

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

#0138

Sponsor:

Council
Member
Johnson

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 personal 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 agreement with its current life and health insurance broker, USI Insurance Services LLC ("USI"), is set to expire on June 30, 2022; and

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

WHEREAS, the term of the proposed agreement with USI (the "Agreement") is for a period of one (1) year from July 1, 2022 through June 30, 2023, 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, a copy of which Agreement, in substantial form, is attached hereto and incorporated herein by reference as Exhibit "A"; and

WHEREAS, it is the recommendation of the Department of Human Resources that the City enter into the Agreement with USI.

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

SECTION 1. The Agreement between the City and USI Insurance Services LLC, a copy of which, in substantial form, is attached hereto as Exhibit "A", for the term of one (1)

year from July 1, 2022 through June 30, 2023, 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, or his designee, is hereby authorized to execute as many copies of the Agreement, as well as to take all additional undertakings related thereto, as may be necessary.

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

First Reading..... February 3, 2022
Second Reading..... February 3, 2022
Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ____ day of _____, 2022.

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 period of one (1) year from July 1, 2022 through June 30, 2023, 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 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.

W0116297

EXHIBIT A



CLIENT SERVICE AGREEMENT

Introduction

This Client Service Agreement (this "Agreement") is made and entered into on July 01, 2022 ("Effective Date") by and between USI Insurance Services LLC ("USI") and City of Wilmington ("Client").

WHEREAS, USI is duly licensed to engage in the insurance business for the purposes set forth herein; and

WHEREAS, Client desires to engage the services of USI upon the terms and conditions hereinafter set forth.

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

1. LINES OF INSURANCE COVERAGE AND OTHER BENEFITS

This Agreement is entered into with respect to the lines of insurance coverage and other mutually agreed-upon programs for which Client agrees to retain USI as its Broker of Record.

2. SERVICES

USI agrees to provide to Client the services outlined in Exhibit A.

The above-referenced services shall be rendered by USI to Client pursuant to the terms of this Agreement. Any additional services requested by Client shall be negotiated by the parties under separate written agreement.

The services to be provided by USI are provided for the exclusive benefit of Client. The services, recommendations, proposals, and information provided by USI are not to be distributed to, used by, or relied upon by other parties. Furthermore, if the services to be provided by USI hereunder shall be deemed by Client to apply to any insurance policy/product in effect prior to the Effective Date, then USI's services shall not be assumed by Client to remedy or resolve any deficiencies in such policy/product. USI will neither assume nor accept liability for any deficiencies, errors, or oversights inherent in such policy/product until such time as USI has had adequate opportunity to review such policy/policies and to provide recommendations to Client concerning same.

3. COMPENSATION

Fee Only Agreement

USI will be compensated for the services through payment of a fee by as outlined in Exhibit B of this Agreement.



Contingent, supplemental, or bonus commissions

It is possible that some of the insurance companies from which USI obtains coverage may pay it additional incentive commissions, sometimes referred to as contingent, supplemental, or bonus commissions, which may be based on the total volume of business we sell for them, and/or the growth rate of that business, retention rate, claims loss ratio, or other factors considering our entire book of business with an insurance company for a designated period of time. Such additional commissions, if any, would be in addition to any other compensation USI may receive. Generally, USI will annually receive from the various insurers with which it places employee benefits related risks less than 1% of its total annual premium placements as contingent compensation.

In the event there is a significant change in Client operations which affects the nature and scope of its insurance requirements, the parties agree to renegotiate USI's compensation, as appropriate.

4. BUSINESS ASSOCIATE AGREEMENT

USI has been retained by the Client's group health plan ("Covered Entity") to perform certain services on behalf of the Covered Entity in its capacity as a consultant with respect to activities of the Covered Entity as a "group health plan" as defined in 45 C.F.R. § 160.103. In connection with the provision of such services by USI, USI will use and disclose certain Protected Health Information (as defined below) concerning the Covered Entity and its activities.

USI and the Covered Entity desire to enter into a business associate agreement (the "Business Associate Agreement") for the purpose of addressing the Privacy Rule, the Security Rule, and the Electronic Transaction Rule, (as those terms are defined below), and for addressing the privacy and security provisions set forth in the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act") contained in Title XIII, Subtitle D, of the American Recovery and Reinvestment Act of 2009. In consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, USI and the Covered Entity agree as follows:

4.1. BUSINESS ASSOCIATE DEFINITIONS

4.1.1 "Agreement" shall mean this document, including all properly executed amendments.

4.1.2 "Breach" shall have the same meaning as the term "breach" in 45 C.F.R. § 164.402.

4.1.3 "Electronic Health Record" shall have the same meaning as the term "electronic health record" in § 13400(5) of the American Recovery and Reinvestment Act of 2009.

4.1.4 "Electronic Protected Health Information" shall have the same meaning as the term "electronic protected health information" in 45 C.F.R. § 160.103.



- 4.1.5 “Electronic Transaction Rule” shall mean the final regulations issued by the U.S. Department of Health and Human Services concerning standard transactions and code sets under 45 C.F.R. Parts 160 and 162.
- 4.1.6 “Individual” shall mean the person who is the subject of the Protected Health Information or a person who qualifies as the personal representative of the individual in accordance with 45 C.F.R. § 164.502(g).
- 4.1.7 “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E.
- 4.1.8 “Protected Health Information” shall mean any information, including genetic information, that: (i) relates to the past, present, or future physical or mental health or condition of an Individual; (ii) the provision of health care to an Individual; (c) or the past, present, or future payment for the provision of health care to an Individual; and that identifies the Individual or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual.
- 4.1.9 “Required by Law” shall have the same meaning as the term “required by law” in 45 C.F.R. § 164.103.
- 4.1.10 “Secretary” shall mean the Secretary of the Department of Health and Human Services (“HHS”) and any other officer or employee of HHS to whom authority has been delegated.
- 4.1.11 “Security Incident” shall have the same meaning as the term “security incident” in 45 C.F.R. § 164.304.
- 4.1.12 “Security Rule” shall mean the Security Standards and Implementation Specifications at 45 C.F.R. Parts 160 and 164, Subparts A and C.
- 4.1.13 “Transaction” shall have the same meaning as the term “transaction” in 45 C.F.R. § 160.103.
- 4.1.14 “Unsecured Protected Health Information” shall have the same meaning as the term “unsecured protected health information” in 45 C.F.R. § 164.402.

4.2. SAFEGUARDING PRIVACY AND SECURITY OF PROTECTED HEALTH INFORMATION

4.2.1 Permitted Uses and Disclosures. USI hereby agrees that it shall be prohibited from using or disclosing Protected Health Information for any purpose other than as expressly permitted or required by the Business Associate Agreement.

4.2.1(a) Functions and Activities on Covered Entity’s Behalf. Except as otherwise set forth in the Business Associate Agreement, the parties hereby agree that USI shall be permitted to use and/or disclose Protected Health Information of the Covered Entity only for the purpose of conducting the



transactions contemplated under the Business Associate Agreement and only for purposes within the scope of USI's representation of the Covered Entity.

- 4.2.1(b) Business Operations. USI is permitted to use and/or disclose Protected Health Information, if necessary, for the proper management and administration of USI's representation of the Covered Entity, or to carry out any legal responsibilities of USI provided that, with respect to any disclosure of Protected Health Information, either:
 - 4.2.1(b)(1) the disclosure is Required by Law; or
 - 4.2.1(b)(2) USI obtains reasonable assurances from the person to whom the Protected Health Information is disclosed that: (i) the Protected Health Information will be held in confidence and used or further disclosed only for the purposes for which USI disclosed the Protected Health Information to the person or as Required by Law; (ii) the person will use appropriate safeguards to prevent use or disclosure of the Protected Health Information; and (iii) the person immediately notifies USI of any instance of which it is aware in which the confidentiality of the Protected Health Information has been breached.
- 4.2.1(c) Data Aggregation Services. USI is permitted to use or disclose Protected Health Information to provide data aggregation services, as that term is defined by 45 C.F.R. § 164.501, relating to health care operations of the Covered Entity.
- 4.2.1(d) Minimum Necessary. USI will, in its performance of the functions, activities, services, and operations specified above, make reasonable efforts to use, to disclose, and to request only the minimum amount of Covered Entity's Protected Health Information reasonably necessary to accomplish the intended purpose of the use, disclosure or request, except that USI will not be obligated to comply with this minimum-necessary limitation if neither USI nor Covered Entity is required to limit its use, disclosure or request to the minimum necessary. USI and Covered Entity acknowledge that the phrase "minimum necessary" shall be interpreted in accordance with the HITECH Act and HHS guidance.



4.2.2 Information Safeguards.

4.2.2(a) Privacy of Covered Entity's Protected Health Information. USI will develop, implement, maintain, and use appropriate administrative, technical, and physical safeguards to protect the privacy of Covered Entity's Protected Health Information. The safeguards must reasonably protect Covered Entity's Protected Health Information from any intentional or unintentional use or disclosure in violation of the Privacy Rule and limit incidental uses or disclosures made pursuant to a use or disclosure otherwise permitted by the Business Associate Agreement.

4.2.2(b) Security of Covered Entity's Electronic Protected Health Information. USI will develop, implement, maintain, and use administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information that USI creates, receives, maintains, or transmits on Covered Entity's behalf as required by the Security Rule.

4.2.3 Subcontractors and Agents. USI will require any of its subcontractors and agents to which USI is permitted by the Business Associate Agreement, or in writing by Covered Entity, to disclose Covered Entity's Protected Health Information and/or Electronic Protected Health Information, to provide satisfactory assurances through a written agreement that meets the applicable requirements of 45 C.F.R. § 164.504(e) that such subcontractor or agent will comply with the same privacy and security safeguard obligations with respect to Covered Entity's Protected Health Information and/or Electronic Protected Health Information that are applicable to USI under the Business Associate Agreement.

4.2.4 Prohibition on Sale of Records. USI shall not directly or indirectly receive remuneration in exchange for any Protected Health Information of an Individual unless the Covered Entity or USI obtains from the Individual, in accordance with 45 C.F.R. § 164.508, a valid authorization that includes a specification of whether the Protected Health Information can be further exchanged for remuneration by the entity receiving Protected Health Information of that Individual, except as otherwise allowed under the HITECH Act.

4.2.5 Penalties for Noncompliance. USI acknowledges that it is subject to civil and criminal enforcement for failure to comply with the Privacy Rule and Security Rule, as amended by the HITECH Act.

4.3. **COMPLIANCE WITH ELECTRONIC TRANSACTION RULE**

If USI conducts, in whole or part, electronic Transactions on behalf of Covered Entity for which HHS has established standards, USI will comply and will require any subcontractor or agent it involves with the conduct of such Transactions to comply, with each applicable



requirement of the Electronic Transaction Rule. USI shall also comply with the National Provider Identifier requirements, if and to the extent applicable.

4.4. INDIVIDUAL RIGHTS

4.4.1 Access. USI will make available to Covered Entity or, at Covered Entity's direction, to an Individual (or the Individual's personal representative) for inspection and obtaining copies Covered Entity's Protected Health Information about the Individual that is in USI's custody or control, so that Covered Entity may meet its access obligations under 45 C.F.R. § 164.524. If the Protected Health Information is held in an Electronic Health Record, then the Individual shall have a right to obtain from USI a copy of such information in an electronic format. USI shall provide such a copy to Covered Entity or, alternatively, to the Individual directly, if such alternative choice is clearly, conspicuously, and specifically made by the Individual or Covered Entity.

4.4.2 Amendment. USI will, upon receipt of written notice from Covered Entity, promptly amend or permit Covered Entity access to amend any portion of Covered Entity's Protected Health Information, so that Covered Entity may meet its amendment obligations under 45 C.F.R. § 164.526.

4.4.3 Disclosure Accounting. To allow Covered Entity to meet its disclosure accounting obligations under 45 C.F.R. § 164.528:

4.4.3(a) Disclosures Subject to Accounting. USI will record the information specified below ("Disclosure Information") for each disclosure of Covered Entity's Protected Health Information, not excepted from disclosure accounting as specified below, that USI makes to Covered Entity or to a third party.

4.4.3(b) Disclosures Not Subject to Accounting. USI will not be obligated to record Disclosure Information or otherwise account for disclosures of Covered Entity's Protected Health Information if Covered Entity need not account for such disclosures.

4.4.3(c) Disclosure Information. With respect to any disclosure by USI of Covered Entity's Protected Health Information that is not excepted from disclosure accounting, USI will record the following Disclosure Information as applicable to the type of accountable disclosure made:

4.4.3(c)(1) Disclosure Information Generally. Except for repetitive disclosures of Covered Entity's Protected Health Information as specified below, the Disclosure Information that USI must record for each accountable disclosure is (i) the disclosure date, (ii) the name and (if known) address of the entity to which USI made



the disclosure, (iii) a brief description of Covered Entity's Protected Health Information disclosed, and (iv) a brief statement of the purpose of the disclosure.

4.4.3(c)(2) Disclosure Information for Repetitive Disclosures. For repetitive disclosures of Covered Entity's Protected Health Information that USI makes for a single purpose to the same person or entity (including Covered Entity), the Disclosure Information that USI must record is either the Disclosure Information specified above for each accountable disclosure, or (i) the Disclosure Information specified above for the first of the repetitive accountable disclosures; (ii) the frequency, periodicity, or number of the repetitive accountable disclosures; and (iii) the date of the last of the repetitive accountable disclosures.

4.4.3(d) Availability of Disclosure Information. USI will maintain the Disclosure Information for at least 6 years following the date of the accountable disclosure to which the Disclosure Information relates (3 years for disclosures related to an Electronic Health Record, starting with the date specified by HHS). USI will make the Disclosure Information available to Covered Entity within 60 calendar days following Covered Entity's request for such Disclosure Information to comply with an Individual's request for disclosure accounting. With respect to disclosures related to an Electronic Health Record, USI shall provide the accounting directly to an Individual making such a disclosure request, if a direct response is requested by the Individual.

4.4.4 Restriction Agreements and Confidential Communications. USI will comply with any agreement that Covered Entity makes that either (i) restricts use or disclosure of Covered Entity's Protected Health Information pursuant to 45 C.F.R. § 164.522(a) or (ii) requires confidential communication about Covered Entity's Protected Health Information pursuant to 45 C.F.R. § 164.522(b), provided that Covered Entity notifies USI in writing of the restriction or confidential communication obligations that USI must follow. Covered Entity will promptly notify USI in writing of the termination of any such restriction agreement or confidential communication requirement and, with respect to termination of any such restriction agreement, instruct USI whether any of Covered Entity's Protected Health Information will remain subject to the terms of the restriction agreement. USI will comply with any restriction request if: (i) except as otherwise Required by Law, the disclosure is to a health plan for purposes of carrying out payment or health care operations (and is not for purposes of carrying out treatment); and (ii) the Protected



Health Information pertains solely to a health care item or service for which the health care provider involved has been paid out-of-pocket in full.

4.5. BREACHES

4.5.1 Privacy or Security Breach. USI will report to Covered Entity any use or disclosure of Covered Entity's Protected Health Information not permitted by the Business Associate Agreement along with any Breach of Covered Entity's Unsecured Protected Health Information. USI will treat the Breach as being discovered in accordance with 45 CFR § 164.410. USI will make the report to the Covered Entity not more than 15 calendar days after USI learns of such non-permitted use or disclosure. If a delay is requested by a law enforcement official in accordance with 45 CFR § 164.412, USI may delay notifying Covered Entity for the applicable time period. USI's report will at least:

4.5.1(a) Identify the nature of the Breach or other non-permitted use or disclosure, which will include a brief description of what happened, including the date of any Breach and the date of the discovery of any Breach;

4.5.1(b) Identify Covered Entity's Protected Health Information that was subject to the non-permitted use or disclosure or Breach (such as whether full name, social security number, date of birth, home address, account number or other information were involved) on an individual basis;

4.5.1(c) Identify who made the non-permitted use or disclosure and who received the non-permitted disclosure;

4.5.1(d) Identify what corrective or investigational action USI took or will take to prevent further non-permitted uses or disclosures to mitigate harmful effects and to protect against any further Breaches;

4.5.1(e) Identify what steps the Individuals who were subject to a Breach should take to protect themselves;

4.5.1(f) Provide such other information, including a written report, as Covered Entity may reasonably request.

4.5.2 Security Incidents. USI will report to Covered Entity any attempted or successful (i) unauthorized access, use, disclosure, modification, or destruction of Covered Entity's Electronic Protected Health Information or (ii) interference with USI's system operations in USI's information systems, of which USI becomes aware. USI will make this report once per month, except if any such Security Incident resulted in a disclosure not permitted by the Business Associate Agreement or Breach of Covered Entity's Unsecured Protected Health Information, USI will make the report in accordance with the provisions set forth in Section 4.5.1.



4.6. BUSINESS ASSOCIATE AGREEMENT TERM AND TERMINATION

4.6.1 Term. Notwithstanding Section 5.1, this section shall be effective on the Effective Date and shall terminate when all Protected Health Information provided by Covered Entity to USI, or created or received by USI on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this section.

4.6.2 Right to Terminate for Cause. Covered Entity may terminate the Business Associate Agreement if it determines, in its sole discretion, that USI has breached any provision of the Business Associate Agreement, and upon written notice to USI of the Breach, USI fails to cure the Breach within 60 calendar days after receipt of the notice. Any such termination will be effective immediately or at such other date specified in Covered Entity's notice of termination.

4.6.3 Return or Destruction of Covered Entity's Protected Health Information. Upon termination of the Business Associate Agreement for any reason, USI, with respect to Protected Health Information received from the Covered Entity, or created, maintained, or received by USI on behalf of Covered Entity, shall:

4.6.3.1. retain only that Protected Health Information which is necessary for USI to continue its proper management and administration or to carry out its legal responsibilities;

4.6.3.2. return to Covered Entity or, if agreed to by Covered Entity, destroy the remaining Protected Health Information that USI still maintains in any form;

4.6.3.3. continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to Electronic Protected Health Information to prevent use or disclosure of the Protected Health Information, other than as provided for in this section, for as long as USI retains the Protected Health Information;

4.6.3.4. not use or disclose the Protected Health Information retained by USI other than for the purposes for which such Protected Health Information was retained and subject to the same conditions set out at Section 4.2.1(b) which applied prior to termination; and

4.6.3.5. return to Covered Entity or, if agreed to by Covered Entity, destroy the Protected Health Information retained by USI when it is no longer needed by USI for its proper management and administration or to carry out its legal responsibilities.



Upon Covered Entity's direction, USI will transmit the Protected Health Information to another business associate of the Covered Entity at termination and/or could add terms regarding USI's obligations to obtain or ensure the destruction of Protected Health Information created, received, or maintained by subcontractors.

4.6.4 Continuing Privacy and Security Obligation. If return or destruction of the Protected Health Information is not feasible, USI agrees to extend the protections of the Business Associate Agreement for as long as necessary to protect the Protected Health Information and to limit any further use or disclosure so as to be consistent with the intent of the Business Associate Agreement.

4.7. **GENERAL PROVISIONS**

4.7.1 Access to Books and Records. USI hereby agrees to make its internal practices, books, and records relating to the use, disclosure, and safeguards for Protected Health Information received from, or created or received by USI on behalf of the Covered Entity, available to the Secretary or the Secretary's designee for purposes of determining compliance with the Privacy Rule and/or the Security Rule.

4.7.2 Mitigation Procedures. USI agrees to have procedures in place for mitigating, to the extent practicable, any deleterious effect from the use or disclosure of Protected Health Information received from, or created or received by, USI on behalf of the Covered Entity, in a manner contrary to the Business Associate Agreement or the Privacy Rule.

4.7.3 Amendment to Agreement. Upon the compliance date of any final regulation or amendment to final regulation promulgated by HHS that affects USI or Covered Entity's obligations under the Business Associate Agreement, the Business Associate Agreement will be automatically amended such that the obligations imposed on USI or Covered Entity remain in compliance with the final regulation or amendment to final regulation.

5. **TERM AND TERMINATION**

5.1. Term. This Agreement shall commence on 7/1/2022 and shall continue to 6/30/2023 (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 least ninety (90) days prior to the termination date of the Agreement or extension unless terminated in accordance with section 5.2 below. In the event of termination, USI will assist Client in arranging a smooth transition process. However, USI's obligation and the obligation of its affiliates to provide services to Client will cease upon the effective date of termination, unless otherwise agreed in writing. USI shall be entitled to receive the fair market value of services rendered hereunder prior to the date of termination.



5.2. Termination. Either party shall have the right to terminate this Agreement upon 60 days' prior written notice to the other.

6. ACCURACY OF INFORMATION

USI's ability to provide Client with the services outlined in Exhibit A above is conditioned upon USI's receipt of accurate and timely information from Client. USI will not independently verify or authenticate information provided by or on behalf of Client. Client shall be solely responsible for the accuracy and completeness of such information and other documentation furnished to USI.

7. ADDITIONAL SERVICES

Additional services are available for additional compensation and subject to the negotiation of separate agreements or by addendum to this Agreement. Such services may include, but are not limited to:

- Human resources advisory services
- Claims and eligibility audits
- Actuarial services
- Employee communications beyond what described in Exhibit A
- Interactive online client services
- Non-benefits insurance brokerage, risk management, and risk financing advice
- Retirement benefits

8. BOOKS AND RECORDS

Client is entitled to copies of reports prepared by USI hereunder, contracts between Client and its carriers and administrators to the extent such contracts are in USI's possession and control, and communications between USI and Client's insurance carriers and employee benefits providers to the extent such books and records are maintained by USI with regard to its performance under this Agreement.

9. NO FIDUCIARY STATUS

USI is not named a fiduciary with respect to any plan for which it may provide services. It is not intended by the Client or USI that any services performed by USI under this Agreement shall include any fiduciary duties or make USI a fiduciary of any plan maintained by the Client.

10. DATA SECURITY

To the extent required by applicable law, USI will implement and maintain reasonable security procedures and practices appropriate to the nature of the personal information it receives, and which are designed to help protect such information from unauthorized access, acquisition, destruction, use, modification, or disclosure.



11. DATA PRIVACY

In order to provide the services identified herein, it may be necessary for USI to receive from Client, or from a party on Client's behalf, information of a personal nature that may be protected by various federal and state privacy or other laws. USI advises Client to consult with its legal counsel as to how these laws impact Client and Client's employees, Client's plan, our contemplated engagement, and disclosure of information to USI. Client represents that it has the authority and all rights, authorizations, approvals and consents required to disclose its employees' and their beneficiaries' information to USI for USI's use in performing its services for Client and Client's employees. Client further represents that USI's use of this information to perform services for Client and Client's employees does not and will not violate any privacy notice or other policy issued by Client or any benefit program Client maintains, or any applicable law.

Moreover, because USI is not engaged in the practice of law and the services provided hereunder are not intended as a substitute for legal advice, USI recommends that Client secure the advice of competent legal counsel with respect to any legal matters related to any plan subject to this Agreement.

12. ENTIRE AGREEMENT

This Agreement contains the entire understanding of the parties with respect to the subject matter contained herein, superseding all prior agreements, understandings, and negotiations with respect to such matters. This Agreement may be modified or otherwise amended and the observance of any term of this Agreement may be waived only if such modification, amendment, or waiver is in writing and signed by the party to be charged with same. This Agreement shall be binding upon and inure to the benefit of the parties' respective successors.

13. FORCE MAJEURE

Neither party shall have any liability for any failure or delay in performance of its obligations under this Agreement because of circumstances beyond its reasonable control including, without limitation, acts of God, fires, floods, earthquakes, acts of war or terrorism, civil disturbances, sabotage, accidents, unusually severe weather, governmental actions, power failures, computer/network viruses that are not preventable through generally available retail products, catastrophic hardware failures, or attacks on its server.

14. SELECTION OF ISSUING INSURANCE COMPANY

USI has no ownership interest in and is not under common control with the insurance company that is issuing the lines of insurance coverage described in this Agreement. USI does not guarantee the solvency of any insurer with which it places Client's risks.



15. VALUE ADDED SERVICES

To the extent that state law prohibits value added services that are unrelated to the insurance products being sold, this Agreement may be modified so that the scope of services and the corresponding compensation therefore is compliant under state law.

16. CONFIDENTIAL INFORMATION

"Confidential Information" shall mean non-public information revealed by or through a party to this Agreement (a "Disclosing Party") to the other party (a "Receiving Party") including (a) information expressly or implicitly identified as originating with or belonging to third parties, or marked or disclosed as confidential, (b) information traditionally recognized as proprietary trade secrets, and (c) all forms and types of financial, business (including customer information), scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing.

As to any Confidential Information disclosed by the Disclosing Party to the Receiving Party, the Receiving Party will take reasonable precautions in accordance with procedures it follows with respect to its own important confidential information to prevent disclosure, directly or indirectly, of all or any portion of the Confidential Information.

Except as may be required by law or legal process, the Receiving Party agrees not to otherwise use the Confidential Information obtained hereunder in the absence of written permission received from the Disclosing Party. The Receiving Party further agrees to return to Disclosing Party all Confidential Information received hereunder upon written request therefore.

The obligations hereunder remain in full force and effect until and unless: (a) the Receiving Party can show that such Confidential Information was in the Receiving Party's possession prior to the date of the disclosure by Disclosing Party; or (b) such Confidential Information was obtained by the Receiving Party after the date of this Agreement from a party other than Disclosing Party, and the Receiving Party has no knowledge that said party is under an obligation of confidentiality to the Disclosing Party with respect to such information; or (c) such Confidential Information becomes generally available to the trade, or to the public, through sources other than Receiving Party; or (d) such Confidential Information is developed at any time by the Receiving Party independent of information or materials disclosed by Disclosing Party to the Receiving Party.

In the event that the Receiving Party is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose any Confidential Information furnished by the Disclosing Party, it is agreed that the Receiving Party will cooperate with the Disclosing Party and provide the Disclosing Party with prompt notice of such request(s) or requirement(s) so that the Disclosing Party may seek an



appropriate protective order, at its sole cost, or waive compliance by the Receiving Party with the provisions of this Agreement. If, in the absence of a protective order or the receipt of a waiver hereunder, the Receiving Party is nonetheless, in the opinion of the Receiving Party, legally required to disclose the Confidential Information forwarded by the Disclosing Party, the Receiving Party may disclose such information without liability hereunder, provided, however, that the Receiving Party shall disclose only that portion of such Confidential Information which it considers that it is legally required to disclose.

Upon termination of this Agreement, or upon Disclosing Party's earlier request, Receiving Party shall promptly deliver to Disclosing Party all Confidential Information and any other material which Disclosing Party furnishes to Receiving Party in connection with this Agreement.

17. INTELLECTUAL PROPERTY

USI and Client shall each retain individual ownership of all materials, ideas, concepts, inventions, discoveries, plans, product names, proprietary information, patents, copyrights, documents, data, programs, training materials, slogans, artwork, research data and results and marketing designs that each provides to this consulting effort (the "Existing Materials"). All Existing Materials shall be subject to the terms and conditions of the confidentiality provisions contained herein. Any and all ideas, concepts, inventions, discoveries, plans, product names, proprietary information, patents, copyrights, documents, data, programs, training materials, slogans, artwork, research data and results and marketing designs (the "Work Product") conceived or developed between USI and Client hereunder, to the extent that such Work Product is distinct from the individually-owned Existing Materials, shall become the sole and exclusive property of Client. Client agrees to hereby grant USI an unlimited non-exclusive license to use the Work Product, which license shall include use among USI's affiliates.

18. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of State of Delaware, without regard to its conflict of laws principles.

19. NOTICES

Any notices required to be given under this Agreement shall be in writing and may be sent by certified mail, return receipt requested, or by confirmed facsimile, to the following addresses which may be changed, from time to time, by written notice as provided herein, setting forth the new address.

Client: City/County Building (PON 190750), 800 N. French Street, 4th Fl., Wilmington, DE 19801

USI: 1007 N Orange St, Suite 1115, Wilmington, DE 19801



20. CITY OF WILMINGTON GENERAL TERMS AND CONDITIONS

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

OTHER GENERAL LEGAL PROVISIONS

If any part, term, or provision of this Agreement shall be found by a court to be legally invalid or unenforceable, then such provision or portion thereof shall be performed in accordance with applicable laws. The invalidity or unenforceability of any provision or portion of any contract document shall not affect the validity of any other provisions or portion of this Agreement.

The parties agree that neither party shall have any liability for indirect, special, punitive, consequential, or incidental damages, including, without limitation, loss of profits.

IN WITNESS WHEREOF, the Client and USI have executed this Agreement as of the date(s) first written below.

USI Insurance Services LLC

City of Wilmington

Signature

Signature

E. Kent Evans

Print Name

Print Name

EB Practice Leader

Title

Title

Date

Date



EXHIBIT A SERVICES

Section 1.0 Analytical Services:

1.1 Design of health care plans, cost-containment and other plan design recommendations

- | | | |
|-------|---|----------|
| 1.1.1 | Review benefit designs and compare to Client's strategic objectives. Recommend modifications where appropriate. | Annually |
| 1.1.2 | Evaluate the impact of plan modifications on employees and the potential savings to Client. | Annually |
| 1.1.3 | Evaluate alternate carriers and product offerings. | Annually |
| 1.1.4 | Provide benefit benchmarking, as appropriate. | Annually |

1.2 Preparation of bid specifications (RFP) (as needed)

- | | | |
|-------|---|----------|
| 1.2.1 | Consult with Client to establish objectives for market review and identify potential carriers or vendors. | Annually |
| 1.2.2 | Assemble benefit, rate and claim data for inclusion in RFP. | Annually |
| 1.2.3 | Deliver RFP to selected vendors and provide any requested additional information. | Annually |

1.3 Analysis of proposals and presentation of findings

- | | | |
|-------|--|----------|
| 1.3.1 | Compare costs, funding, benefits, contracts, negotiated provider discounts, employee network disruption issues, financial strength and anticipated service level for each carrier or vendor, as appropriate. | Annually |
| 1.3.2 | Present USI's recommended carriers or vendors. Recommendation supported by detailed analysis. | Annually |
| 1.3.3 | Organize finalist meetings with Client, if appropriate. | Annually |

1.4 Renewal analysis and negotiation

- | | | |
|-------|--|----------|
| 1.4.1 | Evaluate carrier underwriting practices. | Annually |
|-------|--|----------|



1.4.2 Negotiate with carriers based on internal underwriting analysis and market trends. Annually

1.5 Reporting/Servicing Meetings

1.5.1 Claims and utilization reporting or summary.

1.5.2 Review of annual accounting (as appropriate). Annually

1.5.3 Benefit Resource Center Reports Quarterly

Section 2.0 Account Management Services:

2.1 Contract Review

2.1.1 Perform contract and Benefit Booklet review for each brokered plan Annually

2.2 Employee Meetings

2.2.1 Employee meetings and/or benefit fairs will be limited to a maximum of (1) one per fifty (50) employees Annually

2.2.2 Benefit fairs may be selected in lieu of employee meetings and will be limited to (1) per 100 benefit eligible employees. Annually

2.3 Employer/Employee Communications

2.3.1 Consolidated Benefit Summary Annually

2.3.2 USI Insider and Health & Wellness articles Monthly

2.3.3 Service Calendar Annually

2.3.4 Technical Bulletins As appropriate

2.4 Tax Reporting

2.4.1 Provide signature ready 5500 filings, along with other plan compliance materials as required by the Employee Benefits Security Administration. Annually



EXHIBIT B FEE SCHEDULE

In consideration of the performance of the Services as described in Exhibit A, USI shall be compensated as outlined below:

Annual USI Fees:	\$135,000.00
Total Annual Compensation:	\$135,000.00

1. Fees will be billed on by USI on a monthly basis and are due by the end of the month for which services are provided
2. Compensation will be in effect for the Term unless modified in accordance with Section 12 of the Agreement.



EXHIBIT C

CITY OF WILMINGTON GENERAL TERMS AND CONDITIONS

(the Agreement as supplemented by these General Terms and Conditions shall hereinafter be referred to collectively as this "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 this Agreement as follows: workers' compensation as required by law; commercial general liability coverage for personal injury, including death, and property damage in the minimum amount of One Million Dollars (\$1,000,000.00); and professional liability coverage in the minimum amount of One Million Dollars (\$1,000,000.00) per occurrence and Three Million Dollars (\$3,000,000.00) annual aggregate. 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 all of the above-stated coverage and naming the City as an additional insured with respect to the commercial general liability policy.

2. **Use of Subcontractors.** Contractor may use qualified consultants, subconsultants, 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 defend, 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, copies, 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, copies, 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:

Dany Smith
City of Wilmington
Department of Human Resources
800 N. French Street, 4th Floor
Wilmington, DE 19801

Contractor:

E. Kent Evans
USI Insurance Services LLC
1007 N. 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 this 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. **Severability.** This 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.

17. **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.

18. **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.