

AN ORDINANCE TO AUTHORIZE A CONTRACT BETWEEN THE CITY OF WILMINGTON AND USI INSURANCE SERVICES LLC FOR LIFE AND HEALTH INSURANCE BROKERAGE SERVICES

#4530

Sponsor:

Council
Member
Freel

WHEREAS, pursuant to Section 2-308 and Section 8-200 of the City Charter, the City of Wilmington is authorized to enter into contracts for the supply of property or the rendering of services for a period of more than one year if approved by City Council by ordinance; and

WHEREAS, the City desires to obtain the services of an experienced firm to be the City's life and health insurance broker; and

WHEREAS, the City's contract with its current life and health insurance broker, USI Insurance Services LLC ("USI"), is set to expire on June 30, 2018; and

WHEREAS, the City would like to enter into a new contract with USI for life and health insurance brokerage services; and

WHEREAS, the term of the proposed contract with USI (the "Contract") is for a period of one (1) year from July 1, 2018 through June 30, 2019, at an estimated price of One Hundred Thirty-Five Thousand Dollars (\$135,000.00), with the possibility of three (3) extensions of one (1) year each thereafter at the same annual price, subject to budget appropriations, a copy of which Contract, in substantial form, is attached hereto and incorporated herein by reference as Exhibit "A"; and

WHEREAS, said extension periods were included in the Contract in order to provide for continuity of service; and

WHEREAS, it is the recommendation of the Department of Human Resources that the City enter into the Contract with USI for a period of one (1) year from July 1, 2018

through June 30, 2019, with the possibility of three (3) extensions of one (1) year each thereafter upon the same terms and conditions.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON
HEREBY ORDAINS:**

SECTION 1. The Contract between the City and USI Insurance Services LLC for life and health insurance brokerage services, a copy of which Contract, in substantial form, is attached hereto as Exhibit "A," for the period of one (1) year from July 1, 2018 through June 30, 2019, at an estimated price of One Hundred Thirty-Five Thousand Dollars (\$135,000.00), with the possibility of three (3) extensions of one (1) year each thereafter at the same annual price, is hereby approved, and the Mayor and the City Clerk are hereby authorized to execute as many copies of said Contract, as well as all additional undertakings related thereto, as may be necessary.

SECTION 2. This Ordinance shall be effective upon its passage by City Council and approval of the Mayor.

First Reading May 17, 2018
Second Reading May 17, 2018
Third Reading

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ____ day of _____, 2018.

Mayor

SYNOPSIS: This Ordinance authorizes the City to enter into a contract with USI Insurance Services LLC for life and health insurance brokerage services for the term of one (1) year from July 1, 2018 through June 30, 2019 at an estimated price of One Hundred Thirty-Five Thousand Dollars (\$135,000.00), with the possibility of three (3) extensions of one (1) year each thereafter upon the same terms and conditions.

FISCAL IMPACT STATEMENT: The fiscal impact of this Ordinance is a contract for the period of one (1) year from July 1, 2018 through June 30, 2019 at an estimated price of One Hundred Thirty-Five Thousand Dollars (\$135,000.00), with the possibility of three (3) extensions of one (1) year each thereafter at the same annual price.

W0099707

EXHIBIT A



UNDERSTAND. SERVICE. INNOVATE.

USI Insurance Services
1007 North Orange Street, Suite 1115
Wilmington, DE 19801
www.usi.com
Phone: 302.658.8000/800.441.9385
Fax: 302.658.8879

CITY OF WILMINGTON
800 French Street
Wilmington, DE 19801

USI Insurance Services LLC
1007 North Orange Street Suite 1115
Wilmington, DE 19801

AGREEMENT

This document records our mutual understanding regarding our professional relationship and the services we will provide to you.

City of Wilmington, Delaware (the "City" or "You" or "Your") and USI Insurance Services LLC ("USI") agree as follows:

1.0 Services and Responsibilities

1.1 Subject to all other terms and conditions of this Agreement and of the RFP 15016HRPS for Life & Health Insurance Brokerage Services and its Addenda, and the Willis of Delaware, Inc. Proposal in response thereto, from on or about May 1, 2014, all of which are accepted, adopted, and agreed to as if the RFP was first reviewed and the Proposal was submitted by USI Insurance Services, LLC (USI) and which are incorporated herein by reference as if fully set out herein (collectively, the "Agreement"), USI shall provide the services identified in Appendix A.

1.2 We are committed to acting in your best interests at all times in providing services to you.

1.3 The services we provide to you rely in significant part on the facts, information, and direction provided by you or your authorized representatives. Accordingly, you must provide us with complete and accurate information regarding your loss experience, risk exposures, changes in the analysis or scope of your risk exposures, and any other information reasonably required or requested by us or insurers. It is important to advise us of any changes in your business operations that may affect our services or your insurance coverages. Therefore, all information which is material to your coverage requirements or which might influence insurers in deciding to accept your business, finalizing the terms to apply and/or the cost of coverage or pay a claim, must be disclosed. Failure to fully disclose such information might allow insurers to avoid liability for a particular claim or to void the policy. This duty of disclosure applies equally at renewal of your existing coverage and upon



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placement of new lines of coverage. USI is not responsible for any consequences arising from any delayed, inaccurate or incomplete information.

1.4 At the time of binding, we review the financial soundness of the insurers we recommend to provide your coverages based on publicly available information, including that produced by well-recognized rating agencies. Upon request, we will provide you with our analysis of such insurers. We do not guarantee or warrant the solvency of any insurer or any intermediary that we may use to place your coverage.

1.5 You will make all final decisions relating to your insurance coverages, risk management, and loss control needs. We will procure the insurance coverage chosen by you, including the limits you choose. We will review all binders, policies and endorsements to confirm their accuracy and conformity to negotiated specifications and your instructions. We will advise you of any errors in, or recommended changes to, such documents. You agree to also review all such documents and promptly advise us of any questions you have or of any document or provision which you believe may not be in accordance with your instructions. Your coverage is defined by the terms and conditions detailed in your insurance policies and endorsements.

1.6 In our capacity as employee benefits professionals, we do not provide legal or tax advice. We encourage you to seek any such advice you want or need from competent legal counsel or tax professionals

2.0 Confidentiality

2.1 We treat information you provide us in the course of our professional relationship as confidential and use it only in performing services for you. We may share this information with third parties to provide the services to you. We may also disclose this information to the extent required to comply with applicable laws or regulations or the order of any court or tribunal. By providing us with data, you represent that you are fully authorized to possess that data and to provide it to us, and further that we are fully authorized to obtain, maintain, process and transfer such data in a commercially reasonable manner. We have implemented and maintain commercially reasonable and appropriate security measures to protect sensitive information from unauthorized use or disclosure. Records you provide us will remain your property and will be returned to you upon request. However, we will retain copies of such records to the extent required in the ordinary course of our business or by law. You will treat any information we provide to you, including data, recommendations, proposals, or reports, as confidential, and you will not disclose it to any third parties. You may disclose this information to the extent required to comply with applicable laws or regulations or the order of any court or tribunal. We



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retain the sole rights to all of our proprietary computer programs, systems, methods and procedures and to all files developed by us.

2.2 In the event that you or any of the benefit plans you sponsor need to enter into business associate agreements with USI to satisfy the requirements of the Health Insurance Portability and Accountability Act, the regulations implementing that Act (the "Standards for Privacy of Individually Identifiable Health Information," codified at 45 C.F.R. parts 160 and 164), or any other similar law, you agree to work with USI to execute an agreement in compliance with these requirements.

3.0 Compensation and Disclosure-Fee Only

3.1 You agree that our compensation for the services provided under this Agreement shall be an annual fee (the "Fee") as follows: (i) Year One of \$135,000, or, alternatively, \$11,250 per month for the months remaining in the fiscal year ending June 30, 2019 from inception on the first day of the month after this Agreement is fully approved by City Council and duly endorsed by the Mayor or designee, and (ii) a \$135,000 annual fee for Year Two, Year Three and Year Four, if applicable, with no CPI or other adjustments thereto.

The Fee is in addition to the premium paid for the insurance policies set forth in Appendix A (the "Coverages") purchased by you through us as your insurance brokers and is payable in monthly installments commencing the 1st day of September, 2018, or on the 1st day of the month following this Agreement being fully approved by City Council and duly endorsed by the Mayor or designee. If we receive any commissions for the Coverages purchased by you through us as your insurance brokers we will offset such commissions against the Fee to the fullest extent permitted by law. We will account to you quarterly during the Term of the Agreement and at the termination of the Agreement for all commissions received during the preceding quarter and shall adjust the amount of the Fee owing as required.

3.2 Subject to the adjustments outlined in 3.1 above, if USI is compensated by commissions paid to us by insurers, they will be earned for the entire policy period at the time we place policies for you. We will be paid the commission percentage stated for the placement of your insurance as indicated, and will receive the same commission percentage for all subsequent renewals of this policy unless we negotiate a different commission percentage with you.

3.3 Commission schedules and other compensation arrangements related to our services on your behalf may change over time and may not always be congruent with your specific policy period. USI will provide you with accurate information to the



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best of our knowledge when information is presented to you, but it is possible that compensation arrangements may change over time.

3.4 USI is an insurance producer licensed to do business worldwide, including in all 50 states and the District of Columbia. Insurance producers are authorized by their license to work with insurance purchasers and discuss the benefits and terms and conditions of insurance contracts; to offer advice concerning the substantive benefits of particular insurance contracts; to sell insurance; and to obtain insurance for purchasers. The role of an insurance producer in any particular transaction involves one or more of these activities.

3.5 Subject to the adjustments outlined in 3.1 above, the compensation that will be paid to USI will vary based on the insurance contract it sells. Depending on the insurer and insurance contract you select, compensation may be paid by the insurer selling the insurance contract or by another third party. Such compensation may vary depending on a number of factors, including the insurance contract and insurer you select. In some cases, other factors such as the volume of business USI provides to the insurer or the profitability of insurance contracts USI provides to the insurer also may affect compensation.

3.6 USI will provide you with additional information about the compensation USI expects to receive based in whole or in part on your purchase of insurance, and (if applicable) the compensation expected to be received based in whole or in part on any alternative quotes presented to you.

3.7 You may use a third party administrator, utilization review firm or other similar service provider in connection with the insurance coverages we place for you or the services we provide to you. If you elect to use a service provider from which we or our corporate parents, subsidiaries or affiliates will receive any compensation directly or indirectly relating to the services you purchase from the provider, we will disclose additional information regarding that compensation to you before you make a final decision to use the service provider.

3.8 USI may place your insurance with members of a panel of insurers. USI develops panels of insurers in certain market segments. Participating insurers are reviewed on a variety of factors. Commission rates on panel placements may be higher than rates paid on business placed outside of the panel process. USI discloses its commission rates to clients on quotes obtained through the panel process prior to binding the coverage. In some instances, insurers pay an administration fee to participate in the panel process.



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3.9 Some of our corporate parents, subsidiaries or affiliates are reinsurance brokers that provide reinsurance brokerage services to their insurance carrier clients. Their clients compensate them for those reinsurance brokerage services. Some of their insurance carrier clients may happen to be insurance carriers with whom we place your insurance coverages. The services we provide you and the reinsurance services our reinsurance affiliates provide their clients are separate and any compensation they may earn for the services they provide their clients are separate from and in addition to the compensation we earn for the services we provide you under this Agreement.

3.10 As an insurance intermediary, we normally act for you. However, for some insurance products, we or our corporate parents, subsidiaries or affiliates may provide services to insurers. These services may include (a) acting as a managing general agent, program manager or in other similar capacities which give us binding authority enabling us to accept business on their behalf and immediately provide coverage for a risk; (b) arranging lineslips or similar facilities which enable an insurer to bind business for itself and other insurers; or (c) managing lineslips for insurers. Contracts with these insurers may grant us certain rights or create certain obligations regarding the marketing of insurance products provided by the insurers. We may place your insurance business under such a managing general agent's agreement, binding authority, lineslip or similar facility when we reasonably consider that these match your insurance requirements/instructions. When we intend to do so, we shall inform you and disclose the compensation payable to USI in connection with the placement of the insurance coverage.

3.11 Subsidiaries of USI are members of a major international group of companies. In addition to the commissions received by us from insurers for placement of your insurance coverages, other parties, such as excess and surplus lines brokers, wholesale brokers, reinsurance intermediaries, underwriting managers and similar parties (some of which may be owned in whole or in part by our corporate parents or affiliates), may earn and retain usual and customary commissions for their role in providing insurance products or services to you under their separate contracts with insurers or reinsurers.

3.12 The insurance market is complex, and there could be other relationships which are not described in this document which might create conflicts of interest. If a conflict arises for which there is no practicable way of complying with this commitment, we will promptly inform you and withdraw from the engagement, unless you wish us to continue to provide the services and will provide your written consent. Please let us know in writing if you have concerns or we will assume that you understand and consent to our providing our services pursuant to these terms.



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3.13 Our compensation for the services does not include federal, state and local sales, use, excise, receipts, gross income and other similar taxes or governmental charges which may be imposed. You are responsible for paying any such taxes or charges (except for taxes imposed on the net income of USI) now imposed or becoming effective during the Term. In addition to the premium and our compensation, USI may invoice you for any federal, state and local sales, use, excise or other similar taxes, unless you provide us with a valid tax exemption acceptable to us.

3.14 We reserve the right to pass through to you any mutually agreed reasonable costs related to the printing of your employee communications material, data scrubbing, or other out-of-pocket expenses.

4.0 Premium/Handling of Funds

4.1 You will provide immediately available funds for payment of premiums by the payment dates specified in the insurance policies, invoices or other payment documents. Failure to pay premium on time may prevent coverage from incepting or result in cancellation of coverage by the insurer. We are not responsible for any consequences arising from any delay or failure by you to pay the amount due by the indicated date.

4.2 In certain instances and where explicitly agreed upon in advance, USI may collect insurance premium from you and remit the premium to the appropriate insurance company or intermediary. In doing so, we may also receive and retain interest on premiums you pay from the date we receive the funds until we pay them to the insurers or their intermediaries, or until we return them to you.

4.3 We will handle any premiums you pay through us and any funds which we receive from insurers or intermediaries for payment or return to you in accordance with applicable state and federal insurance laws and regulations and state unclaimed property laws. We may transfer your funds directly to insurers or to third parties such as wholesale brokers, excess and surplus lines brokers, or managing general agents to carry out transactions for you.

5.0 Term and Termination

5.1 The term of the service and compensation arrangement set forth below will begin on July 1, 2018, or on the 1st of the month following City Council and Mayoral approval as aforesaid, and end on June 30, 2019 (the "Initial Term"), with the availability of three (3) extensions of one (1) year each by mutual consent (each, a "Renewal Term" and, together with the Initial Term, the "Term"), to be reached at



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least ninety (90) days prior to the termination date of the Agreement or extension thereof; any such extension shall be at the Fee as described in paragraph 3.1 above, with no CPI or other adjustment. Should no notice of desire to extend or terminate be transmitted in writing by either party to the other party prior to ninety (90) days prior to the said termination date, the Agreement shall continue from month-to-month following the said termination date as before until an extension or termination agreement is reached.

5.2 The Fee for each annual period hereunder (Year One and, if applicable, Year Two, Year Three and Year Four) is earned in accordance with completion of work associated with the phases of services as set forth in Appendix A. The value of each phase of service as a percentage of the Fee is as follows:

Strategic Planning	15%	Earned in equal monthly installments prior to the benefit plan effective date
Program Renewal / Placement Process	35%	Earned in equal monthly installments prior to the benefit plan effective date
Ongoing Service and Resources	50%	Earned in 12 equal monthly installments

The client will be billed for all services rendered for which the fee was earned as of the termination date.

5.3 The Agreement may be terminated for cause by either party upon thirty (30) days written notice; provided that during that period ten (10) days' notice of the specific alleged cause, in sufficient detail, shall be provided along with the termination notice, and ten (10) days following such notice permitted to cure the default; and by either party without cause upon 120 days written notice. USI shall be liable for the reporting and processing of all prior and new placements, renewals and claims in process during the contract term, and to provide a full accounting and documentation of same in acceptable electronic and/or paper form in a timely manner upon termination thereof to any successive contractor or the City, as directed.

If we terminate this Agreement under Section 5.3 before the end of the Term or if you terminate this Agreement without cause before the end of the Term, we will be



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deemed to have fully earned and be entitled to the portion of the Fee for the annual period during which this Agreement is terminated (Year One, Year Two, Year Three or Year Four, as applicable) as set forth in subparagraph 5.2 above.

Any other termination before the end of the Term shall result in USI being deemed to have fully earned and be entitled to a pro rata portion of the Fee, calculated from the start of the annual period during which termination of this Agreement becomes effective (either Year One, Year Two, Year Three or Year Four, as applicable) through the date of termination.

5.4 Our obligation to render the Services under this Agreement ceases at the end of the Term or on termination of the Agreement, whichever is sooner. Nevertheless, we will take reasonable steps to assist in the orderly transition of matters to you or to a new insurance broker which you designate. Claims and premium or other issues may arise after our relationship ends. Such items are normally handled by the insurance broker or consultant serving you at the time the claim or other issue arises. However, we will consider providing services in these areas after the Term or termination of this Agreement for mutually agreed additional compensation.

6.0 Other Provisions

6.1 We do not tolerate unethical behavior either in our own activities or in those with whom we seek to do business. We will comply with all applicable laws, regulations, and rules.

6.2 In certain circumstances, the United States and other countries prohibit or restrict companies from conducting business in certain jurisdictions or with certain individuals or entities and can fine or otherwise penalize companies who conduct such business. The way these sanctions programs may affect a given insurance transaction depends on a number of complex factors including your ownership structure, control, location, and the nationality of your employees. We cannot advise you or insurers on the applicability of sanctions programs nor can we guarantee or otherwise warrant the position of any insurer under existing or future sanctions programs. You should seek legal advice on the potential applicability of sanctions as you deem appropriate. We will comply with all applicable sanctions programs and, where required by law, may take certain actions, including freezing funds held on behalf of parties and individuals covered by applicable sanctions.

6.3 USI owns and retains all right, title, and interest in and to the following USI Property: (i) all software, hardware, technology, documentation, and information provided by USI in connection with the Claim and Risk Control Services; (ii) all ideas, know-how, methodology, models and techniques that may be developed,



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conceived, or invented by USI during its performance under this Agreement; and (iii) all worldwide patent, copyright, trade secret, trademark and other intellectual property rights in and to the property described in clauses (i) and (ii) above. We expressly reserve all rights in the USI Property.

6.4 During the Term of this Agreement and for a reasonable period thereafter, you may audit the records and accounts of USI related to this Agreement, at your expense. You agree to give us reasonable advance written notice of any audit and to conduct the audit during normal business hours in a manner which is not unduly disruptive to our ongoing business.

6.5 We agree to communicate with each other from time to time by electronic mail, sometimes attaching further electronic data. By consenting to this method of communication you and we accept the inherent risks (including the security risks of interception of or unauthorized access to such communications, the risks of corruption of such communications and the risks of viruses or other harmful devices). We each agree, however, to employ reasonable virus checking procedures on our computer systems, and to check all electronic communications received for viruses. You will also check that messages received are complete. In the event of a dispute neither of us will challenge the legal evidentiary standing of an electronic document, and the USI system is deemed the definitive record of electronic communications and documentation.

6.6 Please note that our system blocks certain file extensions for security reasons, including, but not limited to, .rar, .text, .vbs, .mpeg, .mp3, .cmd, .cpl, .wav, .exe, .bat, .scr, .mpq, .avi, .com, .pif, .wma, .mpa, .mpg, .jpeg. Emails with such files attached will not get through to us; and no message will be sent to tell you they have been blocked. If you intend to send us emails with attachments, please verify with us in advance that our system will accept the proposed form of attachment.

6.7 The Section headings in this Agreement are for convenience only and are not intended to define or limit the scope of the contents of such paragraphs. This Agreement may be executed in its original version or in any copy, counterpart, or other duplicate.

6.8 This Agreement supersedes any and all prior agreements between us regarding the insurance coverages and the services provided.

6.9 The provisions of this Agreement are severable and, in the event any provision or portion of any provision is construed by any court of competent jurisdiction to be invalid, the same shall not invalidate any other provision of this Agreement or the remainder of the enforceable portion of the provision.



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6.10 This Agreement is governed by and construed in accordance with the laws of the state of Delaware, and any dispute shall be resolved in the appropriate court of such state or in any federal court in such state with proper jurisdiction thereof.

6.11 The attached City of Wilmington General Terms and Conditions and Business Associate Agreement are hereby incorporated into and shall become an integral part of this Agreement. To the extent that there is any conflict between the Wilmington General Terms and Conditions and Business Associate Agreement and other parts of this Agreement, the terms set forth in the Wilmington General Terms and Conditions and Business Associate Agreement shall govern.

7.0 Questions

7.1 If you have questions, please inform your USI representative or call the head of our office. You may also call 1-866-704-5115, the toll-free number which USI has established for client feedback.

City of Wilmington, Delaware

USI Insurance Services LLC
E. Kent Evans, V.P. and Practice Leader

By: _____

By: _____

Title: _____

Title: V.P. and Practice Leader

Date: _____

Date: _____



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APPENDIX A

Attach US HCP Scope of Services here.

The Scope of Services includes all items listed below in the USI Scope of Services prepared for The City of Wilmington.

USI ONE ADVANTAGE™

USI ONE™ is a fundamentally different approach to risk management, integrating proprietary business analytics with a networked team of local and national experts in a consultative planning process that generates targeted recommendations for improving employee benefit plans.

This enterprise solution provides a set of client customized, actionable, measurable solutions with bottom-line impact to your business through cost reduction and coverage enhancement, resulting in an employee benefit trend advantage.

Financial Management

- ✓ Provide a quarterly report to include paid claims by month and plan, a summary of large claims activity, and preliminary renewal projections (provided experience reporting is available from carrier)
- ✓ Provide tools to help you assess current funding arrangements for appropriateness
- ✓ Clinical and financial reporting through *USI 3D* at the member, population, and cohort level, combined with predictive modeling capabilities to project future plan costs based on the specific disease burdens which exist in your population. This reporting serves as the foundation for making educated decisions regarding plan design, wellness initiatives, and communication campaigns. (provided carrier/TPA allows data upload)

Strategic Development

- ✓ Facilitate an annual planning session to assist in the creation of an Employee Benefits strategy:
 - Assist you in identifying the strengths, weaknesses, opportunities and threats in your current plan designs and program offerings
 - Evaluate workforce demographics
 - Evaluate current programs against specific competitive benchmark data
 - Present information on current trends in plan design and market conditions
 - Interview members of senior management to gather attitudes about the role of employee benefits in the organization and the current state of benefits programs
- ✓ Provide recommendations for establishing and prioritizing objectives aligned to organizational goals
- ✓ Create and deliver a *Client Service Plan* to reflect agreed projects, to include assigned accountabilities and timeframes
- ✓ Meet with the client and build a 3-Year Strategic Plan surrounding the benefit programs

Scope of Services

Annual Health and Benefit Plan Management Activities

- ✓ Conduct a "Pre-Renewal Strategy Meeting" to determine specific goals, budget and needs to be achieved from renewal negotiations
- ✓ Review renewal methodology, experience data, and assumptions against trend analysis for accuracy and logic
- ✓ Negotiate renewals with existing incumbent carriers
- ✓ Develop RFP and "market plan coverage" as determined during the pre-renewal strategy discussion
- ✓ Summarize and analyze each carrier quote. Comparative analysis may include: pricing, terms, conditions, RFP / RFI responses, network access, discount analysis and plan design.
- ✓ Evaluate structure and performance of stop loss coverage, recommending alternatives as appropriate for consideration
- ✓ Evaluate existing and potential carriers, including their capabilities and support services
- ✓ Schedule and facilitate selected carrier and vendor finalist interviews and site visits, as appropriate
- ✓ Provide recommendations on vendors best suited to meet plan goals and objectives (the client makes all decisions regarding the vendors they retain)
- ✓ Assist in establishing appropriate carrier/vendor performance guarantees with monetary penalties, if requested
- ✓ When requested, provide a non-legal review of terms you agree upon with benefits vendors, to help ensure the agreement meets your benefits needs

Implementation and Enrollment

- ✓ Review current vendor electronic data transfer process functionality, as appropriate
- ✓ Finalize benefit program design and rates, including COBRA and fees (our work is administrative in nature and client retains full decision-making authority and discretion with respect to all plan issues)
- ✓ Assist in implementation with multiple organizational departments (HR, IT, Finance, etc.) to ensure timelines are met, systems are set-up correctly, and data transfer is operational
- ✓ Provide multiple versions of contribution modeling (employee/employer) based on enrollment and financial targets
- ✓ Evaluate current communication strategy and develop an appropriate strategy for ongoing communication, taking into consideration business needs, goals, and budget requirements
- ✓ Help coordinate vendor-sponsored communication material, as appropriate
- ✓ Assist in planning employee open enrollment meetings, including carrier participation
- ✓ Assist in the planning and coordination of a health seminar/vendor fair
- ✓ Facilitate up to 4 local enrollment meetings (with > 50 employees) or webcast enrollment meetings
- ✓ Provide train-the-trainer sessions for conducting annual enrollment meetings
- ✓ Design and implement a customized web portal, *HRCconnect*, to provide your employees with access to employee communications about their benefits and other related information

Scope of Services

Account Management

- ✓ Provide ongoing service and response to inquiries from HR and the Benefits team, with regards to day-to-day administration of benefit program matters, consultation on policy coverage's, etc.
- ✓ Facilitate processes related to changes in coverage, including notifying insures of changes in coverage, obtaining approvals, confirming acceptance of client, etc.
- ✓ Provide up-to-date status of all outstanding items and activities
- ✓ Act as an employee/employer advocate in the resolution of escalated service and/or claims issues when requested to do so and properly authorized
- ✓ Keep the organization informed of trends that may impact their benefit programs
- ✓ Organize and facilitate meetings, including carrier reviews, financial reporting, and vendor meetings
- ✓ Assist you in identifying and monitoring potentially catastrophic claims and work with case management to understand possible impact of large claims on plan performance

Dedicated Technical Experts¹

Our Dedicated Technical Experts support our clients by providing solutions to address employee benefit risk. They are networked nationally and embedded in local offices to build integrated client-centered account teams. These experts specialize in the following areas:

- Underwriting and Analytics
- Compliance / Healthcare Reform
- Care Intervention
- Pharmacy
- Communication and HR Services
- Population Health Management

¹ (Team of Experts Provides Consulting and Vendor Searches. Vendor selection and vendor costs are the clients. The following are areas the team provides these services)

Underwriting and Analytics

- ✓ ASO Admin Fee Analysis/Negotiation
- ✓ Comprehensive Underwriting Review
- ✓ Defined Contribution Modeling
- ✓ Evaluate New Hire Waiting Periods
- ✓ Fully Insured to Self-Funded Analysis
- ✓ High Deductible Plan Implementation
- ✓ Improve Network Utilization
- ✓ Large Claim Review and Forecasting
- ✓ Market Leverage and Early Renewal
- ✓ Minimal Essential and Minimal Value Coverages
- ✓ Negotiate Carrier Performance Guarantees
- ✓ Network Discount Analysis
- ✓ Plan Design and Contribution Modeling
- ✓ Proprietary Stop Loss Design/Pricing
- ✓ Quarterly Claim Reviews
- ✓ Review of State Mandated Benefit
- ✓ Spousal Modeling or Carve-out
- ✓ Tiered PPO Network
- ✓ Transition to Defined Contribution Model

Scope of Services

Compliance and Healthcare Reform

- ✓ Compliance Review
- ✓ Specific Webinars and Seminars
- ✓ Compliance Regulatory Updates
- ✓ Employee Communication
- ✓ HCR Reporting and Disclosure
- ✓ HCR Impact Analysis (Scenario Planning)
- ✓ HCR Mitigation Strategies

Care Intervention

- ✓ Transparency Tools
- ✓ Diagnostic Testing Management
- ✓ Musculoskeletal Alternative Treatment
- ✓ Predictive Modeling for Catastrophic Risks
- ✓ Closure of Gaps in Care
- ✓ Carve Out of Condition and Disease Specific Management
- ✓ Telemedicine
- ✓ Reference Based Pricing
- ✓ Dialysis Management
- ✓ Value Based Benefits
- ✓ Onsite Clinics
- ✓ Medical Tourism

Pharmacy

- ✓ Negotiate an Improved PBM Contract
- ✓ Pharmacy Drug Mix Strategies
- ✓ J-Code Audit (Self Admin Drugs Being Administered by a Doctor)
- ✓ Value-Based Rx Plans for Chronic Medical Conditions
- ✓ Specialty Drug Management Program
- ✓ Negotiate PBM Trend vs. Fully Insured Carrier Trend
- ✓ Rx Pass Through Strategies
- ✓ Utilize a Smaller Pharmacy Network

Communication and HR Services

- ✓ Customize Employee Website for Benefits Information
- ✓ Offer Online Enrollment Strategy, Vendor Search
- ✓ Create Total Value Statements (Printing Costs not Included)
- ✓ Develop Enrollment Guides and Customized Brochures (Printing Costs not Included)
- ✓ Dependent Eligibility Audit (Vendor costs not included)
- ✓ Provide Medical Claim Audits / Claim Fraud Audits (Vendor costs not included)
- ✓ Benefit Resource Center – Claim Advocacy for Employees
- ✓ Provide preferred Vendor Management (COBRA, FSA, HRIS, BenAdmin)
- ✓ Reduce Benefits and/or Supplement with Voluntary
- ✓ Mid-Year Planning
- ✓ Provide Client-Specific Service Calendar with Accountability

Scope of Services

Population Health Management

- ✓ Getting Started With Your Wellness Program and Discussing the USI CORE Population Health Strategy
- ✓ Building a Culture of Health in Your Organization
- ✓ Assessing the Health of Your Population and Gaps in Care
- ✓ Measuring the Success of Your Wellness Program
- ✓ Driving Successful Behavior Change
- ✓ Planning a Successful Health Fair
- ✓ Communicating Wellness
- ✓ Communicating Consumerism
- ✓ Creative Distribution

Scope of Services

USI ONE Solutions and Services

Our solutions and services offer clients and their employees critical information and technology-based solutions to drive effective decision making and deliver business results. You will be eligible to receive the following solutions and services:

- ✓ **USI ONE OMNI Engine:** A real-time interacted solutions platform built by USI experts capturing the experience of more than one hundred thousand clients, thousands of professionals, and other one hundred years of doing business through our acquired agencies. Offering quantifiable solutions focused on economic impact to your business.
- ✓ **MyWave Essentials:** A portal for HR and benefit team members to access a host of tools, services and resources to minimize risks, promote wellness, prevent losses, and stay in compliance.
- ✓ **Employer Risk Review:** Using a defined set of diagnostic questions, we prioritize risk areas and quantify the value of USI solutions specific to your business issues.
- ✓ **Health Care Reform Impact Analysis:** Based on information you provide, we help you calculate the cost impact to your organization associated with Health Care Reform.

EXHIBIT A
CITY OF WILMINGTON GENERAL TERMS AND CONDITIONS

(the Agreement as supplemented by these General Terms and Conditions shall hereinafter be referred to collectively as the “Agreement”)

1. **Insurance Coverage.** USI Insurance Services, LLC (“Contractor”) shall provide insurance coverage for itself and all of its employees, if any, used in connection with the Agreement as follows: workers’ compensation as required by law; comprehensive general liability coverage for personal injury, including death, and property damage in the minimum amount of One Million Dollars (\$1,000,000), and professional liability insurance with limits of at least \$1,000,000 per occurrence and \$3,000,000 annual aggregate. All insurance required under this contract except workers’ compensation, employers liability, and professional liability shall be provided on a policy(s) that specifically names the City of Wilmington, its officials and employees as additional insureds. Such policies shall be issued by a Delaware-admitted financially sound carrier and/or carriers and shall be subject to the reasonable approval of the City of Wilmington (“City”). Contractor shall provide the City with a certificate of insurance evidencing the above-stated coverage and naming the City as an additional insured.

2. **Use of Subcontractors.** Contractor may use qualified consultants, sub-consultants, or subcontractors to perform the services required under this Agreement upon the approval of the City.

3. **Discrimination and Harassment.** In the performance of this Agreement, the parties agree that they shall not discriminate or harass, or permit discrimination or harassment, against any person because of age, sex, marital status, race, religion, color, national origin or sexual orientation.

4. **Indemnification.** Contractor shall indemnify and hold harmless the City, its employees, agents, and officers, from and against any and all claims, damages, actions, liabilities and expenses, including reasonable attorneys’ fees, resulting from the negligent acts or omissions of Contractor, its employees, agents, subcontractors, consultants, or subconsultants in performing the services required under this Agreement.

5. **Records.** Contractor shall maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to this Agreement and such other records as may be deemed necessary by the City to assure proper accounting for all project funds. Such records shall be made available for audit purposes to the City or its authorized representatives upon request.

6. **Reports and Information.** Contractor, at such time and in such form as the City may require, shall furnish the City such reports as the City may request pertaining to the work or services undertaken pursuant to this Agreement.

7. **Business License.** Contractor shall obtain and/or maintain an appropriate business license from the City of Wilmington Department of Finance.

8. **Taxes.** Contractor shall withhold, if applicable, City of Wilmington wage taxes from the compensation of its officers, agents and employees as required by the City of Wilmington wage tax law.

9. **Findings Confidential.** All of the drawings, plans, designs, reports, analyses, specifications, information, examinations, proposals, illustrations, copy, maps, graphics, slides, and documents prepared, assembled, drafted or generated by Contractor under this Agreement are confidential, and Contractor agrees that such documents shall not be made available to anyone, without the prior written approval of the City.

10. **Ownership of Information.** All of the drawings, plans, designs, reports, analyses, specifications, information, examinations, proposals, brochures, illustrations, copy, maps, graphics, slides, and documents prepared, assembled, drafted, or generated by Contractor in connection with this Agreement shall become the exclusive property of the City for use by the City as the City deems appropriate. Contractor may keep copies of such documents for its records. Any reuse of the documents without the Contractor's written consent shall be at user's risk and responsibility.

11. **Notices.** Any notice which is required or may be given in connection with this Agreement shall be addressed to the parties as follows:

The City:

Charlotte B. Barnes, Director
City of Wilmington
Department of Human Resources
800 N. French Street, 4th Floor
Wilmington, DE 19801

Contractor:

E. Kent Evans, V.P and Practice Leader
USI Insurance Services LLC
1007 North Orange Street Suite 1115
Wilmington, DE 19801

12. **Independent Contractor.** Contractor (and its employees and agents) is an independent contractor and not an employee or agent of the City.

13. **Oral Modifications.** This Agreement may not be changed orally, but only by an agreement in writing and signed by both parties.

14. **Conflict Between Provisions.** To the extent that there is any conflict between these General Terms and Conditions and other portions of the Agreement, the terms set forth in these General Terms and Conditions shall govern.

15. **Successors and Assigns.** This Agreement, and all the terms and provisions hereof, shall be binding upon and shall inure to the benefit of the City and Contractor, and their respective legal representatives, successors, and assigns.

16. **Termination.** The City of Wilmington may terminate this Agreement at

its convenience upon two weeks' notice. In the event of termination, the City shall pay to Contractor any fees then due for services performed by Contractor through the effective date of termination, if such services have been performed as specified in the Agreement. Contractor, upon receipt of such payment, shall deliver to City any deliverables, reports, or other documents to the extent then completed.

17. **Severability.** The Agreement is intended to be performed in accordance with and only to the extent permitted by all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall for any reason and to any extent be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

18. **Payment.** Payment shall be made by the City to the Contractor as provided in this Agreement after the satisfactory completion of the work specified in this Agreement and upon proper, undisputed invoice to the City.

19. **Applicable Law and Dispute Resolution.** The laws of the State of Delaware shall govern this Agreement. All disputes in connection with this Agreement shall be resolved by the courts of New Castle County, Delaware. Contractor agrees to submit exclusively to the jurisdiction and venue of said courts.

20. **Signed Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

EXHIBIT B

BUSINESS ASSOCIATE AGREEMENT

This Agreement, made as of the date subscribed, between the City of Wilmington (the “Covered Entity”) and USI Insurance Services, LLC (the “Business Associate”).

This Agreement sets forth certain terms that apply to the relationship between Covered Entity and Business Associate that arises out of the services agreement, and which are required by the Health Insurance Portability and Accountability Act, Public Law 104-191, as amended (“HIPAA”) and Delaware state laws and regulations, including Title 6, Chapter 12B of Delaware Code, as applicable. The terms of this Agreement shall be interpreted and applied consistently with HIPAA and Delaware state law.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, the parties intend to be legally bound and agree as follows:

SECTION 1 DEFINITIONS

Unless otherwise specified in this Agreement, all capitalized terms not otherwise defined shall have the meanings established for purposes of Title 45, Parts 160, 162 and 164, of the United States Code of Federal Regulations, as amended from time to time. For purposes of clarification, the following terms are defined as set forth herein below:

1.1 “Breach” means the acquisition, access, use, or disclosure of protected health information in a manner not permitted which compromises the security or privacy of such information. In this context, “compromises the security or privacy” means there is a significant risk of financial, reputational, or other harm to the individual. Breach does not include the three exceptions contained in 45 C.F.R. § 164.402(1).

1.2 “Breach Notification Rule” means the HIPAA Regulations pertaining to breaches of Unsecured PHI as codified in 45 C.F.R. Parts 160 and 164.

1.3 “Discovery” means the first day on which a Breach is known to Business Associate (including any person, other than the individual committing the breach, that is a workforce member or other agent of Business Associate), or by exercising Reasonable Diligence would have been known to Business Associate, to have occurred.

1.4 “Electronic PHI” or “E PHI” means PHI that is transmitted by or maintained in electronic media.

1.5 “Privacy Rule” means the HIPAA Regulations as codified in 45 C.F.R. Parts 160 and 164.

1.6 “Protected Health Information” or “PHI” means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present, or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present, or

future payment of the provision of health care to an individual; and (ii) that identifies the individual, or with respect to which there is reasonable basis to believe the information can be used to identify the individual, and has the meaning given to such term in the Privacy Rule.

1.6A “Personal Information” or PI means a Delaware resident’s first name and last name in combination with any one of the following: 1. Social Security Number, 2. Drivers License Number or federal or state identification card number, 3. account number, credit card number, or debit card number, in combination with any required security code, access code, or password that would permit access to a resident’s financial account, 4. Passport number, 5. A username or email address, in combination with a password or security question and answer that would permit access to an online account, 6. Medical history, 7. Health insurance policy number, subscriber identification number, or any other unique identifier used by a health insurer to identify the person, 8. An individual taxpayer identification number, not including Personal Information that is publicly available

1.7 “Security Incident” has the meaning set out in the Security Rule. Generally, a “Security Incident” means any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or systems operations in an electronic information system.

1.8 “Security Rule” means the Security Standards and Implementation Specifications at 45 C.F.R. Parts 160 and 164.

1.9 “Unsecured PHI” means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of either the encryption method or the destruction method, as defined in Department of Health and Human Services (“HHS”) guidance published on April 27, 2009 (74 FR 19006) and modified by guidance published on August 24, 2009 (74 FR 42740). Unsecured PHI can include information in any form or medium, including electronic, paper, or oral.

SECTION 2

PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

2.1 General Permitted Uses and Disclosures. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI or PI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Services Agreement, provided that such use or disclosure would not violate the Privacy Rule or state laws in Delaware or other locations where such PHI or PI are stored (or Covered Entity’s policies and procedures) if done by Covered Entity. Business Associate will, in its performance of the functions, activities, services, and operations specified above or detailed in the Services Agreement, make reasonable efforts to use, to disclose, and to request only the minimum amount of Covered Entity’s PHI and PI reasonably necessary to accomplish the intended purpose of the use, disclosure or request, except that Business Associate will not be obligated to comply with this minimum-necessary limitation if neither Business Associate nor Covered Entity is required to limit its use, disclosure or request to the minimum necessary. Business Associate and Covered Entity acknowledge that the phrase “minimum necessary” shall be interpreted in accordance with the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”), passed as part of the

American Recovery and Reinvestment Act of 2009, Public Law 111-5, and government guidance of the definition.

2.2 Permitted Uses and Disclosures for Legal Responsibilities. Except as otherwise limited in this Agreement, Business Associate may use PHI and PI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

2.3 Permitted Uses and Disclosures for Administration. Except as otherwise limited in this Agreement, Business Associate may disclose PHI and PI for the proper management and administration of Business Associate, provided that disclosures are required by law or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which he/she is aware in which the confidentiality of the information has been breached.

2.4 Permitted Uses and Disclosures for Data Aggregation. Except as otherwise limited in this Agreement, Business Associate may use PHI and PI to provide to Covered Entity Data Aggregation services that relate to the health care operations of Covered Entity.

2.5 Permitted Uses and Disclosures to Federal and State Authorities. Business Associate may use PHI or PI to report violations of law to appropriate Federal and State authorities, consistent with Federal and State laws and regulations, provided that Business Associate believes in good faith that Covered Entity had engaged in conduct that is unlawful or otherwise violates professional or clinical standard, or that the care, services, or conditions provided by Covered Entity potentially endangers one or more patients, workers, or the public and the disclosure is to a health oversight agency or public health authority, or an attorney retained by or on behalf of Business Associate.

SECTION 3 OBLIGATIONS OF BUSINESS ASSOCIATE

3.1 Use of PHI. Business Associate shall not use or further disclose PHI or PI other than as expressly permitted or required by this Agreement or as required by law. However, Business Associate may use PHI or PI for the purpose of managing its internal business processes relating to its functions under this Agreement. Finally, Business Associate shall require that any subcontractors that create, receive, maintain, or transmit PHI or PI on behalf of Business Associate agree to comply with the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

3.2 Disclosure of PHI or PI. Business Associate shall:

- (a) not disclose PHI or PI to any person other than employees or subcontractors of Business Associate, except as approved by Covered Entity in writing. Any such disclosure to a subcontractor shall be made only upon the execution of a separate business associate agreement by the

subcontractor and the Business Associate to be bound by the provisions of this Agreement, for the express benefit of Business Associate and Covered Entity;

- (b) not disclose PHI or PI to its employees unless Business Associate has advised them of Business Associate's obligations under this Agreement, and the consequences for employees and for Business Associate of violating them. Business Associate shall take appropriate disciplinary action against any employee who uses or discloses PHI or PI in contravention of this Agreement; and
- (c) disclose PHI or PI to any person other than employees or subcontractors of Business Associates only according to the Notice of Privacy Practices provided to Business Associate by Covered Entity.

3.3 Appropriate Safeguards. Business Associate shall use appropriate safeguards and comply, when applicable, with the Security Rule with respect to EPHI, to prevent use or disclosure of PHI or PI, whether electronic or otherwise, other than as provided for by this Agreement. Business Associate shall provide Covered Entity with such information concerning such safeguards as Covered Entity may from time to time request.

3.4 Subcontractors. Business Associate shall ensure that any subcontractors that create, receive, maintain, or transmit EPHI or PI on behalf of Business Associate agree to comply with the applicable requirements of the Security Rule by entering into a contract or other arrangement that complies with the Privacy Rule, Security Rule, Breach Notification Rule, state laws, and this Agreement.

3.5 Delegation of Covered Entity's Duties. To the extent Business Associate is to carry out Covered Entity's obligations under the Privacy Rule and state laws, Business Associate will comply with the requirements of the Privacy Rule and state laws in performance of such obligations.

3.6 Access to Networks. Business Associate agrees that while present at any Covered Entity facility and/or when accessing the Covered Entity's computer network(s), it and all of its employees, agents, representatives and subcontractors shall at all times comply with any network access and other security practices, procedures and/or policies established by the Covered Entity including, without limitation, those established pursuant to HIPAA's Security Rules and state laws.

3.7 Reporting. Business Associate shall provide Covered Entity with information regarding all unauthorized uses and disclosures of PHI or PI by Business Associate, its employees or subcontractors not permitted by this Agreement and of which it becomes aware, including Breaches of Unsecured PHI or PI as required by the Breach Notification Rule or state laws, and the remedial action taken or proposed to be taken with respect to such prohibited use or disclosure.

3.8 Mitigation. Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI or PI by Business Associate in violation of the requirements of this Agreement.

3.9 Access to PHI. Business Associate shall, at the request of Covered Entity, provide PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an individual in order to meet the requirements of an individual's right of access and requests for access to his or her PHI. For PHI contained in an electronic health record, the Business Associate must provide a copy in an electronic format, if requested by the Covered Entity or the individual.

3.10 Accounting of Disclosures. Business Associate shall document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI; and provide to Covered Entity or an individual, information collected in accordance with this Agreement, to permit Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI by providing the requested documentation of disclosures promptly to Covered Entity.

For electronic health records, the Business Associate shall, in addition to documenting disclosures for purposes other than for treatment, payment, or health care operations, document disclosures for the purposes of treatment, payment, or health care operations in accordance with the provisions of the HITECH Act. If Covered Entity first acquires electronic health records on or after January 1, 2009, then effective January 1, 2011 or at a date thereafter when Covered Entity first acquires electronic health records, Business Associate shall document such additional disclosures. If Covered Entity utilized electronic health records prior to January 1, 2009, then effective January 1, 2014 Business Associate shall document such additional disclosures.

3.11 Amendment to PHI. Business Associate shall make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to at the request of Covered Entity or an individual, and in the time and manner designated by Covered Entity.

3.12 Unauthorized Uses and Disclosures. In the event Business Associate becomes aware of a Security Incident involving EPHI or PI, by itself or any of its agents or subcontractors, Business Associate shall promptly notify Covered Entity, in writing, of such Security Incident. Covered Entity and Business Associate agree to act together in good faith to take reasonable steps to investigate and mitigate any harm caused by such unauthorized use or Security Incident.

3.13 Breach of Unsecured PHI. When a Breach of Unsecured PHI or PI occurs, the Business Associate shall notify the Covered Entity without unreasonable delay and in no case later than five (5) calendar days after Discovery. The notification shall include the identification of each individual affected or reasonably believed by the Business Associate to be affected by the Breach. In addition, the Business Associate will provide the Covered Entity with any information that the Covered Entity needs for the required notifications under the Breach Notification Rule without unreasonable delay. The Business Associate will be responsible for the reasonable costs of the Covered Entity that are incurred due to a Breach that occurs while the Business Associate is responsible for the privacy and security of the information.

3.14 Sale of PHI or PI. Business Associate is prohibited from exchanging PHI and PI for direct or indirect remuneration without obtaining the individual's authorization.

3.15 Marketing. In accordance with the HITECH Act, the Business Associate may be remunerated and use or disclose PHI for marketing communications with the prior written consent of Covered Entity for communications that (1) describe a drug or biologic that is currently being prescribed for the recipient of the communication, and the amount paid is "reasonable"; (2) are made by the Business Associate with a HIPAA-compliant authorization from the individual; or (3) are made by the Business Associate on the Covered Entity's behalf and the communication is consistent with this Agreement.

3.16 Compliance. Business Associate shall make its internal practices, books, and records, including policies and procedures relating to the use and disclosure of PHI and PI received from, or created or received by Business Associate on behalf of, Covered Entity, documentation required by the Security Rule or state laws relating to safeguards, and documentation required by the Breach Notification Rule available to Covered Entity, or to the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule, Security Rule, and Breach Notification Rule.

3.17 Amendment of Agreement. Upon the enactment of any law or regulation affecting the use or disclosure of PHI, or the publication of any decision of a court of the United States or of this state relating to any such law, or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation, Covered Entity may, by written notice to Business Associate, amend this Agreement in such manner as Covered Entity determines necessary to comply with such law or regulation.

SECTION 4 OBLIGATIONS OF COVERED ENTITY

4.1 Obligations of Covered Entity. The Covered Entity shall:

- (a) provide Business Associate with a copy of its Notice of Privacy Practices, and will notify Business Associate of any limitation(s) in its Notice of Privacy Practices, to the extent that such limitation may affect Business Associate's use or disclosure of PHI or PI;
- (b) notify Business Associate of any changes in, or revocation of, permission by individual to use or disclose PHI or PI, to the extent that such changes may affect Business Associate's use or disclosure of PHI or PI;
- (c) notify Business Associate of any restriction to the use or disclosure of PHI or PI that Covered Entity agreed to with an individual, to the extent that such restriction may affect Business Associate's use or disclosure of PHI or PI. The Covered Entity is required to agree to a restriction, and the Business Associate must comply with the restriction, in the case of a disclosure to a health plan for payment or health care operations (and is not for the purposes of carrying out treatment) and the PHI pertains solely to a health care item or service for which

the health care provider involved has been paid by the patient or participant in full and not by the health plan; and

- (d) notify Business Associate if an individual has requested that PHI be provided directly to a third party pursuant to a written request signed by the individual that clearly identifies the third party.

SECTION 5 REQUESTS BY COVERED ENTITY

5.1 Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA if done by Covered Entity.

SECTION 6 TERM AND TERMINATION

6.1 Term. The Term of this Agreement shall be effective as of the date first written above, and shall terminate when all of the PHI or PI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity or, if it is not feasible to return or destroy the PHI or PI, protections are extended to such information, in accordance with the termination provisions in this Agreement.

6.2 Business Associate's Failure to Comply with HIPAA and State Law Obligations.

- (a) Opportunity to Cure: Termination. If Business Associate notifies Covered Entity, or Covered Entity otherwise has reason to believe, that Business Associate has violated a material term of any of the requirements set forth in this Agreement and Covered Entity determines that a cure of such violation is possible, not later than five (5) business days following Covered Entity's request, the Parties shall meet (in person or by telephone) to discuss Covered Entity's concerns. Following such meeting, Business Associate shall advise Covered Entity whether it agrees or disagrees with Covered Entity's concerns. If Business Associate agrees with Covered Entity's concerns, not later than five (5) business days after such meeting, Business Associate shall propose to Covered Entity a course of action to address Covered Entity's concerns (a "Corrective Plan") and, if necessary, the Parties thereafter shall engage in good faith discussions in an effort to reach agreement on the terms of the Corrective Plan. If Business Associate materially fails to implement the terms of the mutually agreed Corrective Plan, then, in addition to any other rights and remedies that may be available to Covered Entity, upon written notice to Business Associate, Covered Entity shall have the right to terminate the Agreement in its entirety. If Business Associate disagrees with Covered Entity's concerns, then the Parties will engage in good faith discussions at successively higher levels of management until the dispute has been resolved. Notwithstanding the foregoing, if the Parties are unable to reach agreement on the terms of the Corrective Plan or otherwise are unable to reach agreement with

respect to Covered Entity's concerns within sixty (60) calendar days following Covered Entity's initial request for a meeting as described above, and Covered Entity has determined that Business Associate has violated a material term of any of the requirements set forth in this Agreement then, upon written notice to Business Associate, Covered Entity shall have the right to terminate the Agreement in its entirety.

- (b) No Opportunity to Cure: Termination. If Business Associate notifies Covered Entity, or Covered Entity otherwise has reason to believe, that Business Associate has violated a material term of any of the requirements set forth in this Agreement and the Covered Entity believes that a cure of such violation is not possible, then Covered Entity shall have the right upon written notice to Business Associate to terminate the Agreement in its entirety. If Covered Entity determines that the termination of the Agreement is not feasible, it shall report the violation to the Secretary of Health and Human Services.

6.3 Covered Entity's Failure to Comply with HIPAA Obligations.

- (a) Opportunity to Cure: Termination. If Covered Entity notifies Business Associate, or Business Associate otherwise has reason to believe, that Covered Entity has violated a material term of any of the requirements set forth in this Agreement and Business Associate determines that a cure of such violation is possible, not later than five (5) business days following Business Associate's request, the Parties shall meet (in person or by telephone) to discuss Business Associate's concerns. Following such meeting, Covered Entity shall advise Business Associate whether it agrees or disagrees with Business Associate's concerns. If Covered Entity agrees with Business Associate's concerns, not later than five (5) business days after such meeting, Covered Entity shall propose to Business Associate a course of action to address Business Associate's concerns (a "Corrective Plan") and, if necessary, the Parties thereafter shall engage in good faith discussions in an effort to reach agreement on the terms of the Corrective Plan. If Covered Entity materially fails to implement the terms of the mutually agreed Corrective Plan, then, in addition to any other rights and remedies that may be available to Business Associate, upon written notice to Covered Entity, Business Associate shall have the right to terminate the Agreement in its entirety. If Covered Entity disagrees with Business Associate's concerns, then the Parties will engage in good faith discussions at successively higher levels of management until the dispute has been resolved. Notwithstanding the foregoing, if the Parties are unable to reach agreement on the terms of the Corrective Plan or otherwise are unable to reach agreement with respect to Business Associate's concerns within sixty (60) calendar days following Business Associate's initial request for a meeting as described above, and Business Associate has determined that Covered Entity has violated a material term of any of the requirements set forth in this Agreement then, upon written notice to

Covered Entity, Business Associate shall have the right to terminate the Agreement in its entirety.

- (b) No Opportunity to Cure: Termination. If Covered Entity notifies Business Associate, or Business Associate otherwise has reason to believe, that Covered Entity has violated a material term of any of the requirements set forth in this Agreement and the Business Associate believes that a cure of such violation is not possible, then Business Associate shall have the right upon written notice to Covered Entity to terminate the Agreement in its entirety. If Business Associate determines that the termination of the Agreement is not feasible, it shall report the violation to the Secretary of Health and Human Services.

6.4 Effect of Termination. Except as provided in the following paragraph, upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI or PI received from Covered Entity that it maintains in any form or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI or PI that is in the possession of subcontractors of Business Associate. Business Associate shall retain no copies of the PHI or PI.

In the event that Business Associate determines that returning or destroying the PHI or PI is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of PHI or PI is not feasible, Business Associate shall extend the protections of this Agreement to such PHI or PI and limit further uses and disclosures of such PHI or PI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI or PI.

SECTION 7 MISCELLANEOUS

7.1 Amendment and Addenda. The parties agree to amend this Agreement from time to time as necessary for Covered Entity to comply with the requirements of HIPAA or state laws. Any addenda attached as an appendix to this Agreement shall be an integral part of this Agreement, and this Agreement and any such addenda shall be interpreted as one and the same instrument unless otherwise stated in such addenda.

7.2 Indemnification. Business Associate will indemnify, defend and hold Covered Entity and its officers, directors, employees, agents, successors and assigns harmless, from and against any and all losses, liabilities, damages, costs and expenses (including reasonable attorneys' fees) arising out of or related to any third-party claim based upon any breach of this Agreement by Business Associate or similar breach by other recipients of PHI or PI ("Claim"). If Business Associate assumes the defense of a Claim, Covered Entity shall have the right, at its expense, to participate in the defense of such Claim, and Business Associate shall not take any final action with respect to such Claim without the prior written consent of Covered Entity. Covered Entity will indemnify, defend and hold Business Associate and its officers, directors, employees, agents, successors and assigns harmless, from and against any and all losses,

liabilities, damages, costs and expenses (including reasonable attorneys' fees) arising out of or related to any third-party claim based upon any breach of this Agreement by Covered Entity or similar breach by other recipients of PHI or PI ("Claim"). If Covered Entity assumes the defense of a Claim, Business Associate shall have the right, at its expense, to participate in the defense of such Claim, and Covered Entity shall not take any final action with respect to such Claim without the prior written consent Business Associate.

7.2 Survival. The respective rights and obligations of Business Associate under Section 6.4 of this Agreement shall survive the termination of this Agreement.

7.3 Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity and Business Associate to comply with HIPAA and applicable state laws.

7.4 No Third-Party Beneficiaries. The parties agree that there shall be no incidental or intended third-party beneficiaries under this agreement. Nor shall any other person or entity have rights arising from the same.