

- D. Upon completion of this Contract, transfer to City at no cost all public records in possession of Contractor or keep and maintain public records required by City to perform the service. If Contractor transfers all public records to City upon completion of this Contract, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Contractor keeps and maintains public records upon completion of this Contract, Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to City upon request from City's custodian of public records in a format that is compatible with City's information technology systems.

The above requirements apply to a "Contractor" as defined in Section, 119.0701, Florida Statutes.

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS AT (904) 630-7678; PRR@COJ.NET; CITY OF JACKSONVILLE, PUBLIC RECORDS REQUEST, 214 N. HOGAN STREET, SUITE 1180, JACKSONVILLE, FLORIDA 32202.

C.31 Assignment. City and Contractor each binds itself and its respective successors and assigns in all respects to all of the terms, conditions, covenants, and provisions of the Contract. Contractor shall not sell, assign, or transfer any of its rights (including rights to payment), duties, or obligations under this Contract without the prior written consent of City. In the event of any assignment, Contractor shall remain liable for performance of this Contract unless City expressly waives such liability. City may assign this Contract with prior written notice to Contractor of its intent to do so. Nothing herein shall be construed as creating any personal liability on the part of any officer, employee, or agent of City.

C.32 Notice and Approval of Changes in Ownership. Because the award of this Contract may have been predicated upon Contractor's ownership structure, Contractor agrees that any transfer of a substantial interest in Contractor by any of its owners shall require City's prior written approval, which approval shall not be unreasonably withheld or unreasonably delayed. By execution of the Contract, Contractor represents that it has no knowledge of any intent to transfer a substantial interest in Contractor. A substantial interest shall mean at least 25% of the voting shares in Contractor. This Section shall not apply to (i) transfers occurring upon the incapacitation or death of an owner; (ii) transfers associated with an initial public offering on the NYSE or NASDAQ markets; or, (iii) transfers to a company whose stock is publicly traded on the NYSE or NASDAQ markets.

C.33 Assignment of Antitrust Claims. Contractor and City recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by City. Therefore, Contractor hereby assigns to City any and all claims under the antitrust laws of Florida or the United States for overcharges of goods, materials, or services purchased in connection with the Contract.

C.34 Equal Employment Opportunity. The Equal Opportunity clause in Title 41, Part 60-1.4 of the Code of Federal Regulations (Paragraphs 1 through 7 of President's Executive Order 11246), the provisions of the Equal Opportunity for Individuals with Disabilities Act in 42 U.S.C. Section 12112, the Listing of Employment Openings for Veterans Clause in Title 41, Part 50-260.2 of the Code of Federal Regulations, and the Disabled Veterans and Veterans of the Vietnam Era Clause in Title 41, Part 60-250.5 of the Code of Federal Regulations are incorporated herein by reference if and to the extent applicable. If Contractor is exempt from any of the above-cited terms, written evidence of such exempt status must be provided to City.

C.35 Other Non-Discrimination Provisions. As required by Section 126.404, *Ordinance Code*, contractor represents that it has adopted and will maintain throughout the term of this contract a policy of nondiscrimination or nonharassment against any person with regard to race, color, sex (including pregnancy), sexual orientation, gender identity or expression, religion, political affiliation, national origin, disability, age, marital status, veteran status, or any other impermissible factor in recruitment, hiring, compensation, training, placement, promotion, discipline, demotion, transfers, layoff, recall, termination, working conditions, and related terms and conditions of employment. Contractor agrees that on written request, it will permit reasonable access to its records of employment, employment advertisement, application forms, and other pertinent data and records by the Executive Director of the Community Relations Commission or successor agency or commission for the purpose of investigation to ascertain compliance with the non-discrimination provisions of the Contract; *provided however*, that Contractor shall not be required to produce for inspection records covering periods of time more than one (1) year prior to the effective date of the Contract. Contractor agrees that if any of the products or Services to be provided pursuant to this Contract are to be provided by a subcontractor, the provisions of this section shall be incorporated into and become a part of the subcontract.

C.36 Prompt Payment to Subcontractors and Suppliers. The following is required by Chapter 126, Part 6, *Ordinance Code*; provided however, if Contractor does not use JSEB or MBE subcontractors, as identified below, this Section C.36 shall not apply:

(a) *Generally.* When Contractor receives payment from City for labor, services or materials furnished by subcontractors and suppliers hired by Contractor, Contractor shall remit payment due (less proper retainage) to those subcontractors and suppliers within fifteen (15) calendar days after Contractor's receipt of payment from City. Nothing herein shall prohibit

Contractor from disputing, pursuant to the terms hereof, all or any portion of a payment alleged to be due to its subcontractors and suppliers. In the event of such dispute, Contractor may dispute the disputed portion of any such payment only after Contractor has provided notice to the City and to the subcontractor or supplier whose payment is in dispute, which notice shall: (i) be in writing; (ii) state the amount in dispute; (iii) specifically describe the actions required to cure the dispute; and (iv) be delivered to City and said subcontractor or supplier within ten (10) calendar days after Contractor's receipt of payment from City. Contractor shall pay all undisputed amounts due within the time limits imposed by this Section.

(b) *Jacksonville Small and Emerging Business Enterprise and Minority Business Enterprise Participation.* Notwithstanding Chapter 126, Part 6, *Ordinance Code*, Contractor shall pay all contracts awarded with certified Jacksonville Small and Emerging Business Enterprises ("JSEB") and Minority Business Enterprises ("MBE"), as defined therein, their pro rata share of their earned portion of the progress payments made by City under this Contract within seven (7) business days after Contractor's receipt of payment from City (less proper retainage). The pro-rata share shall be based on all work completed, materials and equipment furnished, or services performed by the certified JSEB or MBE at the time of payment. As a condition precedent to progress and final payments to Contractor, Contractor shall provide to City with its requisition for payment documentation that sufficiently demonstrates that Contractor has made proper payments to its certified JSEBs or MBEs from all prior payments Contractor has received from City. Contractor shall not unreasonably withhold payments to certified JSEBs and MBEs if such payments have been made to Contractor. If Contractor withholds payment to its certified JSEBs or MBEs, which payment has been made by City to Contractor, Contractor shall return said payment to City. Contractor shall provide notice to City and to the certified JSEBs or MBEs whose payment is in dispute, which notice shall: (i) be in writing; (ii) state the amount in dispute; (iii) specifically describe the actions required to cure the dispute; and, (iv) be delivered to City and said JSEBs or MBEs within five (5) calendar days after Contractor's receipt of payment from City. Contractor shall pay all undisputed amounts due within the time limits imposed in this section. The failure to pay undisputed amounts to the JSEBs or MBEs within seven (7) business days shall be a breach of the Contract, compensable by one per-cent (1%) of the outstanding invoice's being withheld by City, not as a penalty, but as liquidated damages to compensate for the additional contract administration by City.

(c) *Third Party Liability.* The Prompt Payment requirements hereunder shall in no way create any contractual relationship or obligation between City and any subcontractor, supplier, JSEB, MBE, or any third party or create any City liability for Contractor's failure to make timely payments hereunder. However, Contractor's failure to comply with the Prompt Payment requirements shall constitute a material breach of Contractor's contractual obligations to City. As a result of said breach, City, without waiving any other available remedy it may have against Contractor, may (i) issue joint checks and (ii) charge Contractor a 0.2% daily late payment charge

or the charges specified in said Chapter 126, *Ordinance Code*, for JSEBs or MBEs and in Chapter 218, Florida Statutes, for non-JSEBs or non-MBEs, whichever is greater.

C.37 Conflicts of Interest. Contractor acknowledges that Section 126.112, *Ordinance Code*, requires that a public official who has a financial interest in a bid or contract make a disclosure at the time that the bid or contract is submitted or at the time that the public official acquires a financial interest in the bid or contract, including but not limited to the public official's name, public office or position held, bid or proposal number, and the position or relationship of the public official with the bidder or contractor.

C.38 Contingent Fees Prohibited. In conformity with Section 126.306, *Ordinance Code*, Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona-fide employee working solely for Contractor, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of the Contract. For the breach or violation of these provisions, City shall have the right to terminate this Contract without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

C.39 Truth in Negotiation Certificate. Pursuant to Section 126.305, *Ordinance Code*, the execution of this Contract by Contractor shall be deemed to be a simultaneous execution of a Truth-In-Negotiation Certificate, whereby Contractor states that the wage rates and other factual unit costs supporting the compensation hereunder are accurate, complete, and current at the time of contracting. Further, Contractor agrees that the compensation hereunder shall be adjusted to exclude any significant sums where City determines the contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs, provided that any and all such adjustments shall be made within one (1) year following the completion date of the Contract.

C.40 Compliance with Applicable Laws. Contractor (and any subcontractors) must comply with all applicable federal, state and local laws, rules, and regulations as the same exist and as may be amended from time to time, including but not limited to:

- 1 Chapter 119, Florida Statutes (the Florida Public Records Law);
- 2 Section 286.011, Florida Statutes (the Florida Sunshine Law);
- 3 Chapter 602, Jacksonville Ordinance Code (the Jacksonville Ethics Code);
- 4 Chapter 126, Jacksonville Ordinance Code (the Jacksonville Purchasing Code); and
- 5 All licensing and certification requirements applicable to performing the Services.

C.41 Cooperative Purchasing. Pursuant to their own governing laws, and subject to the agreement of Contractor, other entities may be permitted to make purchases at the terms and on

the conditions contained herein. These purchases are independent of the agreement between City and Contractor, and City shall not be a party to such transactions.

C.43 Warranty of Ability to Perform. Contractor warrants that (i) it is ready, willing, and able to perform its obligations under the Contract, and (ii) to the best of Contractor's knowledge, there are no pending or threatened actions, proceedings, investigations, or any other legal or financial conditions that would in any way prohibit, restrain, or diminish Contractor's ability to satisfy its Contract obligations. Contractor shall immediately notify City in writing if its ability to perform is compromised in any manner during the term of the Contract.

C.43 Warranty of Authority to Sign Contract. Each person signing this Contract warrants that he or she is duly authorized to do so and to bind the respective party to the Contract.

C.44 Governing State Law/Severability/Venue/Waiver of Jury Trial. The rights, obligations, and remedies of the parties as specified under this Contract shall be interpreted and governed in all aspects by the laws of the State of Florida. Should any provision of this Contract be determined by the courts to be illegal, unenforceable, or in conflict with any applicable law, the validity of the remaining provisions shall not be impaired. Venue for litigation of this Contract shall be exclusively in courts of competent jurisdiction located in Jacksonville, Duval County, Florida. The parties waive any and all rights to a jury trial with respect to disputes arising under the Contract.

C.45 Construction. Both parties acknowledge that they have had the opportunity to provide meaningful input into the terms and conditions contained in the Contract. Therefore, any doubtful or ambiguous provisions contained herein shall not be construed against the party who physically prepared the Contract. Article headings appearing herein are inserted for convenience or reference only and shall in no way be construed to be interpretations of text.

C.46 Scrutinized Companies.

(a) Pursuant to Section 287.135(2), *Florida Statutes*, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with an agency or local government entity for goods or services of:

- (1) Any amount if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, Contractor is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, *Florida Statutes*, or is engaged in a boycott of Israel; or
- (2) One million dollars or more if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, Contractor:
 - i. Is 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 Section 215.473, *Florida Statutes*; or

ii. Is engaged in business operations in Cuba or Syria.

(b) Pursuant to Section 287.135(3)(a)4, *Florida Statutes*, City may terminate this Contract at City's option if this Contract is for goods or services in an amount of one million dollars or more and Contractor:

- (1) Is found to have submitted a false certification under Section 287.135(5), *Florida Statutes*;
- (2) 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 created pursuant to Section 215.473, *Florida Statutes*;
- (3) Is engaged in business operations in Cuba or Syria.

(c) Pursuant to Section 287.135(3)(b), *Florida Statutes*, City may terminate this Contract at City's option if this Contract is for goods and services of any amount and Contractor:

- (1) Is found to have been placed on the Scrutinized Companies that Boycott Israel List; or
- (2) Is engaged in a boycott of Israel.

C.47 Data Security and Privacy.

Contractor acknowledges that its performance of the Services may involve access to confidential patient information including, but not limited to, personally-identifiable information, protected health information, and individual financial information (collectively, "Protected Information") that is subject to state or federal laws and regulations restricting the use and disclosure of such information, including, but not limited to, the federal Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA"). Contractor agrees to comply with all applicable federal and state laws restricting the access, use and disclosure of Protected Information.

Contractor shall use appropriate safeguards to prevent any access, use, modification, disclosure or destruction of Protected Information other than as permitted under applicable laws and regulations, which shall include but not be limited to administrative, physical and technical safeguards as necessary and appropriate to protect the confidentiality, security, integrity and availability of Protected Information, and which shall be no less rigorous than accepted industry practices (such as ISO 27002, ITIL or COBIT or other industry standards of information security).

Notwithstanding any provision in this Contract to the contrary, the Contractor shall indemnify, defend and hold harmless City, its affiliates, members, directors, officers and employees from and against any and all claims, suits, causes of action, inquiries, investigations, proceedings, and the resulting damages, fees, costs, penalties, resolutions, assessments, losses, liabilities, or judgments (including reasonable attorneys' fees) which may be imposed on or

incurred by or instituted against the City or any such person relating to or arising out of any access, use, disclosure, modification, or destruction of Protected Information that is not permitted under applicable law.

This Section shall apply to information that is accessed, created, received, maintained, processed, modified, used, disclosed or destroyed in connection with the Services by the Contractor, in whatever form, including but not limited to paper, electronic or oral, that is individually identifiable information about patients and their family members and significant others, independent contractors, and other individuals, including but not limited to any individually identifiable health and financial information.

Exhibit D
INDEMNIFICATION

Applicant (the “**Indemnifying Party**”) shall hold harmless, indemnify, and defend the City of Jacksonville and the City’s members, officers, officials, employees and agents (collectively the “**Indemnified Parties**”) from and against, without limitation, any and all claims, suits, actions, losses, damages, injuries, liabilities, fines, penalties, costs and expenses of whatsoever kind or nature, which may be incurred by, charged to or recovered from any of the foregoing Indemnified Parties for:

A. General Tort Liability, for any negligent act, error or omission, recklessness or intentionally wrongful conduct on the part of the Indemnifying Party that causes injury (whether mental or corporeal) to persons (including death) or damage to property, whether arising out of or incidental to the Indemnifying Party’s performance of the Contract, operations, services or work performed hereunder; and

B. Environmental Liability, to the extent this Contract contemplates environmental exposures, arising from or in connection with any environmental, health and safety liabilities, claims, citations, clean-up or damages whether arising out of or relating to the operation or other activities performed in connection with the Contract; and

C. Intellectual Property Liability, to the extent this Contract contemplates intellectual property exposures, arising directly or indirectly out of any allegation that the Services provided under this Contract (the “**Service(s)**”), any product generated by the Services, or any part of the Services as contemplated in this Contract, constitutes an infringement of any copyright, patent, trade secret or any other intellectual property right. If in any suit or proceeding, the Services, or any product generated by the Services, is held to constitute an infringement and its use is permanently enjoined, the Indemnifying Party shall, immediately, make every reasonable effort to secure within sixty (60) days, for the Indemnified Parties, a license, authorizing the continued use of the Service or product. If the Indemnifying Party fails to secure such a license for the Indemnified Parties, then the Indemnifying Party shall replace the Service or product with a non-infringing Service or product or modify such Service or product in a way satisfactory to the City, so that the Service or product is non-infringing.

If an Indemnified Party exercises its right under this Contract, the Indemnified Party will (1) provide reasonable notice to the Indemnifying Party of the applicable claim or liability, and (2) allow Indemnifying Party, at its own expense, to participate in the litigation of such claim or liability to protect its interests. **The scope and terms of the indemnity obligations herein described are separate and apart from, and shall not be limited by, any insurance provided pursuant to the Contract or otherwise. Such terms of indemnity shall survive the expiration or termination of the Contract.**

In the event that any portion of the scope or terms of this indemnity is in derogation of Section 725.06 or 725.08 of the Florida Statutes, all other terms of this indemnity shall remain in full force and effect. Further, any term which offends Section 725.06 or 725.08 of the

Florida Statutes will be modified to comply with said statutes.

Exhibit E
INSURANCE REQUIREMENTS

Without limiting its liability under this Contract, Contractor shall at all times during the term of this Contract procure prior to commencement of work and maintain at its sole expense during the life of this Contract (and Company shall require its, subcontractors, laborers, materialmen and suppliers to provide, as applicable), insurance of the types and limits not less than amounts stated below:

Insurance Coverages

Schedule	Limits
Worker's Compensation	Florida Statutory Coverage
Employer's Liability	\$ 100,000 Each Accident
	\$ 100,000 Disease Policy Limit
	\$ 100,000 Each Employee/Disease

This insurance shall cover the Company (and, to the extent they are not otherwise insured, its subcontractors) for those sources of liability which would be covered by the latest edition of the standard Workers' Compensation policy, as filed for use in the State of Florida by the National Council on Compensation Insurance (NCCI), without any restrictive endorsements other than the Florida Employers Liability Coverage Endorsement (NCCI Form WC 09 03), those which are required by the State of Florida, or any restrictive NCCI endorsements which, under an NCCI filing, must be attached to the policy (i.e., mandatory endorsements). In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the Federal Employers' Liability Act, USL&H and Jones, and any other applicable federal or state law.

Commercial General Liability	\$2,000,000	General Aggregate
	\$2,000,000	Products & Comp. Ops. Agg.
	\$1,000,000	Personal/Advertising Injury
	\$1,000,000	Each Occurrence
	\$ 50,000	Fire Damage
	5,000	Medical Expenses

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements other than those reasonably required by the City's Office of Insurance and Risk Management. An Excess Liability policy or Umbrella policy can be used to satisfy the above limits.

Automobile Liability	\$1,000,000	Combined Single Limit
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(Coverage for all automobiles, owned, hired or non-owned used in performance of the Contract)

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Business Auto Coverage Form (ISO Form CA0001) as filed for use in the State of Florida without any restrictive endorsements other than those which are required by the State of Florida, or equivalent manuscript form, must be attached to the policy equivalent endorsement as filed with ISO (i.e., mandatory endorsement).

Professional Liability \$1,000,000 per Claim and Aggregate
(Including Medical Malpractice when applicable)

Any entity hired to perform professional services as a part of this contract shall maintain professional liability coverage on an Occurrence Form or a Claims Made Form with a retroactive date to at least the first date of this Contract and with a three year reporting option beyond the annual expiration date of the policy.

Sexual Molestation \$1,000,000 Per Claim
\$2,000,000 Aggregate

(Only if program includes direct supervision of children, special needs, and/or senior citizens)

Sexual Molestation Liability coverage will be provided on an Occurrence Form or a Claims Made Form with a retroactive date to at least the first date of this Contract. If provided on a Claim Made Form, the coverages must respond to all claims reported within three years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis.

Additional Insurance Provisions

1. Certificates of Insurance. Contractor shall deliver the City Certificates of Insurance that shows the corresponding **City Contract or Bid Number** in the Description, **Additional Insureds, Waivers of Subrogation** and **Primary & Non-Contributory statement** as provided below. The certificates of insurance shall be mailed to the City of Jacksonville (Attention: Chief of Risk Management), 117 W. Duval Street, Suite 335, Jacksonville, Florida 32202.
2. Additional Insured: All insurance **except** Worker's Compensation, Professional Liability, AD&D and Crime (if required) shall be endorsed to name the City of Jacksonville and City's members, officials, officers, employees and agents as Additional Insured. Additional Insured for General Liability shall be in a form no more restrictive than CG2010 and, if products and completed operations is required, CG2037, Automobile Liability CA2048.
3. Waiver of Subrogation. All required insurance policies shall be endorsed to provide for a waiver of underwriter's rights of subrogation in favor of the City of Jacksonville and its members, officials, officers employees and agents.
4. Carrier Qualifications. The above insurance shall be written by an insurer holding a current certificate of authority pursuant to chapter 624, Florida State or a company that is declared as an approved Surplus Lines carrier under Chapter 626 Florida Statutes. Such Insurance

shall be written by an insurer with an A.M. Best Rating of A- VII or better.

5. Contractor's Insurance Primary. The insurance provided by the Contractor shall apply on a primary basis to, and shall not require contribution from, any other insurance or self-insurance maintained by the City or any City members, officials, officers, employees and agents.
6. Deductible or Self-Insured Retention Provisions. All deductibles and self-insured retentions associated with coverages required for compliance with this Contract shall remain the sole and exclusive responsibility of the named insured Contractor. Under no circumstances will the City of Jacksonville and its members, officers, directors, employees, representatives, and agents be responsible for paying any deductible or self-insured retentions related to this Contract.
7. Contractor's Insurance Additional Remedy. Compliance with the insurance requirements of this Contract shall not limit the liability of the Contractor or its Subcontractors, employees or agents to the City or others. Any remedy provided to City or City's members, officials, officers, employees or agents shall be in addition to and not in lieu of any other remedy available under this Contract or otherwise.
8. Waiver/Estoppel. Neither approval by City nor failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide insurance as required under this Contract.
9. Notice. The Contractor shall provide an endorsement issued by the insurer to provide the City thirty (30) days prior written notice of any change in the above insurance coverage limits or cancellation, including expiration or non-renewal. If such endorsement is not provided, the Contractor, as applicable, shall provide said thirty (30) days written notice of any change in the above coverages or limits, coverage being suspended, voided, cancelled, including expiration or non-renewal.
10. Survival. Anything to the contrary notwithstanding, the liabilities of the Contractor under this Contract shall survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverage.
11. Additional Insurance. Depending upon the nature of any aspect of any project and its accompanying exposures and liabilities, the City may reasonably require additional insurance coverages in amounts responsive to those liabilities, which may or may not require that the City also be named as an additional insured.
12. Special Provision: Prior to executing this Agreement, Contractor shall present this Contract and insurance requirements attachments to its Insurance Agent Affirming: 1) That the Agent has Personally reviewed the insurance requirements of the Contract Documents, and (2) That the Agent is capable (has proper market access) to provide the coverages and limits of liability required on behalf of the Contractor.