit B – Fee Schedule constitutes complete payment for all Services rendered under this Agreement, including the cost of all projects, materials, equipment, labor, expenses (including reimbursable expenses), all mark-ups for overhead and profit more particularly described in Exhibit B – Fee Schedule. The County agrees to pay Consultant in current funds, as compensation for its Services.
- 7.2 **Errors and Omissions in Pricing.** Compensation shall not be adjusted because of errors or omissions not the fault of the County in computing the Services costs which result in an increase in the cost of this Agreement or because the time for completion varies from the original estimate, including completion or substantial completion of this Agreement prior to the scheduled or Agreement completion date or on account of County's election to furnish any of the Services. In addition, Consultant shall certify that the original Agreement price or Compensation for the Scope of Services and any additions thereto shall be adjusted to exclude any significant sums by which the County determines the price or Compensation was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.
- 7.3 **Reimbursable Expenses.** County's payment to Consultant pursuant to the Fee Schedule, attached hereto and incorporated herein as Exhibit B, shall be full compensation for Services rendered and any expenses incurred in connection therewith, and Consultant shall not be eligible for reimbursement for any expenses incurred in connection with the performance of this Agreement.
- 7.4 **Payments.** Any payments shall be made in accordance with Exhibit B – Fee Schedule. The rates expressed in Exhibit B shall govern Compensation and provide for payments against specified Deliverables and performance.
- 7.4.1 **Approval of Payment.** If, on the basis of the County Project Manager's observation and review of Consultant's Services, the County Project Manager is satisfied that the Services has been completed and Consultant has fulfilled all of its obligations under the Agreement, the County Project Manager, after receipt of a proper invoice, shall indicate in writing his or her approval of payment and present the invoice to Accounts Payable for payment. Otherwise, the County Project Manager shall return the invoice to Consultant, indicating in writing the reasons for refusing to approve final payment. Subsequent to receiving a

returned invoice, Consultant will make the necessary corrections and resubmit the invoice and, if requested, provide explanation or substantiation for said invoice. Regardless of the foregoing, approval of payment pursuant to this section shall not prevent the County from recovering amounts paid when the County subsequently discovers material defects or deficiencies in the services or work provided by Consultant, which defects or deficiencies would have otherwise caused the County to withhold payment.

7.5 **Invoices.** Invoices or payment requests shall be addressed from Consultant and submitted to the County's Project Manager. All invoicing and payments, including the practices and procedures pertaining thereto, shall be governed by the applicable provisions of Part VII of Chapter 218, Florida Statutes.

7.5.1 **Invoice Detail.** Consultant shall submit an invoice for which professional Services were rendered to the County upon the completion and acceptance of the Services. Each invoice shall show detailed explanations of the Services accomplished and, if requested, provide substantiation for same. Invoices shall be in accordance with the Agreement prices set forth by labor hours by classification, associated rates, any material or subcontracted costs and any indirect rates or costs in accordance with the Agreement prices set forth hereto. All of the above shall sum to the total amount requested.

7.5.2 Consultant's Invoice(s) shall be accompanied by supporting data as may be required by the County Project Manager. County Project Manager shall review Consultant's Invoice and supporting data and notify Consultant in writing within ten (10) days from receipt of the statement if any amounts requested are disputed or lack adequate support or documentation.

7.5.3 **Invoicing Pursuant to Agreement.** Pursuant to Exhibit B, Consultant shall invoice County for all payments due Consultant under this Agreement. County shall pay invoices in accordance with this Agreement. Invoices shall be sent to the address specified by the County.

7.5.4 **Withholding.** The County may withhold payment of any specific invoiced charges that it disputes in good faith and pay all undisputed charges on the invoice.

7.5.5 **Payment Due.** Within forty-five (45) days of acceptance by the County Project Manager of all the Services for which Consultant has submitted an invoice of professional Services, Consultant shall be paid the unpaid balance of any money due for any undisputed Services covered by said invoice.

7.5.6 **Taxes.** County is a tax exempt entity and shall not be charged or invoiced for the payment of taxes for Services performed under this Agreement.

7.6 **Consultant's Continuing Obligations.** Consultant's obligation to perform Services in accordance with the Agreement shall be absolute. Nothing, including without limitation, the following, shall constitute an acceptance of Services not in accordance with the

Agreement: approval of any progress; final payment to Consultant; documentation confirming acceptance of the Services by the County; any payment by the County to Consultant under the Agreement; any act of acceptance by the County or any failure to do so; any correction of defective Services by the County.

- 7.7 **Non-appropriation.** Notwithstanding any other term or provision of this Agreement, the continuation of this Agreement beyond a single fiscal year of County is subject to the appropriation and availability of funds in accordance with Chapter 129, Florida Statutes. Termination by the County due to non-appropriation shall be without a termination charge by Consultant. The County shall not be obligated to pay Consultant under this Agreement beyond the date of termination except as set forth in this Agreement. County's obligation to pay Consultant is limited to the budgeted amount for a fiscal year approved by the Volusia County Council for the then-current fiscal year of this Agreement and is otherwise limited to legally available non-ad valorem tax revenues.

8 PAYMENT OF SUBCONSULTANTS

- 8.1 **Payment.** Consultant shall pay its Subconsultants and suppliers, within thirty (30) days following receipt of payment from the County for such subcontracted Services or supplies. Consultant agrees that if it withholds an amount as retainage from such Subconsultants or suppliers, that it shall release such retainage and pay same within thirty (30) days following receipt of payment of retained amounts from County.
- 8.2 **Indemnification as to Payment of Subconsultants.** Consultant shall save, defend, and hold the County harmless from any and all claims and actions from Consultant's Subconsultants for payment for Services and Deliverables provided by Subconsultants for Consultant under this Agreement. Regardless of the foregoing, nothing in this Agreement shall create any contractual relationship between any Subconsultant and the County or any obligation on the part of the County to pay or to see the payment of any moneys due any Subconsultant, except as may otherwise be required by law.

9 LIMITATION OF LIABILITY AND INDEMNIFICATION OF COUNTY

- 9.1 **Indemnification.** Consultant shall indemnify, defend and hold harmless the County, including its districts, authorities, separate units of government established by law (constitutional), ordinance or resolution, partners, elected and non-elected officials, employees, agents, volunteers, and any party with whom the County has agreed by contract to provide additional insured status from and against all claims, damages, losses, and expenses, including, but not limited to, attorney's fees arising out of, resulting from, or incident to Consultant's performance of its obligations in whole or part of this Agreement, unless such injury or damage is occasioned solely by the fault, negligence, or willful misconduct of the County.
- 9.2 In all claims against the County, Consultant's indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or any benefits payable by or for Consultant, or its employees, agents, contractors, or Subconsultants.
- 9.3 **Sovereign Immunity.** The County expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes. Notwithstanding anything set forth in any section of this Agreement to the contrary, nothing in this Agreement shall be deemed as a waiver of the County's immunity or limits of liability beyond any statutory limited waiver of immunity or limits of liability that may have been or may be adopted by the Florida Legislature, and the cap on the

amount and liability of the County for damages, regardless of the number or nature of claims in tort, equity, or contract, shall not exceed the dollar amount set by the legislature for tort. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against the County, which claim would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

10 INSURANCE

Consultant shall provide the required insurance detailed in Exhibit C for the entire Term of the Agreement. Regardless of anything submitted as proof of insurance, Consultant shall comply with all requirements of Exhibit C.

11 TERMINATION

- 11.1 County may terminate this Agreement upon at least thirty (30) days prior written notice to Consultant.
- 11.2 Consultant may terminate this Agreement upon at least two-hundred ten (210) days prior written notice to County.
- 11.3 Upon receipt of notice of termination by the County from Consultant or upon delivery of notice of termination from the County to Consultant, Consultant shall:
 - 11.3.1 Stop work under the Agreement on the date and to the extent specified in County's Notice of Termination.
 - 11.3.2 Inform the County, in writing, of the extent to which performance is completed.
 - 11.3.3 Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the Services under the Agreement that is in progress but not yet completed.
 - 11.3.4 Assign to the County, in the manner, at the times, and to the extent directed by the County, all of the right, title and interest of Consultant under the orders and subcontracts so terminated.
- 11.4 For all undisputed outstanding invoices submitted to the County prior to the effective date of the termination and subject to Article 6 - Term of Agreement, Article 7 – Agreement Price and Compensation, and this Article 11 - Termination, the County shall cause payments to be made to Consultant within forty five (45) days of receipt of invoice. Consultant shall invoice the County for any sums Consultant claims to be owed by County under this Agreement for work performed from the last invoice to the effective date of termination. County shall review such invoice for payment and County shall pay any undisputed amount within forty five (45) days.
- 11.5 With the approval of the County and to the extent required by the County, settle all outstanding liabilities and all claims arising out of such termination. County's approval of such settlements shall be final for all the purposes of a termination under this Article 11 - Termination. In addition, Consultant shall transfer title and deliver to the County, in the manner, at the times, and to the extent, if any, directed by the County of Deliverables, work-in-progress, reports, models, studies, and other materials produced as a part of, or acquired in connection with the performance of the Services terminated.

- 11.6 If Consultant fails to cure a breach within ten (10) calendar days after receipt of notice from the County of said breach, the County may take over the Services and complete the Services and Consultant shall be liable to the County for any increased cost of the Project reasonably incurred by the County to complete Consultant's unfinished Services. As such, County may apply unpaid Compensation due and owing to Consultant prior to the default as a set off against the costs incurred by the County for taking over such Services.
- 11.7 The right of termination provided to the County and Consultant herein shall be cumulative of all other remedies available at law.
- 11.8 All provisions of this Agreement that impose or contemplate continuing obligations on a party will survive the expiration or termination of this Agreement.

12 DISPUTE RESOLUTION

- 12.1 **Good Faith Efforts to Resolve.** The parties to this Agreement shall exercise their best efforts to negotiate and settle promptly any dispute that may arise with respect to this Agreement in accordance with the provisions set forth in this Section 12, Dispute Resolution. Consultant and County Project Manager shall use reasonable efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient times and places, to address and work toward resolution of issues that arise in performance of this Agreement and any applicable statement of Services. Issues shall be escalated to successive management levels as needed.
- 12.2 **Informal Dispute Resolution.** If a dispute develops between the parties concerning any provision of this Agreement, or the interpretation thereof, or any conduct by the other party under this Agreements, and the parties are unable to resolve such dispute within five (5) business days or longer, that party, known as the Invoking Party, through its applicable Project Manager, shall promptly bring the disputed matter to the attention of the non-Invoking Party's Project Manager or designated representative, as the case may be, of the other party in writing ("Dispute Notice") in order to resolve such dispute.
- 12.3 **Discovery and Negotiation / Recommended Procedures.** Upon issuance of a Dispute Notice, the Project Managers or designated representative shall furnish to each other all non-privileged information with respect to the dispute believed by them to be appropriate and germane. The Project Managers shall negotiate in an effort to resolve the dispute without the necessity of any formal proceeding. If such dispute is not resolved by the Project Managers or designated representative within ten (10) County Work Days (defined as weekdays [i.e. Monday, Tuesday, Wednesday, Thursday and Friday] not designated as holidays by the County) of issuance of the Dispute Notice, or such other time as may be mutually allowed by the Project Managers as being necessary given the scope and complexity of the dispute, the Project Managers may, depending upon the nature, scope, and severity of the dispute, escalate the dispute as indicated below:

County Work Days	Consultant's Representative	County Representative
10	Consultant's Project Manager	County's Project Manager
10	Consultant's Sr. Vice President	Director of Purchasing and Contracts
20	Consultant's COO or President	Deputy County Manager

12.4 **Formal Dispute Resolution.** At any point after issuance of a Dispute Notice under this section, either party may request and initiate formal non-binding mediation before a single mediator, which mediation shall be completed within thirty (30) days of initiation or such longer time as may be agreed upon by both parties as being necessary for the mutual selection of a mediator and scheduling of such mediation. Any such mediation shall be convened and conducted in accordance with the rules of practice and procedure adopted by the Supreme Court of Florida for court-ordered mediation, Rule 1.700 et seq. of the Florida Rules of Civil Procedure, and Chapter 44, Florida Statutes. If the dispute remains unresolved after conducting such mediation, then either party may proceed to finalize any pending termination remedies and commence litigation in a court of competent jurisdiction. Each party shall bear its own costs and attorney's fees for mediation or arbitration of an issue arising under this Agreement.

12.5 **Right to Terminate Reserved.** Regardless of the dispute resolution procedures provided for in this Section 12, Dispute Resolution, nothing herein shall affect, delay, or otherwise preclude a party from terminating this Agreement in accordance with the provisions of Section 11, Termination, it being understood that these dispute resolution procedures are intended as a means of resolving disputes both during the term of this Agreement and after termination or expiration thereof.

13 COUNTY DATA

13.1 Consultant agrees and understands that all files and other information and data created in connection with the administration of this Agreement constitute a public record, except to the extent it is exempt or proprietary under Florida Law (Chapter 119, Florida Statutes) from disclosure or as preempted by federal law. Consultant agrees to maintain for public record access such files and to maintain for public access such files after termination of this Contract to the extent required by the laws of the State of Florida.

13.2 Upon any termination or expiration of this Agreement, Consultant, upon County's written request, shall promptly deliver, but not more than thirty (30) days after County's request, to County an extract of County's data hosted in the System in XML format or such other format as mutually agreed upon by County and Consultant.

- 13.3 THE ABOVE DUTIES AND OBLIGATIONS SHALL SURVIVE THE CANCELLATION OR TERMINATION OF THIS CONTRACT.

14 LOCAL GOVERNMENT REQUIREMENTS

- 14.1 Public Records Law. Pursuant to section 119.0701(2)(a), Florida Statutes, the County is required to provide Consultant with this statement and establish the following requirements as contractual obligations pursuant to the Agreement:

IF CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 386-736-5935, purchasing@volusia.org, by mail, Purchasing and Contracts Division, Attn: Public Records Custodian, 123 W. Indiana Ave. RM 302 DeLand, FL 32720.

By entering into this Agreement, Consultant acknowledges and agrees that any records maintained, generated, received, or kept in connection with, or related to the performance of services provided under, this Agreement are public records subject to the public records disclosure requirements of section 119.07(1), Florida Statutes, and Article I, section 24 of the Florida Constitution. Pursuant to section 119.0701, Florida Statutes, any Consultant entering into a contract for services with the County is required to:

- A. Keep and maintain public records required by the County to perform the services and work provided pursuant to this Agreement.
- B. Upon request from the County's custodian of public records, provide 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.
- C. Ensure 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 Agreement term and following completion or termination of the Agreement if Consultant does not transfer the records to the County.
- D. Upon completion or termination of the Agreement, transfer, at no cost, to the County all public records in the possession of Consultant or keep and maintain public records required by the County to perform the service. If Consultant transfers all public records to the County upon completion or termination of the Agreement, Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Consultant keeps and maintains public records upon completion or termination of the Agreement, Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's

custodian of public records, in a format that is compatible with the information technology systems of the County.

Requests to inspect or copy public records relating to the County's Agreement for services must be made directly to the County. If Consultant receives any such request, Consultant shall instruct the requestor to contact the County. If the County does not possess the records requested, the County shall immediately notify Consultant of such request, and Consultant must provide the records to the County or otherwise allow the records to be inspected or copied within a reasonable time.

Consultant acknowledges that failure to provide the public records to the County within a reasonable time may be subject to penalties under section 119.10, Florida Statutes. Consultant further agrees not to release any records that are statutorily confidential or otherwise exempt from disclosure without first receiving prior written authorization from the County. Consultant shall indemnify, defend, and hold the County harmless for and against any and all claims, damage awards, and causes of action arising from Consultant's failure to comply with the public records disclosure requirements of section 119.07(1), Florida Statutes, or by Consultant's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Consultant authorizes County to seek declaratory, injunctive, or other appropriate relief against Consultant from a Circuit Court in Volusia County on an expedited basis to enforce the requirements of this section.

- 14.2 **No Code Violation or Past Due Debt.** Consultant warrants and represents that neither the business, nor any officer or significant stakeholder of the business is in violation of the Volusia County Code of Ordinances, and does not owe the County any past due debt. Any breach of the foregoing warranty and representation shall be a material breach of this Agreement and the County shall have the right to terminate this Agreement as set forth herein.
- 14.3 **Changes Due to Public Welfare.** The County and Consultant agree to enter into good faith negotiations regarding modifications to this Agreement which may be required in order to implement changes in the interest of the public welfare or due to change in law or ordinance.
- 14.4 **Compliance with Applicable Laws.** Consultant shall perform its obligations hereunder in accordance with all applicable federal, state, local laws, ordinances, rules, regulations (including but not limited to the following statutes: Americans with Disabilities Act (ADA), Titles I, II and III of the ADA; Federal Immigration Reform and Control Act of 1986 (as amended); and Title VII of the Civil Rights Act of 1964 (as amended), and all orders and decrees of bodies or tribunals having jurisdiction or authority which in any manner affect the performance of this Agreement. Consultant shall indemnify, defend, and hold harmless the County and all its officers, agents, servants and employees against any claim or liability arising from or based on the violation of any such law, ordinance, rule, regulation, order or decree caused or committed by Consultant, its representatives, Subconsultants, professional associates, agents, servants or employees. Additionally, Consultant shall obtain and maintain at its own expense all applicable licenses and permits to conduct business pursuant to this Agreement from the federal government, State of Florida, County of Volusia or municipalities when legally required and maintain same in full force and effect during the term of this Agreement.

- 14.5 **Nondiscrimination and Americans with Disabilities Act.** Consultant shall not unlawfully discriminate against any person in the operations and activities in the use or expenditure of the funds or any portion of the funds provided by this Agreement or in the provision of goods or Services pursuant to this Agreement. Consultant agrees it shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing all goods and Services funded or paid for by County, including Titles I, II and III of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. For internet/web Services: For the purposes of this paragraph, any Services or products offered to public via the internet or online must comply with WCAG 2.0 AA in order to be deemed ADA compliant. The County will provide Consultant with prompt written notice with respect to any ADA deficiencies of which the County is aware and Consultant will promptly correct such deficiencies. If the County, the Department of Justice or other governmental entity tasked with the enforcement of the ADA ("Enforcement Agency") notes any deficiency in the facilities, practices, services, or operations of Consultant furnished or provided in connection with this Agreement, Consultant shall, at no additional charge or cost to the County, immediately cure any such deficiencies without delay to the satisfaction of such Enforcement Agency. Consultant further agrees that it shall, to the extent permitted by law, indemnify, defend, and hold harmless the County against any and all claims, sanctions, or penalties assessed against the County, which claims, sanctions, or penalties arise or otherwise result from Consultant's failure to comply with the ADA or WCAG 2.0 AA, for online or internet Services or products. In performing under this Agreement, Consultant agrees that it shall not commit an unfair employment practice in violation of any state or federal law and that it shall not discriminate against any member of the public, employee or applicant for employment for work under this Agreement because of race, color, religion, gender, sexual orientation, age, national origin, political affiliation, or disability and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, gender, sexual orientation, age, national origin, political affiliation, or disability.
- 14.6 **Drug Free Workplace.** The County of Volusia is a drug-free and smoke-free workplace. Consultant agrees that it shall provide a drug-free environment to its personnel during the term of this Agreement and will comply, subject to the prior receipt thereof, with the County's policies on drug-free and smoke-free work place, as amended from time to time, during the term of this Agreement.
- 14.7 **Employment of Illegal Aliens.** Consultant certifies that it does not knowingly or willingly and will not during the performance of the Agreement employ illegal alien workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986, as amended.
- 14.8 **Equal Opportunity; Disadvantaged Business Enterprises.**

Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, gender, sexual orientation, age, national origin, political affiliation, disability, or family status. Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

14.9 **Compliance with FEMA 2 CFR 200.318-326 and Appendix II Contract Provisions** This Agreement and the products/services provided may be utilized in the event of declared State/Federal Emergency, and Consultants shall comply with the applicable sections of Exhibit III, Federal Contract Provisions.

14.10 **Compliance with Federal E-Verify Regulations**

- A. The Consultant shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility and work authorization status of all new employees hired by the Consultant on or after the effective date of this Contract and thereafter during the remaining term of the Contract, including Subconsultant. If and to the extent the Agreement meets the criteria set forth at 48 C.F.R. § 52.222-54(e), the criteria of 48 C.F.R. § 52.222-54 are hereby incorporated by reference into this Agreement as if fully set forth herein.
- B. The Consultant covenants and agrees that if the County has a good faith belief that Consultant has knowingly violated or if Consultant is found to have violated this Section 14.10; Section 446.09(1), Florida Statutes; Section 446.095, Florida Statutes; or the presidential Executive order and subsequent Federal Acquisition Regulation (FAR) rule requiring federal contractors to use E-Verify, if applicable, then the following shall be true: (i) such shall be a material breach of this Contract by Consultant; (ii) Consultant shall indemnify, defend, and hold harmless the County from any fines or penalties levied by a government agency, including the loss or repayment of grant funds by the County; (iii) the County may terminate this Agreement immediately and without penalty and such termination shall not be or be considered a breach of this Agreement; and (iv) Consultant shall be liable for any additional costs incurred by the County as a result of the termination of the Agreement. Consultant acknowledges and understands that if the County terminates this Agreement in accordance with this Section 14.10, the Consultant shall be ineligible for award of a public contract for at least one (1) year after the date on which the Agreement was terminated.
- C. Any subcontract entered into by Consultant with any Subconsultant performing work under this Agreement shall include the following language: "The Subconsultant shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Consultant on or after the effective date of this Contract and thereafter during the remaining term of the Contract." In accordance with Florida law, if Consultant enters into a subcontract to perform work under this Agreement, Consultant shall require from said Subconsultant an affidavit stating that the Subconsultant does not employ, contract with, or subcontract with an unauthorized alien, and Consultant shall maintain a copy of such affidavit for the duration of this Agreement and/or the contract with the Subconsultant, whichever is longer. Consultant acknowledges and agrees that if the County has a good faith belief that a Subconsultant knowingly violated this Section 3.37 or Sections 446.09(1) or 446.095 of the Florida Statutes, but also has a good faith belief that Consultant otherwise complied with this Section 12.9 and applicable law, the County shall promptly notify the Consultant and order the Consultant to immediately terminate the contract with the Subconsultant. Failure to comply with said order shall constitute a violation of this Section 14.10 and the terms of Section 14.10.B shall apply.

14.11 **Scrutinized Companies-FL Statute Section 287.135 and 215.473.**

Consultant certifies that neither the undersigned entity, nor any of its wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such

entities or business associations, that exists for the purpose of making profit have been placed on the Scrutinized Companies that Boycott Israel List created pursuant to s. 215.4725 of the Florida Statutes, or are engaged in a boycott of Israel.

In addition, if this Agreement amount equals or exceeds one million dollars, Consultant certifies that neither the undersigned entity, nor any of its wholly owned subsidiaries, majority- owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for the purpose of making profit are on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s.215.473 of the Florida Statutes, or are engaged in business operations in Cuba or Syria as defined in said statute.

Consultant understands and agrees that the County may immediately terminate this Agreement upon written notice if the undersigned entity (or any of those related entities of respondent as defined above by Florida law) are found to have certified falsely or if any of the following occur with respect to the company or a related entity: (i) it has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, or (ii) for any contract for goods or services of one million dollars or more, it has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or it is found to have been engaged in business operations in Cuba or Syria.

15 MISCELLANEOUS PROVISIONS

15.1 **Independent Consultant.** Consultant shall provide the services required herein strictly in an independent contractor relationship with the County and, except as otherwise expressly set forth herein, is not, nor shall be, construed to be an agent or employee of the County. Nothing herein shall create any association, partnership, joint venture or agency relationship between Consultant and the County. The County shall not provide vehicles or equipment to Consultant to perform the duties required under this Agreement nor will the County pay for any business, travel, office, or training expense or any other Agreement performance expense not specifically set forth in the Scope of Services of this Agreement. Consultant is not exclusively bound to the County and may provide Services to other private and public entities, but agrees and covenants that any such service provided by Consultant or for such entities will not conflict or otherwise interfere with Consultant's provision of Services to the County under this Agreement.

15.2 **Other Agencies.** Consultant may, upon mutual agreement, permit any municipality or other governmental agency to participate in the Contract under the same prices, terms, and conditions.

It is understood that at no time will any city or municipality or other agency be obligated for placing an order for any other city, municipality, or agency, nor will any city, municipality, or agency be obligated for any bills incurred by any other city, municipality, or agency. Further it is understood that each agency will issue its own purchase order to Consultant.

15.3 **Third Party Beneficiaries.** Neither Consultant nor County intends to directly or substantially benefit a third party by this Agreement. The Parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement. Therefore, the Parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement, except as otherwise

provided in this Agreement.

- 15.4 **Waiver of Claims.** Once the Agreement expires, or final payment has been made, Consultant shall have no more than thirty (30) calendar days to present or file any claims against the County concerning the Agreement. After that period, the County will consider Consultant to have waived any right to claims against the County concerning the Agreement.
- 15.5 **Safety.** Consultant shall take the necessary precautions and bear the sole responsibility for the safety of the methods employed in performing the work. Consultant shall at all times comply with the regulations set forth by federal, state, and local laws, rules, and regulations concerning "OSHA" and all applicable state labor laws, regulations, and standards. Consultant shall indemnify and hold harmless the County from and against all liabilities, suits, damages, costs, and expenses (including attorney's fees and court costs) which may be imposed on the County because of Consultant, Subconsultant, or supplier's failure to comply with the regulations.
- 15.6 **Notice.** All notice required under this Agreement shall be in writing and shall be sent by certified United States Mail or national parcel service, postage prepaid, return receipt requested, or by hand-delivery with a written receipt of delivery, addressed to the party for whom it is intended at the place last specified. When sent in accordance with the foregoing, notice shall be deemed delivered the sooner of (i) when received by the addressee or (ii) five (5) days after being deposited in the mail or with the parcel service. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this article. For the present, the parties designate the following:

In the case of County:	with a copies of legal notices to:
<p style="text-align: center;">County of Volusia</p> <p>Attn: Director of Purchasing & Contracts Address: 123 W. Indiana Ave., Rm. 302 DeLand, Florida 32720 Phone: 386-736-5935</p>	<p style="text-align: center;">County of Volusia</p> <p>Attn: County Attorney Address: 123 W. Indiana Ave., Rm. 301 DeLand, Florida 32720 Phone: 386-736-5950</p>
In the case of Consultant:	with a copy of legal notices to:
<p style="text-align: center;">Public Consulting Group LLC</p> <p>Attn: Alissa Narode Assoc. Manager Address: 99 Washington Ave, Suite 1720 Albany, NY 12210 Phone: 617-426-2026</p>	<p style="text-align: center;">Public Consulting Group LLC</p> <p>Attn: Alissa Narode Assoc. Manager Address: 99 Washington Ave, Suite 1720 Albany, NY 12210 Phone: 617-426-2026</p>

15.7 **Assignment.**

Consultant may not assign or otherwise convey Consultant's rights and/or obligations under this Agreement without obtaining the County's prior written consent, which consent the County may withhold, limit and/or condition in the County's sole discretion, including, but not limited to, requiring Consultant or his/her proposed successor in interest to post a performance bond. Any consent by the County under this article shall be by written Amendment to the Agreement in a form and substance specified by the County in its sole discretion. If Consultant desires to assign or otherwise convey its rights and/or obligations under this Agreement, Consultant shall provide the County

with a written request for County's consent no less than thirty (30) days prior to the assignment's proposed effective date. Failure to provide such notice may result in the County assessing a processing fee of Five Hundred Dollars (US \$500.00); however, payment of such fee shall not entitle Consultant to the County's acceptance or approval of its request for assignment.

Nothing herein shall preclude the right of the County to waive its rights under this Section but no waiver shall be granted by the County without a written and duly executed amendment to the Agreement.

- 15.8 **Conflicts.** Neither Consultant nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Consultant's loyal and conscientious exercise of judgment related to its performance under this Agreement. Consultant further agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against County in any legal or administrative proceeding in which he, she, or Consultant is not a party, unless compelled by court process. Further, Consultant agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of County in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude Consultant or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding. In the event Consultant is permitted pursuant to this Agreement to utilize Subconsultants to perform any Services required by this Agreement, Consultant agrees to require such Subconsultants, by written Agreement, to comply with the provisions of this section to the same extent as Consultant.
- 15.9 **Audit Right and Retention of Records.** The County shall have the right to audit the books, records, and accounts of Consultant and its Subconsultants that are related to this Agreement. Consultant and its Subconsultants shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Agreement. Consultant shall preserve and make available, at reasonable times for examination and audit by the County, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for a retention period of five (5) years after completion or termination of this Agreement, and any renewals, as required by Item 65, General Records Schedule GS1-SL for State and Local Government Agencies, effective February 19, 2015 and the Florida Public Records Act (Chapter 119, Florida Statutes). Consultant shall, by written Agreement, require its Subconsultants to agree; (i) to the requirements and obligations of this Article 15.9 – Audit Right and Retention of Records (ii) to be subject to applicable privacy and confidentiality laws and regulations and (iii) Consultant's privacy and confidentiality policies and procedures. All audits must be performed at Consultant's home office in Boston, MA. Nothing in this Article 15.9 – Audit Right and Retention of Records shall require Consultant to violate any laws applicable to Consultant as a provider of Medicare cost reporting consulting services.
- 15.10 **Location of County Data.** Consultant shall not out-source any development and/or support for this Agreement or transfer any County Data outside the territorial limits of the United States of America, without the written approval of the Contract Administrator.
- 15.11 **Key Personnel.** The initial key personnel and any changes or substitutions in the key personnel must be made known to County or specified in the Scope of Services, and County must grant approval before any such initial personnel or change or substitution

can become effective. County agrees not to unreasonably withhold any such approval. Consultant shall, except as agreed by the parties, provide the key personnel as long as said staff are in Consultant's employment. In the event of injury, illness, or death of Consultant's key personnel, or if such key personnel leave Consultant's employ, Consultant shall replace such individual within thirty (30) County work Days after such injury or illness, or from the date of departure from employment or of death. Consultant shall obtain prior written approval of the County Project Manager to replace key personnel, such approval not to be unreasonably withheld. Consultant shall provide the County Project Manager with such information as necessary for County to evaluate the new key personnel. In the event the County Project Manager has reasonable objections to any replacement of key personnel, County shall notify Consultant in writing regarding such objections. Promptly after its receipt of such objections, Consultant shall investigate the matters stated and discuss its findings with County. If County thereafter requests in good faith replacement of the key personnel, Consultant shall use its reasonable best efforts to replace the employee with a person of suitable ability and qualification. Consultant shall use its best efforts to avoid replacing or reassigning any key personnel under this Agreement. If, notwithstanding this commitment, it becomes necessary for Consultant to replace any key personnel under this Agreement, Consultant shall give County as much reasonable detail as possible concerning the proposed replacement. At a minimum, Consultant agrees, where reasonably possible, to provide County with at least thirty (30) days notice of changes to Consultant's Project team participants. Consultant agrees to provide County with resumes of new Project team participants and County may choose to interview new Project team members.

- 15.12 **References to County or Consultant.** Consultant agrees that during the term of this Agreement, except as provided herein, Consultant may not reference County in Consultant's website, and/or press releases, and, may not place County's name or logo on Consultant's website or in collateral marketing materials relating to Consultant's products and Services without prior review and written approval by County. Further, Consultant agrees that it may not use County's name, logo or any trademarks (including in any press releases, customer "case studies," and the like) without County's prior written consent. Termination or expiration of this Agreement shall not affect Consultant's obligation in this regard and such obligation shall survive the termination or cancellation of this Agreement.
- 15.13 **Force Majeure.** Neither party shall be liable for any failure or delay in the performance of its obligations under the Agreement to the extent such failure or delay necessarily results from the occurrence of a Force Majeure Event beyond the control or reasonable anticipation of either party, including, but not limited to, compliance with any unanticipated government law or regulation not otherwise in effect at the time of execution of this Agreement, acts of God, acts of domestic or international terrorism, any virus, bacterium, or other microorganism capable of inducing physical distress, illness, or disease, whether due to a pandemic or otherwise, unforeseeable governmental acts or omissions, fires, strikes, natural disasters, wars, riots, transportation problems, and/or any other unforeseeable cause whatsoever beyond the reasonable control of the parties (and such cause being referred to as a "Force Majeure Event"). Accordingly, the parties further agree that:
- 15.13.1 Upon the occurrence of Force Majeure Event, the non-performing party shall be excused from any further performance of those obligations under this Agreement that are affected by the Force Majeure Event for as long as (a) the Force Majeure Event continues; and (b) the non-performing party continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.

- 15.13.2 Upon the occurrence of a Force Majeure Event, the non-performing party shall notify the other party of the occurrence of such event and describe in reasonable detail the effect(s) of such event upon the party's performance of its obligations and duties pursuant to this Agreement. Such notice shall be delivered or otherwise communicated to the other party within three (3) business days following the failure or delay caused by the Force Majeure Event, or as soon as possible after such failure or delay if the Force Majeure Event precludes the non-performing party from providing notice within such time period.
- 15.13.3 In the event of a Force Majeure Event, the time for performance by the parties under the applicable Statement of Services shall be extended for a period of time equal to the time lost by reason of such cause through execution of a change order pursuant to the terms of the Agreement.
- 15.14 **Bankruptcy Rights of County.** All rights and licenses granted under or pursuant to this Agreement or any attachments hereto by Consultant to County are, and shall otherwise be deemed to be, for purposes of Section 365 (n) of the United States Bankruptcy Code (the "Code"), or replacement provision therefore, licenses to rights to "intellectual property" as defined in the Code. The parties agree that County, as licensee of such rights under this Agreement, shall retain and may fully exercise all of its rights and elections under the Code. The parties further agree that, in the event of the commencement of a bankruptcy proceeding by or against Consultant under the Code, County shall be entitled to retain all of its rights under this Agreement.
- 15.15 **Waiver of Breach and Materiality.** Failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.
- 15.16 **Severance.** In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective to the extent practicable unless County or Consultant elects to terminate this Agreement.
- 15.17 **Entire Agreement.** This Agreement contains the entire agreement between Consultant and County. Any modifications to this Agreement shall not be binding unless in writing and signed by both parties.
- 15.18 **Applicable Law, Venue and Waiver of Jury Trial.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Jurisdiction over and venue for any controversies or legal issues arising out of this Agreement shall, if in state court, be exclusively in the 7th Judicial Circuit in and for the County of Volusia, Florida, or, if in federal court, be exclusively in the Middle District of Florida, Orlando Division. By entering into this Agreement, Consultant and the County hereby expressly waive any rights either party may have to a trial by jury of any civil litigation related to this Agreement, and, unless otherwise expressly provided herein, each agrees to bear its own costs and attorney's fees relating to any dispute arising under this Agreement.
- 15.19 **Prior Agreements.** This document represents the final and complete understanding of the Parties and incorporates or supersedes all prior negotiations, correspondence,

conversations, agreements, and understandings applicable to the matters contained herein. The Parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

16 ELECTRONIC SIGNATURES

Vendor acknowledges that William S. Mosakowski, President and CEO (the "Authorized Signatory") is authorized to execute contracts/agreements with the County of Volusia and any affixed electronic or conformed signature of the Authorized Signatory shall be the act of and attributable to the Authorized Signatory. By signing this Agreement electronically, the Authorized Signatory does thereby adopt the electronic or conformed signature as his or her own and designates a copy of same for use as an official record by the County of Volusia.

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17 SIGNATURES

IN WITNESS WHEREOF, the parties have made and executed this Agreement for Medicare Cost Reporting Consulting Services on the date last written below.

Attest:

DocuSigned by:
Meghan Lindsey
4F4F826DE5724F4...

Meghan Lindsey
Administrative Coordinator

Date: 9/9/2021 | 07:48:03 PDT

COUNTY OF

DocuSigned by:
Suzanne Konchan
5014DA79B91E4A1...

BY: Suzanne Konchan
Deputy County Manager

Date: 9/9/2021 | 07:24:29 PDT

Attest:

DocuSigned by:
Alissa Narode
FA2163BEFC9145F...

Alissa Narode
Associate Manager

Date: 8/30/2021 | 09:25:58 PDT

TBD

DocuSigned by:
William Mosakowski
F1468818E195471...

BY: William S. Mosakowski
President & CEO

Date: 8/27/2021 | 14:00:20 CDT

EXHIBIT A

Medicare Cost Reporting Consulting Services

SCOPE OF SERVICES

2.0 Services to be Provided

A. Project Management

1. The Consultant shall review all County materials, data and all required cost reports to ensure compliance with all state and federal reporting guidelines.
2. The Consultant shall keep the County informed of imminent changes related to all Medicare and Medicaid cost-reporting policies.
3. Beginning in 2021, ground ambulance providers and suppliers must submit Medicare cost reports. The Consultant shall provide the County any updates on this program, highlighting reporting requirements, as they become available. When selected to report, the Consultant shall provide Medicare cost-reporting services and audit assistance to meet reporting requirements.
4. Consultant shall consider all data provided as confidential information. Consultant shall not release any confidential information without prior written consent from the County. Consultant shall inform the County, according to Health Insurance Portability and Accountability Act (HIPAA) guidelines, of any breach of confidential information. This includes unintentional data breaches such as mailing to unintended recipients. Consultant activities shall comply with the Standards for Privacy of Individually Identifiable Health Information, Health Insurance Reform Security Standards published by the HIPAA, and Gramm-Leach-Bliley Act (GLB) and Business Associate Agreement - Exhibit B.

B. Medicare Cost Survey

1. The Consultant shall conduct a preliminary preparedness study to ensure all required cost survey data is being captured by the County and municipalities within the County who perform transports under authority of the County by contract. The Consultant shall provide recommendations and help implement processes for collecting any missing information.
2. The Consultant shall complete the Medicare cost survey on the County's behalf which shall include preparation and audit of the Medicare cost survey and all necessary and required supporting documentation. This shall also include the final report and supporting documentation submission to the Center for Medicare and Medicaid Services (CMS).
3. The Consultant shall collect all data necessary from the County and municipalities within the County who perform transports under authority of the County by contract to complete the Medicare cost survey.

4. The Consultant shall provide detailed data analysis on expenditures assessment, unallowable costs adjustments, and utilization statistics verification.
5. The Consultant shall complete the Medicare cost survey development submission package on behalf of the County.
6. The Consultant shall provide all necessary federal audit support.
7. The Consultant shall provide full access to a web-based portal and training resources.

3.0 Additional Services

If services are required, which are related to, but not included in the Scope of Services for the Medicare Cost Reporting Consulting Services, the County may request the Consultant to provide additional services. The County reserves the right to award additional similar services for, and updates to, the previously awarded Scope of Services. All additional services must be preapproved in writing through a written Amendment.



Exhibit B - Fee Schedule

The fee shall remain firm and fixed for the term of the Agreement inclusive of all labor, material and out-of-pocket expenses. There shall be no reimbursable expenses paid by the County. This fees is inclusive of any subconsultants' fees and all subsequent extensions to the Agreement.

Annual Flat Fee for Medicare Cost Reporting	\$35,000.00
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Hourly Rates

Functional Title	Firm Fixed Hourly Rates
Manager	\$310.00
Associate Manager	\$290.00
Senior Consultant	\$270.00
Consultant	\$225.00
Business Analyst	\$175.00
Operations Analyst	\$135.00
Subject Matter Expert	\$200.00

Hourly Rate section may be used for any additional services not know at the time of the solicitation.

**EXHIBIT C
INSURANCE
REQUIREMENTS**

21-SQ-119BB

Required Types of Insurance

The Consultant shall purchase and maintain at its own expense, during the term of the Agreement, the types and amounts of insurance with limits no less than those shown below, in the form and from companies satisfactory to the County are detailed in *Figure 1* below. *Figure 1* is a listing and general summary of insurance policies required and is not intended to be comprehensive as to the requirements of each specific policy. Consultants shall review the additional requirements in this Exhibit C and ensure that the insurance policies comply with the specific terms and conditions therein.

Figure 1:

TYPE OF INSURANCE		
WORKERS COMPENSATION <input checked="" type="checkbox"/> Waiver of Subrogation	Florida Statutory Coverage	
COMMERCIAL GENERAL LIABILITY <input checked="" type="checkbox"/> Occurrence Basis <input checked="" type="checkbox"/> Contractual Liability <input checked="" type="checkbox"/> Waiver of Subrogation <input checked="" type="checkbox"/> County Additional Insured <input checked="" type="checkbox"/> Independent Contractors	EACH OCCURRENCE	\$ 1,000,000
	GENERAL AGGREGATE	\$ 2,000,000
	Premises-Operations	\$ 1,000,000
	Products & Completed Ops	\$ 1,000,000
	Personal & Adv Inj.	\$ 1,000,000
	Fire Damage	\$
		\$
PROFESSIONAL LIABILITY	\$ 1,000,000 per Claim \$ 2,000,000 Aggregate	
CYBER INSURANCE <input checked="" type="checkbox"/> Cyber & Incident Response <input checked="" type="checkbox"/> Network and Information Security & Privacy Liability <input checked="" type="checkbox"/> Third Party Privacy Breach Management Costs	\$1,000,000 per Claim \$2,000,000 Aggregate	
CANCELLATION: Thirty (30) days written notice of cancellation is required to the Certificate Holder:		
Certificate Holder: County of Volusia Purchasing & Contracts Division 123 W. Indiana Avenue, Room 302 DeLand, FL 32720 ATTN: <u>Rebecca Bishop</u>	Risk Management Division _____	

- A. For the purposes of indemnification of the County or an endorsement or insurance coverage under this Agreement/Contract under which the County is a "named insured", "additional named insured", or "additional insured", the term "County" includes the County of Volusia (a body corporate and politic and a subdivision of

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the State of Florida), including its districts, authorities, separate units of government established by law, ordinance or resolution, partners, elected and non-elected officials, employees, agents, volunteers, and any party with whom the County has agreed by contract to provide additional insured status.

- B. Subconsultants and Independent Contractors. All subconsultants & independent contractors utilized by Consultant to provide services to County and its employees under this Agreement/Contract shall be required to maintain all insurance policies with the same terms, conditions, and requirements required of the Consultant in Figure 1 above and described below in this Exhibit.
- C. Claims Made Basis Insurance Policies. All insurance policies written on a Claims Made Form shall maintain a retroactive date prior to or equal to the effective date of the Agreement. The Consultant shall purchase a Supplemental Extended Reporting Period ("SERP") with a minimum reporting period of not less than three (3) years in the event the policy is canceled, not renewed, switched to occurrence form, or any other event which requires the purchase of a SERP to cover a gap in insurance for claims which may arise under or related to the Agreement. The Consultant's purchase of the SERP shall not relieve the Consultant of the obligation to provide replacement coverage. In addition, the Consultant shall require the carrier immediately inform the Consultant, the County Risk Manager, and the Purchasing and Contracts Division of any contractual obligations that may alter its professional liability coverage under the Agreement.
- D. Risk Retention Groups and Pools. Consultant shall not obtain an insurance policy required under this Agreement from a Risk Retention Group or Pool.
- E. Minimum Required Policies and Limits. Minimum underlying policies, coverages, and limits shall include all policies listed in *Figure 1*.
- F. Additional Insured, Policies, Coverages, Limits, Primary and Non-Contributory Basis. Under all insurance policies where the County is required to be an additional insured, the coverage and limits provided to the County under Consultant's insurance policies shall be that listed in *Figure 1* or the Consultant's actual limits, whichever is higher. All coverage provided to the County as an additional insured by said policies shall be primary and shall not be additional to or contributing with any other insurance carried by or for the benefit of the County with any other insurance available to the County. The Consultant shall utilize ISO Form CG 20 38 04 13 and CG 20 37 04 13 or equivalent to provide additional insured status to the County and any party to whom the County is contractually bound to provide additional insured status under a commercial general liability policy.
- G. If the services provided require the disposal of any hazardous or non-hazardous materials off the job site, the disposal site operator must furnish a certificate of insurance for Pollution Legal Liability with coverage for bodily injury and property damage for losses that arise from the facility that is accepting the waste under the Agreement.
- H. Workers' Compensation, Insurance. Workers' Compensation insurance is required for all employees of the Consultant, employed or hired to perform or

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provide work or services under the Agreement or that is in any way connected with work or services performed under the Agreement, without exclusion for any class of employee, and shall comply fully with the Florida Workers' Compensation Law (Chapter 440, Florida Statutes, Workers' Compensation Insurance) and include Employers' Liability Insurance with limits no less than the statutory. Policy shall include a waiver of subrogation in favor of the County. If Consultant is using a "leased employee" or an employee obtained through a professional employer organization ("PEO"), Consultant is required to have such employees covered by worker's compensation insurance in accordance with Florida Worker's Compensation law and the insurance carrier of the PEO execute a waiver of subrogation in favor of the County, its employees and insurers.

- i. Consultant and its Subconsultants, or any associated or subsidiary company doing work on County property or under the Agreement must be named in the Workers' Compensation coverage or provide proof of their own Workers' Compensation coverage, without exclusion of any class of employee, and with a minimum of the statutory limits per occurrence for Employer's liability coverage. Further, if the Consultant's Subconsultants fail to obtain Workers' Compensation insurance and a claim is made against the County by the uncovered employee of said Subconsultant of the Consultant, the Consultant shall indemnify, defend, and hold harmless the County from all claims for all costs including attorney's fees and costs arising under said employee(s) Workers' Compensation insurance claim(s).

- I. Commercial General Liability Insurance. The Consultant shall acquire and maintain Commercial General Liability insurance, with limits of not less than the amounts shown above. Consultant shall not obtain an insurance policy wherein the policy limits are reduced by defense and claim expenses. Such insurance shall be issued on an occurrence basis and include coverage for the Consultant's operations, independent Consultants, Subconsultants and "broad form" property damage coverages protecting itself, its employees, agents, Consultants or subsidiaries, and their employees or agents for claims for damages caused by bodily injury, property damage, or personal or advertising injury, and products liability/completed operations including what is commonly known as groups A, B, and C. Such policies shall include coverage for claims by any person as a result of actions directly or indirectly related to the employment of such person or entity by the Consultant or by any of its Subconsultants arising from work or services performed under the Agreement. Public liability coverage shall include either blanket contractual insurance or a designated contract contractual liability coverage endorsement, indicating expressly the Consultant's Agreement to indemnify, defend and hold harmless the County as provided in the Agreement. The commercial general liability policy shall provide coverage to County when it is required to be named as an additional insured either by endorsement or pursuant to a blanket additional insured endorsement, for those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01), as filed for use in the State of Florida by the Insurance Services Office, without the attachment of any endorsements excluding or limiting coverage for Bodily Injury, Property Damage, Products/Completed Operations, Independent Consultants, Property of County in

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Contractor's Care, Custody or Control or Property of County on which contracted operations are being performed, Explosion, Collapse or Underground hazards (XCU Coverage, Contractual Liability or Separation of Insureds. When County is added as additional insured by endorsement, ISO Endorsements CG 20 38 and CG 20 37 or their equivalent shall be used and shall provide such additional insured status that is at least as broad as ISO form CG 20 10 11 85. If County has agreed by separate contract to require Consultant to name another party as an additional insured, Consultant shall add said party as an additional insured to the commercial general liability policy by ISO Endorsement CG 20 38. Consultant shall require its Subconsultants performing work under this Agreement to add the County and any other party that the County has agreed by separate contract to require Consultant to name as an additional insured to their Commercial General Liability policy as an additional insured by ISO Endorsement CG 20 38. All commercial general liability policies shall provide a waiver of subrogation in favor of the County and any other party required by this Agreement to be named as an additional insured.

- J. Motor Vehicle Liability. The Consultant shall secure and maintain during the term of the Agreement motor vehicle coverage in the split limit amounts of no less than the amounts shown in *Figure 1* per person, per occurrence for bodily injury and for property damage or a combined single limit of the amount shown above **with "Any Auto", Coverage Symbol 1, providing coverage for all autos operated regardless of ownership, and** protecting itself, its employees, agents or lessees, or subsidiaries and their employees or agents against claims arising from the ownership, maintenance, or use of a motor vehicle. The County shall be an additional insured under this policy when required in *Figure 1*.
- K. Professional Liability. The Consultant shall ensure that it secures and maintains, during the term of the Agreement, Professional Liability insurance with limits of no less than the amount shown above. Such policy shall cover all the Consultant's or its Subconsultant's professional liabilities whether occasioned by the Consultant or its Subconsultants, or its agents or employees [and broad enough to include errors and omissions specific to Consultant's professional liability for direct and contingent design errors and Architect's/Engineers professional liability with no exclusions for design-build work]. The County shall be an additional insured under this policy when required in *Figure 1*.

If the Consultant fails to secure and maintain the professional liability insurance coverage required herein, the Consultant shall be liable to the County and agrees to indemnify, defend, and hold harmless the County against all claims, actions, losses or damages that would have been covered by such insurance.

- L. Cyber Insurance. The Consultant shall secure and maintain during the term of the Agreement data privacy and network security liability insurance, with a limit of not less than the amounts shown above with an aggregate limit and per occurrence basis, with coverage for (a) data breaches by the Consultant or anyone causing the loss of use of electronic data; loss of personally identifiable information or County confidential information; violations of privacy regulations associated with the control and use of personally identifiable financial, medical or other sensitive information including but not limited to HITECH; HIPPA; Gramm-Leach Bliley Act

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of 1999; Florida Breach of Security Act (Section 817.5681, Florida Statutes (2012)); the Federal Trade Commission Act (15 U.S.C. 45(a)); violations of the identity Red Flags under the Fair and Accurate Credit Transactions Act of 2003; (c) violations of any state, federal or foreign identity theft or privacy protection, notification and credit monitoring statutes (including any amendments thereto); (d) online defamation, advertising, libel, and slander-related exposures as well as emerging Web 2.0 liabilities created by casual users of third parties accessing Consultant's web site(s) or computer systems through eMedia and the Internet; (e) network security breaches for failure of security measures to prevent a denial of service, unauthorized access, theft of electronic data, and inadvertent transmission of a virus or other malicious code; (f) infringement of intellectual property rights (e.g., patent, copyright, or trademark) in any telecommunications medium (e.g., cell phones, modems, text, videos, images, blogs, etc.) which result in a loss of County revenue or expense to the County due to a covered network outage or computer system loss; (f) cyber investigation expense incurred to investigate a data privacy or network security wrongful act; and, (g) cyber extortion for expenses incurred in the event of an extortion threat to cause a data privacy or network security wrongful act.

- M. Primary and Excess Coverage. Any insurance required may be provided by primary and excess insurance policies.

1. Insurance Requirements

A. General Insurance Requirements:

- i. All insurance policies shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all insuring companies are required to have a minimum rating of A- and a Financial category size of VIII or greater in the "Best Key Rating Guide" published by A.M. Best & Company, Inc.
- ii. Approval by County of any policy of insurance shall not relieve Consultant from its responsibility to maintain the insurance coverage required herein for the performance of work or services by the Consultant or its Subconsultants for the entire term of the Agreement and for such longer periods of time as may be required under other clauses of the Agreement.
- iii. Waiver of Subrogation. The Consultant hereby waives all rights against the County and its Subconsultants for damages by reason of any claim, demand, suit or settlement (including workers' compensation) for any claim for injuries or illness of anyone, or perils arising out of the Agreement. The Consultant shall require similar waivers from all its Subconsultants. Consultant's insurance policies shall include a waiver of subrogation in favor of the County. This provision applies to all policies of insurance required under the Agreement (including Workers' Compensation, and general liability).
- iv. County Not Liable for Paying Deductibles. For all insurance required by Consultant, the County shall not be responsible or liable for paying

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deductibles for any claim arising out of or related to the Consultant's business or any Subconsultant performing work or services on behalf of the Consultant or for the Consultant's benefit under the Agreement.

- v. Cancellation Notices. During the term of the Agreement, Consultant shall be responsible for promptly advising and providing the County Risk Manager and the Purchasing and Contracts divisions with copies of notices of cancellation or any other changes in the terms and conditions of the original insurance policies approved by the County under the Agreement within two (2) business days of receipt of such notice or change.
- vi. Deductibles. Consultants that maintain and administer a self-insured retention or a large deductible program exceeding the insurance requirements listed in this solicitation using a formal program to fund either program may submit an exception in accordance with Section 3.8 of RSQ #21-P-119BB, Questions, Exceptions, and Addenda, to be considered for this solicitation.

The request must include a summary of the program's design, funding method, and the program's supporting financial information. If additional information is necessary, the County will request more specific information, which must be provided by the Consultant. The County Risk Manager will review the information submitted and determine whether the program is acceptable to the County.

Consultants with no formal risk management program in place to manage and fund deductibles or self-insured retentions may not be considered. Subject to County approval, Consultant may obtain a letter of credit in the amount equivalent to the deductible, which shall remain in effect during the term of the Agreement at no additional cost to the County.

- vii. Consultant's obligations or services shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity or insurance defense of additional or named insureds which would otherwise exhaust or be unavailable as to a party or person described in this Agreement.

2. Proof of Insurance

- A. The Consultant shall be required to furnish evidence of all required insurance in the form of certificates of insurance, which shall clearly outline all hazards covered as itemized herein, the amounts of insurance applicable to each hazard and the expiration dates.
- B. The Consultant shall furnish proof of insurance acceptable to the County prior to or at the time of execution of the Agreement and the Consultant shall not commence work or provide any service until the Consultant has obtained all the insurance required under the Agreement and such insurance has been filed with and approved by the County. Upon request from the County, the Consultant shall furnish copies of all requested policies and any changes or amendments thereto, immediately, to the County, the County Risk Manager, and Purchasing and

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Contracts Divisions, prior to the commencement of any contractual obligations. The Agreement may be terminated by the County, without penalty or expense to County, if at any time during the term of the Agreement proof of any insurance required hereunder is not provided to the County.

- C. All certificates of insurance shall clearly indicate that the Consultant has obtained insurance of the type, amount and classification required by this Section. No work or services by Consultant or its Subconsultants shall be commenced until County has approved these policies or certificates of insurance. Further, the Consultant agrees that the County shall make no payments pursuant to the terms of the Agreement until all required proof or evidence of insurance has been provided to the County. The Agreement may be terminated by the County, without penalty or expense, if proof of any insurance required hereunder is not provided to the County.
 - D. The Consultant shall file replacement certificates with the County at the time of expiration or termination of the required insurance occurring during the term of the Agreement. In the event such insurance lapses, the County expressly reserves the right to renew the insurance policies at the Consultant's expense or terminate the Agreement but County has no obligation to renew any policies.
3. The provisions of this Exhibit C, shall survive the cancellation or termination of the Agreement.

HIPAA Business Associate Agreement

1. PREAMBLE AND DEFINITIONS.

1.1 Pursuant to the Health Insurance Portability and Accountability Act of 1996, as amended ("**HIPAA**"), the County of Volusia ("**Covered Entity**") and Public Consulting Group LLC, or any of its corporate affiliates ("**Business Associate**"), a Delaware Limited Liability Company, enter into this Business Associate Agreement ("**BAA**") as of the earlier of the effective date of the Underlying Agreement (as defined below) or the date of full execution of this BAA (the "**Effective Date**") that addresses the HIPAA requirements with respect to "business associates," as defined under the privacy, security, breach notification, and enforcement rules at 45 C.F.R. Part 160 and Part 164 ("**HIPAA Rules**"). A reference in this BAA to a section in the HIPAA Rules means the section as in effect or as amended.

1.2 This BAA is intended to ensure that Business Associate will establish and implement appropriate safeguards for the Protected Health Information ("**PHI**") (as defined under the HIPAA Rules) that Business Associate may receive, create, maintain, use, or disclose in connection with the functions, activities, and services that Business Associate performs for Covered Entity. The functions, activities, and services that Business Associate performs for Covered Entity are defined in **MEDICARE COST REPORTING & MEDICAID REIMBURSEMENT CONSULTING SERVICES** (the "**Underlying Agreement**").

1.3 Pursuant to changes required under the Health Information Technology for Economic and Clinical Health Act of 2009 (the "**HITECH Act**") and under the American Recovery and Reinvestment Act of 2009 ("**ARRA**"), this BAA also reflects federal breach notification requirements imposed on Business Associate when "Unsecured PHI" (as defined under the HIPAA Rules) is acquired by an unauthorized party, and the expanded privacy and security provisions imposed on business associates.

1.4 Unless the context clearly indicates otherwise, the following terms in this BAA shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, disclosure, Electronic Media, Electronic Protected Health Information (ePHI), Health Care Operations, individual, Minimum Necessary, Notice of Privacy Practices, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured PHI, and use.

1.5 A reference in this BAA to the Privacy Rule means the Privacy Rule, in conformity with the regulations at 45 C.F.R. Parts 160-164 (the "**Privacy Rule**") as interpreted under applicable regulations and guidance of general application published by HHS, including all amendments thereto for which compliance is required, as amended by the HITECH Act, ARRA, and the HIPAA Rules.

2. GENERAL OBLIGATIONS OF BUSINESS ASSOCIATE.

2.1 Business Associate agrees not to use or disclose PHI, other than as permitted or required by this BAA or as Required By Law, or if such use or disclosure does not otherwise cause a Breach of Unsecured PHI.

2.2 Business Associate agrees to use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to ePHI, to prevent use or disclosure of PHI other than as provided for by the BAA.

2.3 Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate as a result of a use or disclosure of PHI by Business Associate in violation of this BAA's requirements or that would otherwise cause a Breach of Unsecured PHI.

2.4 The Business Associate agrees to the following breach notification requirements:

(a) Business Associate agrees to report to Covered Entity any Breach of Unsecured PHI not provided for by the BAA of which it becomes aware within 20 calendar days of "discovery" within the meaning of the HITECH Act. Such notice shall include the identification of each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed in connection with such Breach. In addition, Business Associate shall provide any additional information reasonably requested by Covered Entity for purposes of investigating the Breach and any other available information that Covered Entity is required to include to the individual under 45 C.F.R. § 164.404(c) at the time of notification or promptly thereafter as information becomes available. Business Associate's notification of a Breach of Unsecured PHI under this Section shall comply in all respects with each applicable provision of Section 13400 of Subtitle D (Privacy) of ARRA, the HIPAA Rules and related guidance issued by the Secretary or the delegate of the Secretary from time to time.

(b) In the event of Business Associate's use or disclosure of Unsecured PHI in violation of HIPAA, the HITECH Act, or ARRA, Business Associate bears the burden of demonstrating that notice as required under this Section 2.4 was made, including evidence demonstrating the necessity of any delay, or that the use or disclosure did not constitute a Breach of Unsecured PHI.

2.5 Business Associate agrees, in accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, to require that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information.

2.6 Business Associate agrees to make available PHI in a Designated Record Set to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.524.

(a) Business Associate agrees to comply with an individual's request to restrict the disclosure of their personal PHI in a manner consistent with 45 C.F.R. § 164.522, except where such use, disclosure, or request is required or permitted under applicable law.

(b) Business Associate agrees to charge fees related to providing individuals access to their PHI in accordance with 45 C.F.R. § 164.524(c)(4).

(c) Business Associate agrees that when requesting, using, or disclosing PHI in accordance with 45 C.F.R. § 164.502(b)(1) that such request, use, or disclosure shall be to the minimum extent necessary, including the use of a "limited data set" as defined in 45 C.F.R. § 164.514(e)(2), to accomplish the intended purpose of such request, use, or disclosure, as interpreted under related guidance issued by the Secretary from time to time.

2.7 Business Associate agrees to make any amendments to PHI in a Designated Record Set as directed or agreed to by the Covered Entity pursuant to 45 C.F.R. § 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.526.

2.8 Business Associate agrees to maintain and make available the information required to provide an accounting of disclosures to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.528.

2.9 Business Associate agrees to make its internal practices, books, and records, including policies and procedures regarding PHI, relating to the use and disclosure of PHI and Breach of any Unsecured PHI received from Covered Entity, or created or received by the Business Associate on behalf of Covered Entity, available to Covered Entity (or the Secretary) for the purpose of Covered Entity or the Secretary determining compliance with the Privacy Rule (as defined in Section 8).

2.10 To the extent that Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, Business Associate agrees to comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).

2.11 Business Associate agrees to account for the following disclosures:

(a) Business Associate agrees to maintain and document disclosures of PHI and Breaches of Unsecured PHI and any information relating to the disclosure of PHI and Breach of Unsecured PHI in a manner as would be required for Covered Entity to respond to a request by an individual or the Secretary for an accounting of PHI disclosures and Breaches of Unsecured PHI.

(b) Business Associate agrees to provide to Covered Entity, or to an individual at Covered Entity's request, information collected in accordance with this Section 2.11, to permit Covered Entity to respond to a request by an individual or the Secretary for an accounting of PHI disclosures and Breaches of Unsecured PHI.

(c) Business Associate agrees to account for any disclosure of PHI used or maintained as an Electronic Health Record (as defined in Section 5) ("**EHR**") in a manner consistent with 45 C.F.R. § 164.528 and related guidance issued by the Secretary from time to time; provided that an individual shall have the right to receive

an accounting of disclosures of EHR by the Business Associate made on behalf of the Covered Entity only during the three years prior to the date on which the accounting is requested from Covered Entity.

(d) In the case of an EHR that the Business Associate acquired on behalf of the Covered Entity as of January 1, 2009, paragraph (c) above shall apply to disclosures with respect to PHI made by the Business Associate from such EHR on or after January 1, 2014. In the case of an EHR that the Business Associate acquires on behalf of the Covered Entity after January 1, 2009, paragraph (c) above shall apply to disclosures with respect to PHI made by the Business Associate from such EHR on or after the later of January 1, 2011, or the date that it acquires the EHR.

2.12 Business Associate agrees to comply with the "Prohibition on Sale of Electronic Health Records or Protected Health Information," as provided in Section 13405(d) of Subtitle D (Privacy) of ARRA, and the "Conditions on Certain Contacts as Part of Health Care Operations," as provided in Section 13406 of Subtitle D (Privacy) of ARRA and related guidance issued by the Secretary from time to time.

2.13 Business Associate acknowledges that, effective on the Effective Date of this BAA, it shall be liable under the civil and criminal enforcement provisions set forth at 42 U.S.C. § 1320d-5 and 1320d-6, as amended, for failure to comply with any of the use and disclosure requirements of this BAA and any guidance issued by the Secretary from time to time with respect to such use and disclosure requirements.

3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE.

3.1 General Uses and Disclosures. Business Associate agrees to receive, create, use, or disclose PHI only in a manner that is consistent with this BAA, the Privacy Rule, or Security Rule (as defined in Section 5) and only in connection with providing services to Covered Entity; provided that the use or disclosure would not violate the Privacy Rule, including 45 C.F.R. § 164.504(e), if the use or disclosure would be done by Covered Entity. For example, the use and disclosure of PHI will be permitted for "treatment, payment, and health care operations," in accordance with the Privacy Rule.

3.2 Business Associate may use or disclose PHI as Required By Law.

3.3 Business Associate agrees to make uses and disclosures and requests for PHI: Consistent with Covered Entity's Minimum Necessary policies and procedures.

3.4 Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by the Covered Entity.

4. OBLIGATIONS OF COVERED ENTITY.

4.1 Covered Entity shall:

(a) Provide Business Associate with the Notice of Privacy Practices that Covered Entity produces in accordance with the Privacy Rule, and any changes or

limitations to such notice under 45 C.F.R. § 164.520, to the extent that such changes or limitations may affect Business Associate's use or disclosure of PHI.

(b) Notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to or is required to comply with under 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI under this BAA.

(c) Notify Business Associate of any changes in or revocation of permission by an individual to use or disclose PHI, if such change or revocation may affect Business Associate's permitted or required uses and disclosures of PHI under this BAA.

4.2 Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy and Security Rule if done by Covered Entity, except as provided under Section 3 of this BAA.

5. COMPLIANCE WITH SECURITY RULE.

5.1 Effective April 20, 2005, Business Associate shall comply with the HIPAA Security Rule, which shall mean the Standards for Security of Electronic Protected Health Information at 45 C.F.R. Part 160 and Subparts A and C of Part 164, as amended by ARRA and the HITECH Act. The term "**Electronic Health Record**" or "**EHR**" as used in this BAA shall mean an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.

5.2 In accordance with the Security Rule, Business Associate agrees to:

(a) Implement the administrative safeguards set forth at 45 C.F.R. § 164.308, the physical safeguards set forth at 45 C.F.R. § 164.310, the technical safeguards set forth at 45 C.F.R. § 164.312, and the policies and procedures set forth at 45 C.F.R. § 164.316 to reasonably and appropriately protect the confidentiality, integrity, and availability of the ePHI that it creates, receives, maintains, or transmits on behalf of Covered Entity as required by the Security Rule. Business Associate acknowledges that, effective on the Effective Date of this BAA, (a) the foregoing safeguards, policies, and procedures requirements shall apply to Business Associate in the same manner that such requirements apply to Covered Entity, and (b) Business Associate shall be liable under the civil and criminal enforcement provisions set forth at 42 U.S.C. § 1320d-5 and 1320d-6, as amended from time to time, for failure to comply with the safeguards, policies, and procedures requirements and any guidance issued by the Secretary from time to time with respect to such requirements;

(b) Require that any agent, including a Subcontractor, to whom it provides such PHI agrees to implement reasonable and appropriate safeguards to protect the PHI; and

(c) Report to the Covered Entity any Security Incident of which it becomes aware.

6. INDEMNIFICATION.

The parties agree and acknowledge that except as set forth herein, the indemnification obligations contained under the Underlying Agreement shall govern each party's performance under this BAA.

7. TERM AND TERMINATION.

7.1 This BAA shall be in effect as of the Effective Date, and shall terminate on the earlier of the date that:

(a) Either party terminates for cause as authorized under Section 7.2.

(b) All of the PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity. If it is not feasible to return or destroy PHI, protections are extended in accordance with Section 7.3.

7.2 Upon either party's knowledge of material breach by the other party, the non-breaching party shall provide an opportunity for the breaching party to cure the breach or end the violation; or terminate the BAA. If the breaching party does not cure the breach or end the violation within a reasonable timeframe not to exceed 10 days from the notification of the breach, or if a material term of the BAA has been breached and a cure is not possible, the non-breaching party may terminate this BAA and the Underlying Agreement, upon written notice to the other party.

7.3 Upon termination of this BAA for any reason, the parties agree that:

Upon termination of this BAA for any reason, Business Associate, with respect to PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:

(a) Retain only that PHI that is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities.

(b) Return to Covered Entity or, if agreed to by Covered Entity, destroy the remaining PHI that the Business Associate still maintains in any form.

(c) Continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to ePHI to prevent use or disclosure of the PHI, other than as provided for in this Section 7, for as long as Business Associate retains the PHI.

(d) Not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out at paragraphs (2) and (3) above which applied prior to termination.

(e) Return to Covered Entity or, if agreed to by Covered Entity, destroy the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

7.4 The obligations of Business Associate under this Section 7 shall survive the termination of this BAA.

8. MISCELLANEOUS.

8.1 The parties agree to take such action as is necessary to amend this BAA to comply with the requirements of the Privacy Rule, the Security Rule, HIPAA, ARRA, the HITECH Act, the HIPAA Rules, and any other applicable law.

8.2 The respective rights and obligations of Business Associate under Section 6 and Section 7 of this BAA shall survive the termination of this BAA.

8.3 This BAA shall be interpreted in the following manner:

(a) Any ambiguity shall be resolved in favor of a meaning that permits Covered Entity to comply with the HIPAA Rules.

(b) Any inconsistency between the BAA's provisions and the HIPAA Rules, including all amendments, as interpreted by the HHS, a court, or another regulatory agency with authority over the Parties, shall be interpreted according to the interpretation of the HHS, the court, or the regulatory agency.

(c) Any provision of this BAA that differs from those required by the HIPAA Rules, but is nonetheless permitted by the HIPAA Rules, shall be adhered to as stated in this BAA.

8.4 This BAA constitutes the entire agreement between the parties related to the subject matter of this BAA, except to the extent that the Underlying Agreement imposes more stringent requirements related to the use and protection of PHI upon Business Associate. This BAA supersedes all prior negotiations, discussions, representations, or proposals, whether oral or written. This BAA may not be modified unless done so in writing and signed by a duly authorized representative of both parties. If any provision of this BAA, or part thereof, is found to be invalid, the remaining provisions shall remain in effect.

8.5 This BAA will be binding on the successors and assigns of the Covered Entity and the Business Associate. However, this BAA may not be assigned, in whole or in part, without the written consent of the other party. Any attempted assignment in violation of this provision shall be null and void.

8.6 This BAA may be executed in two or more counterparts, each of which shall be deemed an original.

8.7 Except to the extent preempted by federal law, this BAA shall be governed by and construed in accordance with the same internal laws as that of the Underlying Agreement.

8.8 **Sovereign Immunity.** To the extent permissible by law, the Covered Entity expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes. Notwithstanding anything set forth in any article of this BAA to the contrary, nothing in this BAA shall be deemed as a waiver of the Covered Entity's immunity or limits of liability beyond any statutory limited waiver of immunity or limits of liability that may have been or may be adopted by the Florida Legislature, and the cap on the amount and liability of the Covered Entity for damages, regardless of the number or nature of claims in tort, equity, or contract, shall not exceed the dollar amount set by the legislature for tort. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against the Covered Entity, which claim would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

IN WITNESS WHEREOF, the parties hereto have executed this BAA as of the last date indicated below:

Attest:

COUNTY OF VOLUSIA

DocuSigned by:
Meghan Lindsey
4F4F826DE5724F4...

DocuSigned by:
Suzanne Konchan
5014DA79B91E4A1...

Meghan Lindsey
Administrative Coordinator

BY: Suzanne Konchan
Deputy County Manager

Date: 9/9/2021 | 07:48:03 PDT

Date: 9/9/2021 | 07:24:29 PDT

Attest:

TBD

DocuSigned by:
Alissa Narode
FA2163BEFC9145F...

DocuSigned by:
William Mosakowski
F1468818E195471...

Alissa Narode
Associate Manager

BY: William S. Mosakowski
President & CEO

Date: 8/30/2021 | 09:25:58 PDT

Date: 8/27/2021 | 14:00:20 CDT