

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

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 property and casualty insurance broker; and

WHEREAS, the City's contract with its current property and casualty 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 property and casualty 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 Sixty Thousand Dollars (\$60,000.00), 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

#4531

Sponsor:

Council
Member
Freel

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 property and casualty 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 Sixty Thousand Dollars (\$60,000.00), 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 property and casualty insurance brokerage services for the term of one (1) year from July 1, 2018 through June 30, 2019 at an estimated price of Sixty Thousand Dollars (\$60,000.00), 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 Sixty Thousand Dollars (\$60,000.00), with the possibility of three (3) extensions of one (1) year each thereafter at the same annual price.

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

City of Wilmington, DE
800 French Street, 5th Floor
Wilmington, DE 19801

USI Insurance Services LLC
222 Delaware Avenue, Ste. 1000
Wilmington, DE 19801

SERVICE AGREEMENT

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

The City of Wilmington, DE (the "City", or "you" or "your") and USI Insurance Services LLC ("USI") agree that the Term of the service and compensation arrangement set forth below will begin on July 1, 2018 and end on June 30, 2019, with the availability of three (3) extensions of one (1) year each by mutual consent, to be reached at least ninety (90) days prior to the termination date of the Contract or extension thereof. 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 Contract shall continue from month-to-month following the said termination date as before until an extension or termination agreement is reached.

1.0. Services and Responsibilities

1.1 Subject to all other terms and conditions of this Agreement, USI shall provide the services as outlined in Appendix A and the Request for Proposal referenced in Section 6.10 of this Agreement.

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

1.3 USI will work with your staff to update insurance underwriting data on the insurance policies described in Appendix A and in the Request for Proposal referenced in Section 6.10 of this Agreement.



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

1.5 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.

1.6 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.

1.7 We will inform you of the reporting requirements for claims, including where claims should be reported and the method of reporting to be used. Please carefully review any claims-reporting instructions or information we provide. Failure to timely and properly report a claim may jeopardize coverage for the claim. In addition, please retain copies of all insurance policies and coverage documents as well as claims-reporting instructions after termination of the policies in case you need to report claims after termination of a policy.

1.8 We will meet, as requested by you, with your representatives to discuss coverage and policies. We will promptly respond to your requests for coverage information,



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analysis of changing market conditions, and assistance in reporting subsequent changes in information to insurance companies and service providers.

1.9 In our capacity as insurance brokers, we do not provide legal, actuarial or tax advice. We encourage you to seek any such advice you want or need from competent legal counsel or tax professionals or actuaries.

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

3.0 Compensation and Disclosure- *fee only*

3.1 You agree that our compensation for the services provided under this Agreement shall be a fee of \$60,000. The Fee is in addition to the premium paid for the insurance policies in Appendix A (the "Coverages") purchased by you through us as your insurance brokers and is payable in quarterly installments commencing the 1st day of July, 2018.

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. However, if we are requested to place any new lines of



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insurance not included in this proposal, then we will negotiate with you for additional fee, or to place such insurance on a commission basis.

Claim, Risk Control and Data Analytic Services

Service	Parameters	
<i>Claim Reporting</i>	<i>Included and not subject to maximum hour cap</i>	
<i>Claim Monitoring and Advocacy</i>	<i>Included and not subject to maximum hour cap</i>	
<i>Individual Claim Strategy Reviews – Telephonic</i>	<i>Meetings per year</i>	Unlimited
<i>Claim Strategy Reviews – Onsite</i>	<i>Meetings per year</i>	4
<i>Contract Review</i>	<i>Contracts per year</i>	12
<i>High Dollar Resolution/CAT or complex claim consulting</i>	<i>Not included in this fee. Negotiated service</i>	
<i>Critical Incident / Crisis Management Consulting</i>	<i>Not included in this fee. Negotiated service</i>	

3.2 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.

3.3 Our compensation may be revised if you request a change in the coverages and/or services during the term of this Agreement and we enter into a written agreement documenting any change in coverages, services and compensation, as outlined in 3.1.

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.



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3.5 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; provided however that such compensation may not exceed that which is provided in subparagraph 3.1 above except by mutual consent and addendum hereto.

3.6 In some cases the use of a wholesale broker may be beneficial to you. We will not directly or indirectly place or renew your insurance business through a wholesale broker unless we first disclose to you in writing any compensation our corporate parents, subsidiaries or affiliates will receive as a result.

3.7 If wholesalers, underwriting managers or managing general agents have a role in providing insurance products and services to you, they will also earn and retain compensation for their role in providing those products and services. If any such parties are corporate parents, subsidiaries or affiliates of ours, any compensation our corporate parents, subsidiaries or affiliates will receive will be we disclosed to you. If such parties are not affiliated with us, and if you desire more information regarding the compensation those parties will receive, please contact us and we will assist you in obtaining this information.

3.8 In the ordinary course of business 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 after we receive such funds.

3.9 As an insurance intermediary, we normally act for you. However, we or our corporate parents, subsidiaries or affiliates may provide services to insurers for some insurance products. These services may include 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. 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, 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.



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3.10 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 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.

4.0 Premium and Handling of Funds

4.1 You will provide immediately available funds to pay premiums by the 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 You may use a premium finance company, property appraiser, structured settlement firm or other similar service provider in connection with the insurance coverages we place for 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 Termination

5.1 The Contract 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.



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If we terminate this agreement under Section 4.1 before the end of the Term, we will be deemed to have fully earned and be entitled to a pro rata portion of the Fee, calculated from the start of the Term through the date of termination.

If you terminate this agreement without cause before the end of the Term, we will be deemed to have fully earned and be entitled to a portion of the fee as set forth in the following schedule:

During the first six months:	75%
After six months:	100%

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 Term through the date of termination.

5.2 Our obligation to render the services under this agreement ceases at the end of the Term or on the effective date of termination of our relationship, 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. Claims and premium or other adjustments may arise after our relationship ends, and we have no responsibility to handle these things after our relationship ends. Such items are normally handled by the insurance broker serving you at the time the claim or adjustment arises. However, we will consider providing such services after the termination of this agreement for mutually agreed additional compensation. Nevertheless, we will, process all remaining deposit premium installments on the policy(ies) in effect at the time of change.

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



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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, 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 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.

6.5 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.

6.6 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.

6.7 This Agreement supersedes any and all prior agreements between us regarding the insurance coverages and the services provided. This Agreement may not be amended or modified except by a written agreement executed by the parties.



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6.8 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.

6.9 This Agreement is governed by and construed in accordance with the laws of the state of Delaware without regarding to such state's choice of law rules. Any dispute shall be resolved in the appropriate state or federal courts located in such state.

6.10 City of Wilmington Contract 14068HRPS Request for Proposal, Property & Casualty (P & C) Insurance Brokerage Services, and the Willis of Delaware, predecessor of USI, Proposal in response thereto dated March 31, 2014 are incorporated herein by reference as if fully set out herein.

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 at 302-658-8000. You may also call 1-866-657-0861, the toll-free number which USI has established for client feedback.

City of Wilmington, DE

USI Insurance Services LLC

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____



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APPENDIX A

Scope of Services

Appendix A

1. SCOPE OF SERVICES

A) Risk Management and Insurance Brokerage Services

1. Negotiate coverage terms, premiums, and the placement of coverage with insurers, for THE CITY OF WILMINGTON's Commercial Property/Casualty insurance program made up of the following policies/coverages:
 - Workers Compensation/Excess Workers Compensation
 - Commercial Property
 - General Liability
 - Automobile Liability
 - Automobile Physical Damage
 - Cyber Liability
 - Environmental Liability
 - Umbrella Liability
 - Crime
 - Special Events Liability
 - Hull and Machinery Liability and Marine Liability
 - Flood
 - Police Professional Liability
 - Employee Benefits Liability
 - Employment Practices Liability
 - Management Liability
 - Sexual Abuse and Molestation Liability
2. Review insurance policies for conformity with the insurers' proposals and obtain necessary revisions.
3. Obtain from the insurers and promptly deliver to THE CITY OF WILMINGTON the requested insurance policies, endorsements, and related documentation on the understanding that THE CITY OF WILMINGTON will also review all such documents delivered to THE CITY OF WILMINGTON and promptly advise USI of any revisions that may be needed;
4. Verify the accuracy of each binder, certificate, endorsement, premium audit, and premium adjustment, and other documents received from THE CITY OF WILMINGTON's insurer(s), and obtain revisions from insurers when needed.
5. Prepare certificates of insurance as requested by THE CITY OF WILMINGTON and as appropriate.
6. Prepare a schedule of THE CITY OF WILMINGTON's insurance policies, including the names of the insurers, policy

- numbers, term, limits of liability, deductibles, retentions, payment plans and the estimated annual premium.
7. Monitor the financial strength of the insurer(s) providing THE CITY OF WILMINGTON's coverages, and inform THE CITY OF WILMINGTON in the event that the A.M. Best rating of such insurer(s) is reduced below "A-".
 8. Perform property replacement cost evaluations on an as needed basis.
 9. Assist THE CITY OF WILMINGTON in developing and maintaining the underwriting-related information required to obtain insurance coverage, relying on the information provided by THE CITY OF WILMINGTON on the understanding that THE CITY OF WILMINGTON shall be responsible for the accuracy such information.
 10. Furnish continuing advice, technical assistance and counsel to THE CITY OF WILMINGTON, as requested by THE CITY OF WILMINGTON.
 11. Provide periodic forecasts of ultimate losses to THE CITY OF WILMINGTON in reliance on information provided by insurers and THE CITY OF WILMINGTON.

B) Claims, Loss Control & Engineering

1. Monitor the loss control assistance provided by THE CITY OF WILMINGTON's insurers, evaluate the insurers' recommendations submitted and attempt to negotiate amendments where requested by THE CITY OF WILMINGTON and as appropriate.
2. Furnish THE CITY OF WILMINGTON with loss control assistance as requested by THE CITY including but not limited to, safety training and risk management center software.
3. Provide detailed loss data to THE CITY OF WILMINGTON on a periodic basis, based on data from the insurers or, if available, from USI's databases.
4. Analyze THE CITY OF WILMINGTON's loss data to determine trends in causes and sites of incidents, and provide the data analysis to THE CITY OF WILMINGTON on a periodic basis.
5. Monitor the claim services provided by THE CITY OF WILMINGTON's insurers, including assistance with claims submission interpretation of insurance policies.
6. Attend claims review meetings convened by THE CITY OF WILMINGTON's insurers as requested by THE CITY OF WILMINGTON.
7. Analyze reserve amounts allocated for claims by insurers and notify THE CITY OF WILMINGTON as to increases.
8. Monitor problematic claims regularly.

9. Conduct loss control surveys at the THE CITY OF WILMINGTON's facilities as agreed in writing by THE CITY OF WILMINGTON and USI.

As respects all Loss Control and Engineering services described above, USI does not offer any warranty, either express or implied, that such services shall result in either monetary savings or claim payments by insurers to THE CITY OF WILMINGTON. In addition, THE CITY OF WILMINGTON acknowledges that USI, in performing a Loss Control analysis, cannot identify or detect every possible hazard, risk or legal violation that may be present in THE CITY OF WILMINGTON's operation or premises.

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.