

ITEM #45-A

**ADDITIONAL MATERIAL
10:00 A.M. REGULAR MEETING**

JUNE 12, 2018

SUBMITTED AT THE REQUEST OF

**FINANCE and ADMINISTRATIVE
SERVICES DEPARTMENT**



Finance and Administrative Services Department

PURCHASING DIVISION

115 S. Andrews Avenue, Room 212 • Fort Lauderdale, Florida 33301 • 954-357-6066 • FAX 954-357-8535

MEMORANDUM

DATE: June 8, 2018

TO: Board of County Commissioners

THRU: Kevin B. Kelleher, Deputy CFO/Deputy Director
Finance and Administrative Services Department

FROM: Brenda J. Billingsley, Director
Purchasing Division

SUBJECT: June 12, 2018 - Commission Meeting - Agenda Item No. 45A
Motion to Approve Agreement between Broward County and USI Insurance
Services National, Inc., for Employee Benefits Consulting Services,
Request for Proposals (RFP) No. R2114673P1

Attached is the executed Agreement, Exhibit 2 for Agenda Item No. 45A which replaces the current placeholder page.

Attachment

BJB/cc/lg

c: Bertha Henry, County Administrator
Monica Cepero, Deputy County Administrator
George Tablack, CPA, Chief Financial Officer
Lisa Morrison, Benefits Manager, Human Resources Division
Robert Melton, County Auditor
Andrew Meyers, County Attorney



**AGREEMENT BETWEEN BROWARD COUNTY AND USI INSURANCE SERVICES NATIONAL, INC.
FOR EMPLOYEE BENEFITS CONSULTING SERVICES
(RFP # R2114673P1)**

This is an Agreement ("Agreement"), made and entered into by and between Broward County, a political subdivision of the State of Florida ("County"), and USI Insurance Services National, Inc., a foreign corporation authorized to transact business in the State of Florida ("Consultant") (collectively referred to as the "Parties").

IN CONSIDERATION of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1. DEFINITIONS AND IDENTIFICATIONS

The following definitions and identifications set forth below apply unless the context in which the word or phrase is used requires a different definition:

- 1.1 **Agreement**: This document, Articles 1 through 13, inclusive of the Exhibits attached hereto.
- 1.2 **Board**: The Board of County Commissioners of Broward County, Florida, which is the governing body of the Broward County government created by the Broward County Charter.
- 1.3 **Consultant**: The person, firm, corporation or other entity selected to perform the Services pursuant to this Agreement.
- 1.4 **Contract Administrator**: The Director of Broward County Human Resources Division ("Director"), or the Director's designee, who is the representative of County concerning the Project. In the administration of this Agreement, as contrasted with matters of policy, all Parties may rely upon instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.
- 1.5 **County Administrator**: The administrative head of County pursuant to Sections 3.02 and 3.03 of the Broward County Charter.
- 1.6 **County Attorney**: County's chief legal counsel who directs and supervises the Office of the County Attorney pursuant to Section 2.10 of the Broward County Charter.
- 1.7 **County Business Enterprise or "CBE"**: A small business located in Broward County, Florida, certified by Broward County's Office of Economic and Small Business Development as meeting the eligibility requirements of County's CBE program.

1.8 **Notice to Proceed**: A written authorization to proceed with the Project, phase, or task thereof, issued by the Contract Administrator.

1.9 **Project**: The Additional Services (as defined in Exhibit A) outlined in each Work Order and as set forth herein.

1.10 **Purchasing Director**: Broward County's Director of its Purchasing Division.

1.11 **RFP**: Request for Proposals for Employee Benefits Consulting Services for the Broward County Board of County Commissioners, RFP# R2114673P1.

1.12 **Services**: All work required by Contractor under this Agreement, including without limitation all deliverables, consulting, training, project management, and other services specified in Exhibit A.

1.13 **Subconsultant**: An entity or individual, or combination thereof, providing Services to County through Consultant for all or any portion of the Services under this Agreement. The term "Subconsultant" shall include all subcontractors.

1.14 **Work Order**: A written description of Additional Services required pursuant to Article 4 of this Agreement.

ARTICLE 2. PREAMBLE

In order to establish the background, context, and frame of reference for this Agreement and to generally express the objectives and intentions of the respective Parties hereto, the following statements, representations, and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions that follow and may be relied upon by the Parties as essential elements of the mutual considerations upon which this Agreement is based.

2.1 County has budgeted funds for the Agreement. This Agreement is funded with County funds.

2.2 This Agreement is the result of County's RFP process. Consultant was chosen as the consultant to perform the Services herein.

2.3 Negotiations pertaining to the Services to be performed by Consultant were undertaken with Consultant, and this Agreement incorporates the results of such negotiations.

ARTICLE 3. TERM OF AGREEMENT

3.1 Term. This Agreement shall be effective upon the date last executed by the Parties ("Effective Date"), and Consultant's performance of Services shall commence on July 1, 2018 and terminate on June 30, 2021. The continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and availability of funds in accordance with Chapter 129, Florida Statutes.

3.2 Renewal. This Agreement may be renewed upon the mutual consent of County and Consultant for up to two (2) consecutive twelve-month periods. If the Agreement is renewed, the first renewal term will commence on July 1, 2021 and end on June 30, 2022 ("First Renewal Term"). If the Agreement is again renewed, the second renewal term will commence on July 1, 2022 and end on June 30, 2023 ("Second Renewal Term").

3.3 Notwithstanding the above, County may, by and through the Purchasing Director and at his or her sole discretion, extend the term of this Agreement on a month-to-month basis, for a maximum of six (6) additional months, to allow for completion of any open Work Orders, or due to ongoing negotiations for renewal, or if expiration of this Agreement would result in a gap in the provision of services while County conducts a new solicitation and procurement process for the Services.

ARTICLE 4. SCOPE OF SERVICES; OPTIONAL AND ADDITIONAL SERVICES; CHANGES IN SCOPE OF SERVICES

4.1 Consultant shall provide General Professional Benefit Consulting Services set forth in Exhibit A, including all necessary, incidental, and related activities required for full and complete performance of this Agreement (the "Scope of Services"). Consultant shall commence its performance of those Services subject to fixed fees ("Basic Services"), as described in Exhibit A, on the date specified in County's Notice to Proceed. Any Additional Services will be performed by Consultant ""for the applicable fixed fee amount set forth on Exhibit B. If no fixed fee for the requested Additional Services is set forth on Exhibit B, Consultant shall provide County with a guaranteed maximum fee quotation based on the hourly rates set forth on Exhibit B. Before commencing the performance of any Additional Services, Consultant must receive a Work Order and a Notice to Proceed for Additional Services for the stated fixed fee or for an agreed upon guaranteed maximum fee , whichever the case may be, in a manner as set forth below.

4.1.1 All Additional Services to be performed by Consultant pursuant to the terms of this Agreement must first be authorized by the Contract Administrator in writing by a Work Order in accordance with the requirements of this Subsection 4.1.1. Consultant warrants that the terms of any Project represented in the associated Work Order reflect the same terms, conditions and pricing as offered, negotiated, and accepted by County related to **RFP No. R2114673P1** and as set forth in this Agreement.

4.1.1.1 Before any Project is commenced pursuant to a Work Order, Consultant shall supply the Contract Administrator with a written estimate for all charges expected to be incurred for such Project, which estimate shall be reviewed by Contract Administrator and a final amount for Consultant's compensation shall be approved as follows:

A. Work Orders that will cost County not more than Thirty Thousand Dollars (\$30,000.00) in the aggregate may be signed by Contract Administrator and Consultant.

B. Work Orders that will cost County more than Thirty Thousand Dollars (\$30,000.00) in the aggregate but not more than One Hundred Thousand Dollars (\$100,000.00) in the aggregate may be signed by Purchasing Director and Consultant.

C. Work Orders above Purchasing Director's authority in Subsection 4.1.1.1 (B) require Board approval.

4.1.1.2 Subsequent to Contract Administrator issuing a Work Order pursuant to this article, Contract Administrator will issue a Notice to Proceed for the authorized work. Consultant shall not commence such work until after it receives the Contract Administrator's Notice to Proceed.

4.1.1.3 Any charges in excess of the amount approved in the original Work Order shall require a modification thereto approved by Contract Administrator, Purchasing Director, or Board pursuant to the limits set forth above using the cumulative total of the modifications (the amount approved in the original Work Order plus the modifications thereto). Notwithstanding anything contained in this subsection, Consultant's compensation shall not exceed the amount approved in the Work Order unless such additional amount received the prior written approval as outlined above.

4.1.1.4 All Work Orders issued by the Contract Administrator shall contain, as a minimum, the following information and requirements:

A. A description of the Services to be performed (which description must specify in detail the individual tasks and other activities to be performed by Consultant), a reference to this Agreement pursuant to which the work to be undertaken is authorized, and a statement of the method of compensation.

B. A budget establishing the amount of compensation, which if it is a guaranteed maximum fee shall not be exceeded unless prior written

approval of County is obtained. In the event County does not approve an increase in the guaranteed maximum amount, and the need for such action is not the fault of Consultant, the authorization shall be terminated, and Consultant shall be paid in full for all work completed to that point, but shall in no case shall, Consultant be paid more than the guaranteed maximum amount. The information contained in the guaranteed maximum fee budget shall be in sufficient detail so as to identify the various elements of costs.

C. A time established for completion of the work or Services undertaken by Consultant and for the submission to County of documents, reports, and other information pursuant to this Agreement.

D. Any other additional instructions or provision relating to the Work Order pursuant to this Agreement.

E. Work Orders shall be dated, serially numbered, and signed.

4.2 Consultant acknowledges and agrees that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the terms and conditions of this Agreement, except as otherwise provided pursuant to the Agreement, or as expressly authorized by the Broward County Procurement Code (Chapter 21 of the Broward County Administrative Code), or any other applicable portion of the County Administrative Code. Any change to the terms and conditions of this Agreement must be accomplished by a written amendment, executed by the Parties in accordance with Article 12 of this Agreement. Any change in the means or manner of the provision of data warehouse services shall be subject to County's prior written approval. Additionally, notwithstanding the above stated requirement for a written amendment and the provisions of Section 12.6, to change the terms and conditions of this Agreement, County, in its sole discretion, shall have the right to elect to partially terminate this Agreement as it pertains to data warehouse services and to delete those services from the Scope of Services, without the need for a written amendment to accomplish such change, and procure data warehouse services through another provider, by giving notice of such election given to Consultant. The partial termination and deletion of data warehouse services shall be effective on the date specified in County's notice of partial termination and deletion. In the event County elects to delete data warehouse services, Consultant shall comply with the requirements of Section 12.1, and thereafter County shall provide Consultant with such access to the data as is necessary for Consultant to perform its remaining Services under this Agreement.

4.3 In the event a dispute between the Contract Administrator and Consultant arises over whether requested Services constitute Additional Services and such dispute cannot be resolved by the Contract Administrator and Consultant, such dispute shall be promptly presented to the Purchasing Director for resolution. The Purchasing Director's decision shall be final and binding on the Parties. The resolution shall be set forth in a written document in accordance with

Section 4.2 above, if applicable. During the pendency of any dispute, Consultant shall promptly perform the disputed Services.

4.4 Because Consultant shall be required to recommend insurance products based upon an objective review thereof, Consultant shall not be engaged as an agent or broker or participate in any capacity whatsoever in the sale or placement of employee benefit insurance coverage on behalf of County unless specifically approved by the Board. Consultant shall also not provide third party administration, employee benefit insurance services, claims administration, medical management, or any other form of services that would directly or indirectly be associated with coverage placed on behalf of County, unless approved by the Board. Notwithstanding the foregoing sentences, Consultant shall be permitted to serve as an agent or broker and otherwise participate in the sale or placement of stop loss insurance coverage on behalf of the County pursuant to this Agreement, including but not limited to Exhibit A, Scope of Services.

4.5 Consultant shall return telephone calls or reply to emails from Contract Administrator or his/her designee on or before the next business day.

4.6 It is understood and agreed that this Agreement is a consulting contract for services, and the services shall include advice and recommendations. However, the final decisions in connection with the implementation of such advice and recommendations shall be made by County. Notwithstanding the foregoing sentence, nothing herein shall be deemed to affect Consultant's obligations under this Agreement, including, without limitation, Articles 4 and 8 hereof.

4.7 Penalties.

4.7.1 Penalty Invoices. If County, through its Contract Administrator, finds Consultant has incurred penalties pursuant to the terms of this Agreement and Exhibit C, Performance Measures, County will submit a written invoice to Consultant detailing the alleged performance failures.

4.7.2 Agreed Penalties. Any time penalties are incurred by Consultant pursuant to the terms of this Agreement, County will submit an invoice to Consultant for payment of these penalties no later than the end of the month following the period for which penalties were assessed. Unless Consultant files a dispute pursuant to Section 4.7.3, Consultant must pay these penalties within twenty (20) days from the date of invoice. If a penalty is not paid by Consultant pursuant to the terms of this Agreement, County may automatically deduct the penalty amounts from Consultant's compensation.

4.7.3 Disputed Penalties. Any time penalties are assessed by the Contract Administrator against Consultant pursuant to the terms of this Agreement, Consultant may appeal the assessment of such penalties to the Purchasing Director within ten (10) days after notice of the assessment is given pursuant to Article 9. The appeal shall be in writing and

Consultant shall state the reasons why the penalties should be reduced or not assessed. If the appeal is not resolved by mutual agreement, the Purchasing Director shall promptly issue a decision in writing, after consulting with the County Attorney's Office. The decision shall state the reasons for the action taken, and inform Consultant of its right to administrative review. If Consultant disagrees with the decision of the Purchasing Director, it may seek administrative review by filing notice with the Purchasing Director not later than ten (10) days after the decision of the Purchasing Director. County and Consultant agree that the hearing procedures shall be in accordance with the provisions of Section 21.120 of the Broward County Procurement Code, as may be amended from time to time.

ARTICLE 5. COMPENSATION AND METHOD OF PAYMENT

5.1 County agrees to pay Consultant the fixed monthly fees and fixed annual fees for Basic Services set forth in Exhibit B, in the manner set forth in Section 5.4. During the initial three-year term of the Agreement, the fixed monthly fee amounts to a cumulative total of Four Hundred Eighty Six Thousand Dollars (\$486,000.00) and the fixed annual fees amount to a cumulative total of Sixteen Thousand Five Hundred Dollars (\$16,500.00). County shall receive the benefit (in terms of a reduction from fixed monthly fees) from any reduction in the cost to Consultant for data warehouse charges, and Consultant agrees that it shall reduce its fixed fee for such Services the next month following the reduction in cost to Consultant.

5.2 County agrees to pay Consultant the fixed fees set forth on Exhibit B for Additional Services performed consistent with the terms of this Agreement. When Exhibit B does not set forth a fixed fee for an Additional Service, the hourly rates set forth in Exhibit B are the rates to be charged by Consultant for those Additional Services. All Work Orders issued pursuant to this Agreement shall not exceed Three Hundred Thousand Dollars (\$300,000), cumulatively, over the initial term of this Agreement.

5.3 County agrees to pay Consultant, in the manner specified in Section 5.4, the compensation as set forth in each Work Order for the work actually performed and completed pursuant to this Agreement and the specific scope attached to each Work Order. It is acknowledged and agreed by Consultant that the amount in each Work Order is the maximum payable and constitutes a limitation upon County's obligation to compensate Consultant for the Services listed therein. This maximum amount, however, does not constitute a limitation of any sort upon Consultant's obligation to perform all items of work required by or that can be reasonably inferred from each Work Order. No amount shall be paid to Consultant to reimburse its expenses.

5.4 Method of Billing and Payment.

5.4.1 Consultant shall submit invoices for compensation no more often than on a monthly basis. An original invoice plus one copy are due within fifteen (15) days of the

end of the month except the final invoice that must be received no later than sixty (60) days after this Agreement expires. Invoices shall designate the nature of the Services performed.

5.4.2 County shall pay Consultant within thirty (30) calendar days from receipt of Consultant's proper invoice, as defined by County's Prompt Payment Ordinance (Broward County Ordinance, Section 1-51.6, Broward County Code, as may be amended from time to time). To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by Contract Administrator.

5.4.3 Payment will be made to Consultant at:

Susan O'Hara White, Senior Vice President
USI Insurance Services
2400 East Commercial Blvd., Suite 600
Fort Lauderdale, FL 33308

ARTICLE 6. INDEMNIFICATION

Consultant shall at all times hereafter indemnify, hold harmless and defend County and all of County's current and former officers, agents, servants, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorneys' fees, court costs, and expenses raised or asserted by any person or entity not a party to this Agreement (collectively, a "Claim"), which Claim is caused or alleged to be caused, in whole or in part, by any intentional, reckless or negligent act or omission of Consultant, its current or former officers, employees, agents, or servants, arising from, relating to, or in connection with this Agreement". In the event any Claim is brought against an Indemnified Party, Consultant shall, upon written notice from County, defend each Indemnified Party against each such Claim by counsel satisfactory to County or, at County's option, pay for an attorney selected by the County Attorney to defend the Indemnified Party. The obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Contract Administrator and the County Attorney, any sums due Consultant under this Agreement may be retained by County until all of County's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by County.

ARTICLE 7. TERMINATION

7.1 This Agreement or any Work Order issued under this Agreement may be terminated for cause by action of the Board upon not less than sixty (60) days' written notice. This Agreement may also be terminated for convenience by the Board. Termination for convenience by the Board shall be effective on the termination date stated in the written notice provided by County, which termination date shall be not less than thirty (30) days after the date of such written notice. If

this Agreement or the subject Work Order was entered into on behalf of County by someone other than the Board, termination by County of the Agreement or Work Order, as applicable, may be by action of the County Administrator or the County representative (including his or her successor) who entered into this Agreement or Work Order on behalf of County. This Agreement may also be terminated by the County Administrator upon such notice as the County Administrator deems appropriate under the circumstances in the event the County Administrator determines that termination is necessary to protect the public health, safety, or welfare. If County erroneously, improperly or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

7.2 Consultant may terminate this Agreement without cause upon not less than two hundred seventy (270) days' prior written notice, or for cause as provided in this Agreement upon not less than sixty (60) days' written notice.

7.3 County may terminate this Agreement or any Work Order issued under this Agreement for cause for reasons including, but not limited to, (i) Consultant's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, (ii) Consultant's failure to continuously perform its obligations under this Agreement or any Work Order issued under this Agreement in a manner calculated to meet or accomplish the objectives of County as set forth in this Agreement, or (iii) multiple breaches of the provisions of this Agreement or any Work Order issued under this Agreement by Consultant notwithstanding whether any such breach was previously waived or cured. This Agreement may also be terminated for cause if Consultant is a "scrutinized company" pursuant to Section 215.473, Florida Statutes, as amended, or if Consultant is placed on a "discriminatory vendor list" pursuant to Section 287.134, Florida Statutes, or if Consultant provides a false certification submitted pursuant to Section 287.135, Florida Statutes, as amended.

7.4 In addition, either party may terminate this Agreement for cause for any of the following events:

7.4.1 Consultant may terminate this Agreement upon sixty (60) days' notice to County, in the event that the payments to be made by County to Consultant, as provided herein, have not been paid within sixty (60) days after invoice and said monies are not paid within ten (10) business days after written notice to County of said default.

7.4.2 Other than the payment of monies, if either party believes there has been a default under this Agreement, the aggrieved party shall send to the party in default written notice identifying the default. If within thirty (30) days of the date of such notice, the default has not been cured, the aggrieved party may terminate this Agreement upon sixty (60) days notice to the other.

7.4.3 In the event that Consultant files a petition seeking bankruptcy protection, or enters into an arrangement with creditors because of its insolvency, then upon thirty (30) days' notice, County may declare this Agreement canceled.

7.4.4 Consultant may terminate this Agreement upon sixty (60) days' notice, in the event Consultant is no longer able to legally provide the Services required under this Agreement. The notice provided herein shall state, with specificity, the reason(s) why Consultant is no longer able to legally provide the Services under this Agreement.

7.5 Notice of termination shall be provided in accordance with Article 9 of this Agreement, except that notice of termination by the County Administrator that the County Administrator deems necessary to protect the public health, safety, or welfare, may be verbal notice that shall be promptly confirmed in writing in accordance with Article 9.

7.6 In the event this Agreement is terminated for convenience by County, Consultant shall be paid for any payments due to the date the Agreement is terminated.

7.7 In the event this Agreement is terminated, any payments due by County to Consultant shall be withheld until all documents are provided to County by Consultant pursuant to Section 12.1 of this Agreement.

ARTICLE 8. INSURANCE

8.1 For purposes of this article, the term "County" shall include Broward County and its members, officials, officers, and employees.

8.2 Consultant shall maintain, at its sole expense and at all times during the term of this Agreement (unless a different time period is otherwise stated herein), at least the minimum limits of insurance coverage designated in Exhibit E (inclusive of any amount provided by an umbrella or excess policy) in accordance with the terms and conditions stated in this article. All required insurance shall apply on a primary basis, and shall not require contribution from, any other insurance or self-insurance maintained by County. Any insurance, or self-insurance, maintained by County shall be in excess of, and shall not contribute with, the insurance provided by Consultant.

8.3 Insurers providing the insurance required by this Agreement must either be: (1) authorized by a current certificate of authority issued by the State of Florida to transact insurance in the State of Florida, or (2) except with respect to coverage for the liability imposed by the Florida Workers' Compensation Act, an eligible surplus lines insurer under Florida law. In addition, each such insurer shall have and maintain throughout the period for which coverage is required, a minimum A. M. Best Company Rating of "A-" and a minimum Financial Size Category of "VII." To the extent insurance requirements are designated in Exhibit E, the applicable policies shall comply with the following:

8.3.1 Commercial General Liability Insurance. Policy shall be no more restrictive than that provided by the latest edition of the standard Commercial General Liability Form (Form CG 00 01) as filed for use in the State of Florida by the Insurance Services Office (ISO), with the exception of endorsements specifically required by ISO or the State of Florida, and liability arising out of:

Mold, fungus, or bacteria

Terrorism

Silica, asbestos or lead

Sexual molestation

Architects and engineers professional liability, unless coverage for professional liability is specifically required by this Agreement.

County shall be included on the policy (and any excess or umbrella policy) as an "Additional Insured" on a form no more restrictive than ISO form CG 20 10 (Additional Insured – Owners, Lessees, or Contractor). The policy (and any excess or umbrella policy) must be endorsed to waive the insurer's right to subrogate against County.

8.3.2 Business Automobile Liability Insurance. Policy shall be no more restrictive than that provided by Section II (Liability Coverage) of the most recent version of the standard Business Auto Policy (ISO Form CA 00 01) without any restrictive endorsements, including coverage for liability contractually assumed, and shall cover all owned, non-owned, and hired autos used in connection with the performance of work under this Agreement. County shall be included on the policy (and any excess or umbrella policy) as an "Additional Insured." The policy (and any excess or umbrella policy) must be endorsed to waive the insurer's right to subrogate against County.

8.3.3 Workers' Compensation/Employer's Liability Insurance. Such insurance shall be no more restrictive than that provided by the latest edition of the standard Workers' Compensation Policy, as filed for use in Florida by the National Council on Compensation Insurance (NCCI), with the exception of endorsements required by NCCI or the State of Florida. The policy must be endorsed to waive the insurer's right to subrogate against County in the manner that would result from the attachment of the NCCI form "Waiver of our Right to Recover from Others Endorsement" (Advisory Form WC 00 03 13) with County scheduled thereon. Where appropriate, coverage shall be included for any applicable Federal or State employer's liability laws including, but not limited to, the Federal Employer's Liability Act, the Jones Act, and the Longshoreman and Harbor Workers' Compensation Act.

8.3.4 Professional Liability Insurance. Such insurance shall cover Consultant for those sources of liability arising out of the rendering or failure to render professional services in the performance of the Services required in this Agreement. If policy provides coverage

on a claims-made basis, such coverage must respond to all claims reported within at least three (3) years following the period for which coverage is required, unless a longer period is indicated in Exhibit E.

8.4 Within fifteen (15) days after the full execution of this Agreement or notification of award, whichever is earlier, Consultant shall provide to County satisfactory evidence of the insurance required in this Agreement. With respect to the Workers' Compensation/Employer's Liability Insurance, Professional Liability, and Business Automobile Liability Insurance, an appropriate Certificate of Insurance identifying the project and signed by an authorized representative of the insurer shall be satisfactory evidence of insurance. With respect to the Commercial General Liability, an appropriate Certificate of Insurance identifying the project, signed by an authorized representative of the insurer, and copies of the actual additional insured endorsements as issued on the policy(ies) shall be satisfactory evidence of such insurance.

8.5 Coverage is not to cease and is to remain in force until County determines all performance required of Consultant is completed. If any of the insurance coverage will expire prior to the completion of the Services, proof of insurance renewal shall be provided to County prior to the policy's expiration.

8.6 Consultant shall provide County thirty (30) days' advance notice of any cancellation of the policy except in cases of cancellation for non-payment for which County shall be given ten (10) days' advance notice.

8.7 Consultant shall provide, within thirty (30) days after receipt of a written request from County, a copy of the policies providing the coverage required by this Agreement. Consultant may redact portions of the policies that are not relevant to the insurance required by this Agreement.

8.8 County and Consultant, each for itself and on behalf of its insurers, to the fullest extent permitted by law without voiding the insurance required hereunder, waive all rights against the other party and any of the other party's contractors, subcontractors, agents, and employees for damages or loss to the extent covered and paid for by any insurance maintained by the other party.

8.9 If Consultant uses a Subconsultant, Consultant shall require each Subconsultant to endorse County as an "Additional Insured" on the Subconsultant's Commercial General Liability policy.

ARTICLE 9. NOTICES

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a

written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this article. For the present, the Parties designate the following as the respective places for giving of notice:

FOR COUNTY:

Director of Human Resources Division, Contract Administrator
Broward County Governmental Center
115 South Andrews Avenue, Room 508
Fort Lauderdale, Florida 33301

With a copy to:

Office of the County Attorney
Broward County Governmental Center
115 S. Andrews Avenue, Suite 423
Fort Lauderdale, Florida 33301

FOR CONSULTANT:

Susan O'Hara White
Senior Vice President, National Accounts Consulting
USI Insurance Services
2400 East Commercial Blvd., Suite 600
Fort Lauderdale, FL 33308

ARTICLE 10. ASSIGNMENT AND PERFORMANCE

10.1 Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered without the written consent of the other party. Notwithstanding the foregoing, the Services to be performed by Consultant under this Agreement may, at its discretion, be performed directly by Consultant or wholly or in part through a subsidiary or affiliate of Consultant without need for County's written consent. Consultant shall not otherwise subcontract any portion of the work required by this Agreement without the prior written consent of County. County hereby approves Consultant's use of Gelin Benefits Group, LLC, as a Subconsultant to provide benchmarking and survey services. County shall have the right to terminate this Agreement, effective immediately, if there is an assignment, or attempted assignment, transfer, or encumbrance of this Agreement or any right or interest herein by Consultant without County's prior written consent. Consultant shall remain liable to County for all acts or omissions of such subsidiaries, affiliates, Subconsultants, or other entities.

10.2 Any purchase, sale, merger, consolidation, reorganization, or other transaction that may result in a change in control of Consultant or require the assignment or transfer of this Agreement

or any interest herein to any parent, subsidiary, or affiliated corporation or partners of Consultant, or to any other entity shall be deemed an assignment requiring the written consent of County. In the event Consultant, or any portion thereof, becomes the intended subject of a purchase, sale, merger, consolidation, reorganization, or other transaction that may result in a change in control of Consultant or require the assignment or transfer of this Agreement or any interest herein to any parent, subsidiary, or affiliated corporation or partners of Consultant, or to any other entity, Consultant shall provide notice to County pursuant to Article 9 of this Agreement no later than when notice is provided to its shareholders, and such notice shall include any request for County's consent to the assignment or transfer of this Agreement or interest, as necessary. Any County consent to an assignment or transfer of this Agreement or interest herein shall be at County's sole discretion and shall be subject to the requirement that the succeeding entity accept and agree to perform the continuing covenants of this Agreement and such entity shall further agree to continue to be responsible for compliance with and performance of the terms and conditions of this Agreement. Any attempted assignment or transfer in violation of this section shall be in all respects null and void. Any attempted assignment or transfer in violation of this section shall be in all respects null and void.

ARTICLE 11. NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND AMERICAN WITH DISABILITIES ACT

11.1 No party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement.

Consultant shall include the foregoing or similar language in its contracts with any Subconsultants or suppliers, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 C.F.R. Parts 23 and 26, as amended.

Failure to comply with the foregoing requirements will be a material breach of this Agreement that shall permit County to terminate this Agreement or to exercise any other remedy provided under this Agreement or at law or in equity, Broward County Code of Ordinances, Broward County Administrative Code, or under other applicable law, all such remedies being cumulative.

11.2 Consultant shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement and shall not otherwise unlawfully discriminate in violation of the Broward County Code, Chapter 16½, as may be amended from time to time. Consultant shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any Services funded by County, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, Consultant shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

ARTICLE 12. MISCELLANEOUS

12.1 Ownership of Documents. All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, specifications and reports whether furnished to Consultant by County or prepared or provided by Consultant in connection with this Agreement, and all data in the Data Warehouse (as defined in Exhibit A), are and shall be the property of County, whether the Project for which they are made is completed or not, and shall be delivered by Consultant to Contract Administrator within fifteen (15) days of the receipt of the written notice of termination of this Agreement, including, but not limited to, partial termination pursuant to Section 4.2. If applicable, County may withhold any payments then due to Consultant until Consultant complies with the provisions of this section.

12.2 Public Records. To the extent Consultant is acting on behalf of County as stated in Section 119.0701, Florida Statutes, Consultant shall:

- a. Keep and maintain public records required by County to perform the Services under this Agreement;
- b. Upon request from County, provide County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
- c. Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion or termination of this Agreement if the records are not transferred to County; and
- d. Upon expiration or termination of this Agreement, transfer to County, at no cost, all public records in possession of Consultant or keep and maintain public records required by County to perform the Services. If Consultant transfers the records to County, Consultant shall destroy any duplicate public records that are exempt or confidential and exempt. If Consultant keeps and maintains the public records, Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to County upon request in a format that is compatible with the information technology systems of County.

The failure of Consultant to comply with the provisions of this section shall constitute a material breach of this Agreement entitling County to exercise any remedy provided in this Agreement or under applicable law.

A request for public records regarding this Agreement must be made directly to County, who will be responsible for responding to any such public records requests. Consultant will provide any requested records to County to enable County to respond to the public records request.

Any material submitted to County that Consultant contends constitutes or contains trade secrets or is otherwise exempt from production under Florida public records laws (including Chapter 119, Florida Statutes) ("Trade Secret Materials") must be separately submitted and conspicuously labeled "EXEMPT FROM PUBLIC RECORD PRODUCT – TRADE SECRET." In addition, Consultant must, simultaneous with the submission of any Trade Secret Materials, provide a sworn affidavit from a person with personal knowledge attesting that the Trade Secret Materials constitute trade secrets under Section 812.081, Florida Statutes, and stating the factual basis for same. In the event that a third party submits a request to County for records designated by Consultant as Trade Secret Materials, County shall refrain from disclosing the Trade Secret Materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by Consultant. Consultant shall indemnify and defend County and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments and liabilities of any kind, including attorneys' fees, litigation expenses, and court costs, relating to the non-disclosure of any Trade Secret Materials in response to a records request by a third party.

IF CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954) 357-6700, benefitsrecords@broward.org, 115 S. ANDREWS AVE., ROOM 514, FORT LAUDERDALE, FLORIDA 33301.

12.3 Audit Rights and Retention of Records. Consultant shall preserve all Contract Records (as defined below) for a minimum period of three (3) years after expiration or termination of this Agreement or until resolution of any audit findings, whichever is longer. Contract Records shall, upon reasonable notice, be open to County inspection and subject to audit and reproduction during normal business hours. County audits and inspections pursuant to this section may be performed by any County representative (including any outside representative engaged by County). County may conduct audits or inspections at any time during the term of this Agreement and for a period of three (3) years after the expiration or termination of this Agreement (or longer if required by law). County may, without limitation, verify information, payroll distribution, and amounts through interviews, written affirmations, and on-site inspection with Consultant's employees, Subconsultants, vendors, or other labor.

Contract Records include any and all information, materials and data of every kind and character, including, without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, drawings, receipts, vouchers and memoranda, and any and all other documents that pertain to rights, duties, obligations or performance under this Agreement. Contract Records

include hard copy and electronic records, written policies and procedures, time sheets, payroll records and registers, cancelled payroll checks, estimating work sheets, correspondence, invoices and related payment documentation, general ledgers, insurance rebates and dividends, and any other records pertaining to rights, duties, obligations or performance under this Agreement, whether by Consultant or Subconsultants.

County shall have the right to audit, review, examine, inspect, analyze, and make copies of all Contract Records at a location within Broward County. County reserves the right to conduct such audit or review at Consultant's place of business, if deemed appropriate by County, with seventy-two (72) hours' advance notice. Consultant agrees to provide adequate and appropriate work space. Consultant shall provide County with reasonable access to Consultant's facilities, and County shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Agreement.

Consultant shall, by written contract, require its Subconsultants to agree to the requirements and obligations of this section.

Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for County's disallowance and recovery of any payment reliant upon such entry. If an audit or inspection in accordance with this section discloses overpricing or overcharges to County of any nature by Consultant or its Subconsultants in excess of five percent (5%) of the total contract billings reviewed by County, the reasonable actual cost of County's audit shall be reimbursed to County by Consultant in addition to making adjustments for the overcharges. Any adjustments or payments due as a result of such audit or inspection shall be made within thirty (30) days from presentation of County's findings to Consultant.

12.4 Representative of County and Consultant. The Parties recognize that questions in the day-to-day conduct of the Project will arise. The Contract Administrator, upon Consultant's request, shall advise Consultant in writing of one (1) or more County employees to whom all communications pertaining to the day-to-day conduct of the Project shall be addressed. Consultant shall inform the Contract Administrator in writing of Consultant's representative to whom matters involving the conduct of the Project shall be addressed.

12.5 All Prior Agreements Superseded. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein; and the Parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

12.6 Amendments. No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

12.7 Interpretation. The language of this Agreement has been agreed to by both Parties to express their mutual intent and no rule of strict construction shall be applied against either party hereto. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article of this Agreement, such reference is to the section or article as a whole, including all of the subsections of such section, unless the reference is made to a particular subsection or subparagraph of such section or article. Any reference to "days" means calendar days, unless expressly stated otherwise.

12.8 Consultant's Staff. Consultant will provide the key staff identified in their proposal for Project as long as said key staff are in Consultant's employment. Consultant will obtain prior written approval of Contract Administrator to change key staff. Consultant shall provide Contract Administrator with such information as necessary to determine the suitability of proposed new key staff. Contract Administrator will be reasonable in evaluating key staff qualifications. If Contract Administrator desires to request removal of any of Consultant's staff, Contract Administrator shall first meet with Consultant and provide reasonable justification for said removal.

12.9 Drug-Free Workplace. It is a requirement of County that it enter into contracts only with firms that certify the establishment of a drug-free work place in accordance with Section 21.31(a) of the Broward County Administrative Code. Execution of this Agreement by Consultant shall also serve as Consultant's required certification that it either has or that it will establish a drug-free work place in accordance with Section 21.31(a) of the Broward County Administrative Code.

12.10 Independent Contractor. Consultant is an independent contractor under this Agreement. Services provided by Consultant shall be subject to the supervision of Consultant. In providing the Services, Consultant or its agents shall not be acting and shall not be deemed as acting as officers, employees, or agents of County, except as authorized by the Contract Administrator for permitting, licensing, or other regulatory requirements.

12.11 Third Party Beneficiaries. Neither Consultant nor County intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

12.12 Conflicts. Neither Consultant nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Consultant's loyal and conscientious exercise of judgment and care related to its performance under this Agreement. None of Consultant's officers or employees shall, during the term of this Agreement, serve as an expert witness against County in any legal or administrative proceeding in which he, she, or Consultant is not a party, unless compelled by court process. Further, such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of County in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude Consultant or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding. In the event Consultant is permitted pursuant to this Agreement to utilize Subconsultants to perform any Services required by this Agreement, Consultant shall require such Subconsultants, by written contract, to comply with the provisions of this section to the same extent as Consultant.

12.13 Materiality and Waiver of Breach. County and Consultant agree that each requirement, duty, and obligation set forth herein was bargained for at arms-length and is agreed to by the Parties in exchange for quid pro quo, that each is substantial and important to the formation of this Agreement and that each is, therefore, a material term hereof. County's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement. Any waiver must be in writing signed by an authorized signatory of the waiving party.

12.14 Compliance with Laws.

12.14.1 Consultant shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations related to this Agreement.

12.14.2 HIPAA. Consultant acknowledges and agrees that it must comply with Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), including its attendant Rules and Regulations, as amended, and to abide by any other laws, rules, and regulations that evolve from HIPAA, either federal or state, upon their implementation.

It is expressly understood by the Parties that County personnel and/or their agents have access to protected health information ("PHI") that is subject to the requirements of 45 CFR Section 164.052 and related regulations. Consultant shall fully protect individually identifiable health information as required by HIPAA, including

compliance with all obligations stated in the Business Associate Agreement attached hereto as Exhibit "D". Where required, Consultant shall handle and secure such PHI in compliance with HIPAA and its related regulations and, if required by HIPAA or other laws, include in its "Notice of Privacy Practices" notice of Consultant's and County's uses of participant's PHI. The requirement to comply with this provision and HIPAA shall survive the expiration or earlier termination of this Agreement. County hereby authorizes the County Administrator to sign Business Associate Agreements on its behalf.

12.15 Severability. In the event any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.

12.16 Joint Preparation. This Agreement has been jointly prepared by the Parties hereto, and shall not be construed more strictly against either party.

12.17 Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 13 of this Agreement shall prevail and be given effect.

12.18 Law, Jurisdiction, Venue, Waiver of Jury Trial. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. All Parties acknowledge and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction that either party may claim by virtue of its residency or other jurisdictional device. **BY ENTERING INTO THIS AGREEMENT, CONSULTANT AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

12.19 Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated herein by reference. The attached Exhibits A, B, C, D, and E are incorporated into and made a part of this Agreement.

12.20 Payable Interest

12.20.1 Payment of Interest. County shall not be liable to pay any interest to Consultant for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Consultant waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim arising from, related to, or in connection with this Agreement. This subsection shall not apply to any claim for interest, including for post-judgment interest, if such application would be contrary to applicable law.

12.20.2 Rate of Interest. If the preceding subsection is inapplicable or is determined to be invalid or unenforceable by a court of competent jurisdiction, the annual rate of interest payable by County under this Agreement, whether as prejudgment interest or for any other purpose, shall be, to the full extent permissible under applicable law, 0.25% (one quarter of one percent) simple interest (uncompounded).

12.21 Counterparts and Multiple Originals. This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

12.22 Use of County Logo. Consultant shall not use County's name, logo, or otherwise refer to this Agreement in any marketing or publicity materials without the prior written consent of County.

ARTICLE 13. REPRESENTATIONS AND WARRANTIES

13.1 Representation of Authority. Consultant represents and warrants that this Agreement constitutes the legal, valid, binding and enforceable agreement of Consultant, and that neither the execution nor performance of this Agreement constitutes a breach of any agreement that Consultant has with any third party or violates any law, rule, regulation, or duty arising in law or equity applicable to Consultant. Consultant further represents and warrants that execution of this Agreement is within Consultant's legal powers, and each individual executing this Agreement on behalf of Consultant is duly authorized by all necessary and appropriate action to do so on behalf of Consultant and does so with full legal authority.

13.2 Solicitation Representations. Consultant represents and warrants that all statements and representations made in Consultant's proposal, bid, or other supporting documents submitted to County in connection with the solicitation, negotiation, or award of this Agreement, including during the procurement or evaluation process, were true and correct when made and are

true and correct as of the Effective Date of this Agreement, unless otherwise expressly disclosed in this Agreement by Consultant.

13.3 Contingency Fee. Consultant represents that it has not paid or agreed to pay any person or entity, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

13.4 Truth-In-Negotiation Representation. Consultant's compensation under this Agreement is based upon its representations to County, and Consultant certifies that the wage rates, factual unit costs, and other information supplied to substantiate Consultant's compensation, including without limitation in the negotiation of this Agreement, are accurate, complete, and current as of the Effective Date. Consultant's compensation will be adjusted to exclude any significant sums by which the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.

13.5 Public Entity Crime Act. Consultant represents that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Agreement will not violate that Act. Consultant further represents that there has been no determination that it committed a "public entity crime" as defined by Section 287.133, Florida Statutes, and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Consultant has been placed on the convicted vendor list.

13.6 Discriminatory Vendor and Scrutinized Companies Lists. Consultant represents that it has not been placed on the discriminatory vendor list as provided in Section 287.134, Florida Statutes. Consultant further represents that it is not ineligible to contract with County on any of the grounds stated in Section 287.135, Florida Statutes.

13.7 Warranty of Performance. Consultant represents and warrants that it possesses the knowledge, skill, experience, and financial capability required to perform and provide the Services under this Agreement, and that each person and entity that will provide Services under this Agreement is duly qualified to perform such Services by all appropriate governmental authorities, where required, and is sufficiently experienced and skilled in the area(s) for which such person or entity will render Services. Consultant represents and warrants that the Services under this Agreement shall be performed in a skillful and respectful manner, and that the quality of all such Services shall equal or exceed prevailing industry standards for the provision of such Services.

13.8 Domestic Partnership Requirement. Unless this Agreement is exempt from the provisions of the Broward County Domestic Partnership Act, Consultant certifies and represents that it will comply with the provisions of Section 16½-157, Broward County Code of Ordinances, as amended) for the duration of this Agreement, and the contract language referenced in

Section 16½-157 is deemed incorporated in this Agreement as though fully set forth in this section.

13.9 Breach of Representations. County materially relies on the representations of Consultant stated in this article in entering into this Agreement. County shall be entitled to recover any damages it incurs to the extent any such representation is untrue. In addition, if any such representation is false, County shall have the right, at its sole discretion, to terminate this Agreement without any further liability to Consultant, to deduct from the compensation due Consultant under this Agreement the full amount of any value paid in violation of a representation, or to recover all sums paid to Consultant under this Agreement. Furthermore, a false representation may result in debarment from County's competitive procurement activities.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: BROWARD COUNTY, through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the _____ day of _____, 2018, and USI INSURANCE SERVICES NATIONAL, INC., signing by and through its _____, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, by and through
its Board of County Commissioners

Broward County Administrator, as
Ex-officio Clerk of the Broward County
Board of County Commissioners

By _____
Mayor
____ day of _____, 2018

Insurance requirements
approved by Broward County
Risk Management Division

By Colleen Pounall 06/08/18
Signature (Date)

Colleen Pounall Risk Analyst
Print Name and Title above

Approved as to form by
Andrew J. Meyers
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641


By Jeffrey S. Siniawsky (Date)
Assistant County Attorney

JSS/dp
2018-06-06 Employee Benefits Consultant Services Agreement
06/06/2018
#60100

AGREEMENT BETWEEN BROWARD COUNTY AND USI INSURANCE SERVICES NATIONAL, INC.
FOR EMPLOYEE BENEFITS CONSULTING SERVICES (RFP # R2114673P1)

CONSULTANT

ATTEST:



Secretary witness

Douglas Beller
(Typed Name of Secretary witness)

CORPORATE SEAL

USI Insurance Services National, Inc.

By



President/Vice President

Susan White, Vice President
(Typed Name and Title)

7th day of June, 2018.

INDEX TO EXHIBITS:

Exhibit A	Scope of Services
Exhibit B	Compensation Fees & Rates
Exhibit C	Performance Measures
Exhibit D	Business Associate Agreement
Exhibit E	Insurance Requirements

EXHIBIT A SCOPE OF SERVICES

INTRODUCTION

The Consultant will provide benefits consulting services for a fixed monthly fee for certain services and additional services on an ad-hoc basis related to Broward County's employee benefit plan, including but not limited to procurement services, analysis, compliance, strategy and monthly review of health and pharmacy claims through use of a data warehouse maintained by the Consultant.

BACKGROUND INFORMATION

The Consultant will provide full service expert knowledge and advice and perform consulting and actuarial services for welfare benefit programs and related products with emphasis on public sector experience. Services will be provided both on a fixed monthly fee and on an ad-hoc basis based on a cost quotation and issuance of a work order and notice to proceed.

Insured Lives

- 5,552 benefit eligible employees
- 4,667 employees insured for health coverage, 9,249 insured lives including eligible dependents

Self-Insured Health Plans (Current Provider: UnitedHealthcare (UHC))

- High Deductible Health Plan Base Plan (HDHP Base) with County-funded HSA
- HDHP In/Out of Network Plan (HDHP OON) with County-funded HSA
- Consumer Driven Health Plan (CDH Plan) High (HMO with copays and deductible)
- CDH Low (HMO with copays and deductible)

Stop Loss Insurance

Self-Insured Pharmacy (Rx) Program

- OptumRx

Other Voluntary Benefit Programs Offered

- Flexible Spending Accounts
- Dental DHMO and PPO plans (Humana/CompBenefits)
- Vision Plan (UnitedHealthcare)
- Term Life Insurance (Securian)
- Long Term Disability (LTD) (Standard)
- Personal Income Protection Plans (Allstate)
- Prepaid Legal (U.S. Legal Services)
- Deferred Compensation (Brighthouse, ICMA, Nationwide)

EXHIBIT A
SCOPE OF SERVICES

Consultant will assist the County with meeting the challenges related to the Affordable Care Act regulations and requirements in addition to containing costs of providing benefits in a changing marketplace, including innovative ways to offset risk to obtain the best coverage at the lowest cost possible to provide financially competitive and affordable benefit programs to our employees.

(The remainder of this page is intentionally left blank.)

EXHIBIT A
SCOPE OF SERVICES

The Consultant should anticipate assignments that may include an array of optional services and projects including but not limited to:

- a. Strategic Planning
 - i. Assist County in short and long term employee benefit strategic planning.
 - ii. Conduct trend analysis forecasts, project future level of reserves, and analyze the claims payment time lag pattern.
 - iii. Assist County in the development, implementation and ongoing management of an effective and measurable wellness program that will reduce health and welfare cost over the long term.
 - iv. Participate in management presentations involving benefit strategies and issues.
- b. Underwriting/Actuarial Services
 - i. Provide actuary services as needed. Calculate and recommend appropriate premium rates, administrative fees, and self-funded plan liabilities to maintain the viability of the plans, insuring quality and cost-effective benefits are provided by the plans.
 - ii. Provide actuarial costing of legislative proposals for mandated benefit programs.
- c. Data Warehouse:
 - i. Integrate claims data from health and pharmacy providers to provide detailed monthly reporting and analysis; meet monthly to review.
 - ii. Prepare financial exhibits that provide County with the information needed to make informed decisions regarding County's benefits plan designs and funding levels.
- d. Procurement Process - Request For Proposal (RFP) assistance:
 - i. Assist the County with the RFP procurement process to select a vendor for the County's health plan (fully-insured or self-insured).
 - ii. Assist the County with RFP procurement process to select a vendor for the County's self-insured pharmacy plan.
- e. Compliance:
 - i. Provide updates on pertinent proposed and enacted benefits legislation, including Patient Protection and Affordable Care Act (PPACA).
 - ii. Provide research and professional advice on new developments in benefits law and programs both state and federal, making sure County is always current on any new developments and/or requirements relative to legally administering its benefits plans, i.e. Public Health Service Act, HIPPA, COBRA and others.
 - iii. Provide support in the preparation of reports and senior management presentations.

**EXHIBIT A
SCOPE OF SERVICES**

FIXED MONTHLY FEE

1.	<p>Consulting Services</p> <ul style="list-style-type: none"> ▪ Monitor and advise County of current issues in the area of benefits law and administration including advice regarding HIPAA, COBRA, Medicare, Affordable Care Act, HealthCare Reform and other similar state and federal laws that govern group insurance programs. ▪ Assist County in short and long term employee benefit strategic planning. ▪ Participate in management presentations involving benefit strategies and issues. ▪ Serve as a source of general expertise for various benefit issues County may encounter. ▪ Provide support in the preparation of reports and senior management presentations. ▪ Provide annual premium equivalent rates by plan and tier for health and pharmacy plans including "One on" Medicare and "Two on" Medicare for retiree coverage. ▪ Attend annual review with health and pharmacy vendors. ▪ Provide actuarial Claim Reserve Recommendation including Lag Report for health and pharmacy plans by November 1st of each year. ▪ Assist with annual funding projections and recommendations for health and pharmacy plans for upcoming year to include legislative and compliance updates, historical plan performance, breakdown of costs between County and employee, member spend, member utilization by service, network provider opportunities
2.	<p>Data warehouse collection and reporting:</p> <ul style="list-style-type: none"> ▪ Import and store data from health and pharmacy vendors on a monthly basis. ▪ System must be capable of creating standard and ad hoc reports. ▪ System must allow County Benefits staff access to the reporting tool. ▪ Provide a reporting package that includes a summary and data of plan performance, experience, trend, utilization (on an aggregate basis) on a quarterly basis. ▪ On a monthly basis provide electronically the following: <ul style="list-style-type: none"> a. Monthly Group Monitoring Report (GMR) by Plan and Total Combined to include employee and member counts, County Budgeted Premium including Health Savings Account contributions, Employee Contributions, Gross Claims, Gross Administration Expenses, Total Gross Cost. Report should include Per Employee Per Month (PEPM) costs for each category. b. Plan Experience Summary to include Claim Summary, Total Cost Summary and Budget to Actual Summary. c. Claim Cost by Age Group to include # members, # claimants, # of services, Total Charges, Discount Amount, Employee Responsibility, Plan Payment, Allowed Charges. d. Large Claim Report to include Paid through date, de-identified Claimant #, Most Expensive Diagnosis/ Treatment, Disease Category, Prior Month/YTD Payment, YTD Payment, Specific Deductible, Amount Reimbursed. e. Preventable Conditions to include Diagnosis Category, # Admissions, Avg. Length of Stay, Average paid per day, # of Services, # of patients, Average paid per patient, Total charges, Plan Payment, Diagnosis Prefixes Considered. f. Prescription Analysis to include Rank, Drug name, Drug class, National Drug Code (NDC) #, Brand/Generic, Quantity Dispensed, # of Rx's, Total Charges, Plan Payment, % of Payment, Average Plan Payment, Employee Responsibility. Report should include Distribution of Paid Amount Summary to include Top 25 Drugs, Other Drugs, Total Plan Share. g. Monthly Cost Summary to include Employee and Member counts, Claims processed, Services processed, Total charges, Discount amount, Employee responsibility, Exclusions,

**EXHIBIT A
SCOPE OF SERVICES**

	<p>Other insurance, Plan Payment, Plan Payment per Employee, Plan Payment per Member. Report should include a summary of Medical Plan Payments and Rx Plan Payments.</p> <p>h. Monitor Health and Pharmacy Stop Loss to ensure accurate reimbursement for claims exceeding individual and aggregate thresholds.</p> <ul style="list-style-type: none"> ▪ System Reporting Tool shall provide the following reports (including, but not limited to): <ul style="list-style-type: none"> a. Duplicate claims b. Contractual rates and performance c. Engagement rates for preventive services. d. Provide care compliance reporting that includes gaps in care. e. Care compliance risk management (individual member exceed certain threshold, track care and identify gaps in care) f. Stop loss tracking g. Sweep of data for claims associated with automobile accidents for subrogation purposes h. Utilization Benchmarking/Comparison i. Emerging Claims j. Advanced Imaging k. Clinical Risk Groups - Disease Management Metrics & Compliance. l. Demographic Analysis m. Network Analysis n. Monthly Cost Summary – per month summary of claim expenditures, network discounts and employee responsibility. Action Plan Summary. o. Shock Claims – review high claims members and the costs incurred. p. Plan Experience Summary – Eligibility and plan cost summary on a per-month basis. q. Key Utilization Indicators – Summary –level trend analysis of employee census and benefits.
--	--

FIXED ANNUAL FEE BASIS

1.	Florida Office of Insurance Regulation annual self-funded health and pharmacy plan filing to include actuarial services and filing of reports.
2.	Prepare a complete Stop Loss Insurance bid package with specifications including, but not limited to, a match of existing County coverage and/or alternatives, dependent upon the County's specific claim utilization and needs. Ensure that the current County stop loss contract, medical/Rx benefit summaries, proposed plan changes, census, 2-years medical/Rx claims by month, enrollment by month/tier and large claims with diagnosis are provided to proposing vendors. Upon receipt of proposals, the Employee Benefits Consultant will analyze and summarize each proposal, and provide a complete report outlining the proposal that would best suit the County needs.

**EXHIBIT A
SCOPE OF SERVICES**

ADDITIONAL SERVICES

Additional services may be desired from time to time for special projects. These additional services will be performed at the request of County and will be paid by Work Order on an ad hoc basis. Services that may be requested, include but are not limited to, those listed below. Additional ad hoc services may also be requested as the need arises.

All Work Orders issued pursuant to this Agreement shall not exceed \$300,000, cumulative, over the term of the Agreement, including any renewals or extensions. The County agrees to pay the compensation as set forth in each Work Order for the work actually performed and completed. It is acknowledged and agreed that the amount in each Work Order is the maximum payable and constitutes a limitation upon the County's obligation to compensate for the services listed therein. This maximum amount does not constitute a limitation of any sort upon the obligation to perform all items of work required by or which can be reasonably inferred from each Work Order.

1.	<p>Analyze renewal proposal for self-insured pharmacy plan. Participate in negotiation meetings and attend Board meetings as requested.</p> <p>This includes, but is not limited to the following tasks:</p> <ul style="list-style-type: none">• Obtain Claims Utilization• Review Claims Utilization• Identify Cost Drivers• Evaluate Renewal Terms and Underwriting Components including contractual, clinical, and operational• Evaluate Plan Design Changes, if needed• Evaluate Performance Guarantees• Negotiate Clinical Metrics• Identify technology improvements and resources to include• Negotiate Contract Terms• Negotiate Fee Structure• Negotiate Discounts and Rebates• Negotiate Performance• Negotiate Content of Scope of Services• Develop presentation to Administration & Commissioners• Meet with all parties including debriefings with Commissioners & staff
2.	<p>Prepare complete Request for Proposals (RFP) solicitation documents and provide analysis of responses for self-insured pharmacy plan. Participate in negotiation meetings and attend Board meetings as requested.</p> <p>This includes, but is not limited to the following tasks:</p> <ul style="list-style-type: none">• Develop RFP specifications that are culturally appropriate for the County• Coordinate with the County's Purchasing Division and Human Resources to deliver and release the RFP• Manage carrier / service provider queries forwarded by the County's Purchasing Division in an efficient and timely manner• Analyze all responses: network evaluation, provider disruption analysis, discount analysis, pricing analysis, care management, account services and resources, wellness and engagement, plan design compatibility and innovations, rate structure, administrative services, resources, Communication - resources, cost, capabilities

**EXHIBIT A
SCOPE OF SERVICES**

	<p>Technology - resources, cost, capabilities,</p> <ul style="list-style-type: none"> • Account management team, reporting capabilities, flexibility to prepare executive summary & report • Debrief with Administration and Commissioners • Present to Administration and Commissioners • Negotiate with team and number one ranked firm
3.	<p>Analyze renewal proposal for self-insured health plan. Participate in negotiation meetings and attend Board meetings as requested.</p> <p>This includes, but is not limited to the following tasks:</p> <ul style="list-style-type: none"> • Obtain Claims Utilization, Contractual Terms, Performance Metrics • Review Claims Utilization and Performance Metrics • Identify Contractual, Clinical, and Operational Cost Drivers • Evaluate Renewal Terms and Underwriting Components • Evaluate Plan Design Changes, if needed • Evaluate market based alternatives including, but not limited to, onsite or near site solutions • Evaluate Network Performance • Evaluate Disease management Performance and Engagement • Develop standard underwriting projections and market based targets / underwriting & Actuarial work • Negotiate Contract Terms • Negotiate Fee Structure • Negotiate Performance Guarantees • Negotiate Content of Scope of Services • Develop presentation to Administration & Commissioners • Meet with all parties including debriefings with Commissioners & staff
4.	<p>Prepare complete Request for Proposals (RFP) solicitation documents and provide analysis of responses for self-insured health plan. Participate in negotiation meetings and attend Board meetings as requested.</p> <p>This includes, but is not limited to the following tasks:</p> <ul style="list-style-type: none"> • Develop RFP specifications that are culturally appropriate for the County • Coordinate with the County's Purchasing Division and Human Resources to deliver and release the RFP • Manage carrier / service provider queries forwarded by the County's Purchasing Division in an efficient and timely manner • Analyze all responses: network evaluation, provider disruption analysis, discount analysis, pricing analysis, care management, account services and resources, wellness and engagement, plan design compatibility and innovations, rate structure, administrative services, resources, Communication - resources, cost, capabilities • Technology - resources, cost, capabilities, • Account management team, reporting capabilities, flexibility to prepare executive summary & report • Debrief with Administration and Commissioners • Present to Administration and Commissioners • Negotiate with team and number one ranked firm

**EXHIBIT B
COMPENSATION FEES & RATES**

FIXED MONTHLY FEE		FIXED FEE
Benefit Plan Consulting Services		\$10,500 per month
Data Warehouse (Data collection & reporting)		\$3,000 per month
FIXED ANNUAL FEE		
Annual FLOIR self-insured plan filings (Health & Pharmacy)		\$3,000 annually
Stop Loss Insurance Services		\$2,500 annually
FIXED FEE ADDITIONAL SERVICES		
Pharmacy Plan (one-time payment as compensation for services during the year of contract renewal)		\$5,000
Pharmacy Plan (one-time payment as compensation for procurement services during the year of contract solicitation)		\$25,000
Health Plan (one-time payment as compensation for services during the year of contract renewal)		\$10,000
Health Plan (one-time payment as compensation for procurement services during the year of contract solicitation)		\$60,000
ADDITIONAL SERVICES AS REQUESTED		
Fixed Fee Work Order with breakdown of cost by Person and Hourly Rates		
PERSON	HOURLY RATES	
Principal	\$275.00	
Lead Consultant	\$275.00	
Lead Actuary	\$185.00	
Actuary	\$185.00	
Senior Consultant	\$160.00	
Consultant	\$160.00	
Analyst	\$75.00	
Administrative/Clerical	\$160.00	
Medical Professional	\$250.00 - \$350.00	

**EXHIBIT C
PERFORMANCE MEASURES**

	PERFORMANCE MEASURE	ACCEPTABLE PERFORMANCE	PENALTY
	Implementation Guarantees		
1.	<p>Implementation Commitment: Implementation meetings will be held with the County to discuss program details and implementation strategy. Implementation will be managed in accordance with a customized implementation plan, that will include:</p> <ul style="list-style-type: none"> • Time parameters • Pertinent steps • Agreed upon timeframes for each step • Plan adjustments made from time to time as mutually agreed upon by Policyholder and Vendor <p>At least 95% of action items assigned to Vendor will be completed or delivered by the due date indicated in the implementation plan</p>	95%	.50% of annual premium of the Benefit Plan Consulting Services fee
2.	<p>Implementation Satisfaction: Benefits staff will be satisfied that the service delivered by the assigned Implementation Team qualifies as a "solid performance that generally meets requirements" (3.0) or higher as defined in the survey defined below.</p>	<p>Based on average Score:</p> <p>5.0 – 3.0 = 0</p> <p>2.9 – 2.5 = ½</p> <p>2.4 – 2.0 = ¾</p> <p>1.9 & below = all of category penalty.</p>	.50% of annual premium of the Benefit Plan Consulting Services fee; paid annually

**EXHIBIT C
PERFORMANCE MEASURES**

SAMPLE - Implementation Satisfaction Assessment Tool

Implementation	Score	Comments
1. Exhibits knowledge of, and acts to meet County's needs. Is viewed as a valuable resource.		
2. Proactively offers useful information and ideas to help manage benefit plans.		
3. Responds to questions and requests in a timely manner.		
4. Communicates clearly and professionally.		
5. Is well prepared for meetings.		
6. Delivers on commitments and proactively provides updates on issues.		
7. Effective and timely escalated issue resolution.		
8. Identifies and implements process changes to avoid potential errors.		
9. Implementation process successfully completed.		
Additional comments:		

Rating Scale

5.0	Exceptional performance with extraordinary results that exceed requirements.
4.0 – 4.9	Outstanding performance that generally exceeds requirements.
3.0 – 3.9	Solid performance that generally meets requirements.
2.0 – 2.9	Marginal performance that generally does not meet requirements
1.0 – 1.9	Unsatisfactory performance that consistently does not meet requirements

(The remainder of this page is intentionally left blank.)

**EXHIBIT C
PERFORMANCE MEASURES**

	PERFORMANCE MEASURE	ACCEPTABLE PERFORMANCE	PENALTY
	Performance Guarantees		
1.	<p>Project/Work Order</p> <p>Firm guarantees:</p> <ol style="list-style-type: none"> 1. The completion of all projects and work orders including all specific tasks to be performed; and 2. The completion of all projects and work orders within the timeframe mutually agreed upon by Firm and County. 	100%	10% of project or work order compensation
2.	<p>Data Warehouse – Reporting</p> <p>Firm guarantees:</p> <p>Upon implementation of data feeds from the County's health and pharmacy vendors to Firm or Firm's designated provider. Firm agrees to provide County monthly reporting content per an agreed upon format. Firm will provide County with reports with a full overview within 15 days following the last day of the previous month.</p>	95%	10% of monthly Data Warehouse Fee
	Account Management:		
3.	<p>Communication Response Time:</p> <p>Account Team Member acknowledges receipt of emails, responds to emails, and phone calls within 24 hours. (Measured monthly)</p>	100%	5% of monthly Benefit Plan Consulting Services Fee; paid quarterly
4.	<p>Service Meetings: Monthly meetings will be prescheduled to review plan performance and service delivery. (Measured monthly)</p>	100%	5% of monthly Benefit Plan Consulting Services Fee; paid quarterly

**EXHIBIT C
PERFORMANCE MEASURES**

	PERFORMANCE MEASURE	ACCEPTABLE PERFORMANCE	PENALTY
5.	Renewal Notification: Renewal notice will be provided to Policyholder 270 days before rate guarantee expiration date. Plan analysis and current experience reports will accompany renewal, providing explanation of proposed rate action. (Measured annually beginning 4 th year of contract)	100%	.25% of annual premium of the Benefit Plan Consulting Services fee; paid annually
6.	Client Annual Satisfaction: Benefits staff will be satisfied that the service delivered by the Account Management Team qualifies as a "solid performance that generally meets requirements" (3.0) or higher as defined in the survey defined below. (Measured annually) SEE SAMPLE BELOW	Based on average Score: 5.0 – 3.0 = 0 2.9 – 2.5 = ½ 2.4 – 2.0 = ¼ 1.9 & below = all of category penalty.	.50% of annual premium of the Benefit Plan Consulting Services fee; paid annually

(The remainder of this page is intentionally left blank.)

EXHIBIT C PERFORMANCE MEASURES

SAMPLE - Annual Satisfaction Assessment Tool

Account Management	Score	Comments
1. Exhibits knowledge of, and acts to meet County's needs. Is viewed as a valuable resource.		
2. Proactively offers useful information and ideas to help manage benefit plans.		
3. Responds to questions and requests in a timely manner.		
4. Provides accurate and timely information.		
5. Communicates clearly and professionally.		
6. Is well prepared for meetings.		
7. Delivers on commitments and proactively provides updates on issues.		
8. Effective and timely escalated issue resolution.		
9. Provides the right resources to effectively manage County's account.		
Additional comments:		

Rating Scale

5.0	Exceptional performance with extraordinary results that exceed requirements.
4.0 – 4.9	Outstanding performance that generally exceeds requirements.
3.0 – 3.9	Solid performance that generally meets requirements.
2.0 – 2.9	Marginal performance that generally does not meet requirements
1.0 – 1.9	Unsatisfactory performance that consistently does not meet requirements.

End of Exhibit C

(The remainder of this page is intentionally left blank.)

EXHIBIT D
BUSINESS ASSOCIATE AGREEMENT BETWEEN
BROWARD COUNTY, FLORIDA AND USI INSURANCE SERVICES NATIONAL, INC.

This BUSINESS ASSOCIATE AGREEMENT ("BAA") is entered into by and between Broward County, Florida ("County"), and USI Insurance Services National, Inc. ("Business Associate") in connection with the AGREEMENT BETWEEN BROWARD COUNTY AND USI INSURANCE SERVICES NATIONAL, INC. FOR EMPLOYEE BENEFITS CONSULTING SERVICES RFP # R2114673P1 (the "Agreement").

RECITALS

1. Business Associate provides services related to the operation of certain activities/programs that involve the use or disclosure of Protected Health Information ("PHI");
2. The operation of such activities/programs is subject to the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act ("HITECH");
3. HIPAA and HITECH mandate that certain responsibilities of contractors with access to PHI be documented through a written agreement; and
4. The County and Business Associate desire to comply with the requirements of HIPAA and HITECH and acknowledge their respective responsibilities.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1: Definitions

- 1.1 All terms used in this BAA not otherwise defined herein shall have the meanings stated in the Privacy and Security Rules, 45 C.F.R. Parts 160, 162, 164, and 42 U.S.C. § 17921.
- 1.2 "HIPAA Laws" mean collectively HIPAA, HITECH, 42 C.F.R. Part 2 (if applicable), and the related regulations and amendments.
- 1.3 When the term "PHI" is used in this BAA, it includes the term "Electronic Protected Health Information" or "EPHI."
- 1.4 Penalties as used in Section 3.18 below are defined as civil penalties that may be applied to the Business Associate and its workforce members by the Secretary of Health and Human Services (HHS). The amount of the penalties range depending on the type of violation. In determining penalties, the Secretary may take into account:

- a. the nature and extent of the violation;
- b. the nature and extent of harm resulting from such violation;
- c. the degree of culpability of the covered entity or business associate;
- d. the history of prior compliance with the administrative simplification provision including violations by the covered entity or business associate;
- e. the financial condition of the covered entity or business associate, and
- f. such other matters as justice may require.

Section 2: Confidentiality

- 2.1 County and Business Associate shall comply with all federal and state laws governing the privacy and security of PHI.
- 2.2 ☐ If this box is checked, the County and Business Associate are required to comply with 42 C.F.R. Part 2 with respect to patient identifying information concerning alcohol and substance abuse treatment.

Section 3: Obligations and Activities of the Business Associate

Use and Disclosure of PHI

- 3.1 The Business Associate shall not use or disclose PHI other than as permitted or required by this BAA or as required by law. Business Associate may:
 - a. Use and disclose PHI only as necessary to perform its obligations under the Agreement, provided that such use or disclosure would not violate HIPAA Laws if done by the County;
 - b. Use the PHI received in its capacity as a Business Associate of the County for its proper management and administration and to fulfill any legal responsibilities of Business Associate;
 - c. Disclose PHI in its possession to a third party for the proper management and administration of Business Associate, or to fulfill any legal responsibilities of Business Associate, provided that the disclosure would not violate HIPAA Laws if made by the County, or is required by law, and Business Associate has received from the third party written assurances that (i) the information will be kept confidential and used or further disclosed only for the purposes for which it was disclosed to the third party or as required by law; (ii) the third party will notify Business Associate of any instances of which it becomes aware in which the

confidentiality of the information may have been breached; and (iii) the third party has agreed to implement reasonable and appropriate steps to safeguard the information;

- d. Use PHI to provide data aggregation activities relating to the operations of the County; and
- e. De-identify any and all PHI created or received by Business Associate under the Agreement, provided that the de-identification conforms to the requirements of the HIPAA Laws.

3.2 Business Associate shall limit its use and disclosure of, and request for PHI when practical or as required by law, to the information making up a Limited Data Set, as defined by HIPAA, and in all other cases subject to the requirements of 45 C.F.R. 164.502(b), to the minimum amount of PHI necessary to accomplish the intended purpose of the use, disclosure, or request.

3.3 Business Associate is prohibited from selling PHI, using PHI for marketing purposes, or attempting to re-identify any PHI information in violation of HIPAA Laws.

Administrative, Physical, and Technical Safeguards

3.4 Business Associate shall implement administrative, physical, and technical safeguards that protect the confidentiality, integrity and availability of PHI that it creates, receives, maintains, or transmits on behalf of the County. The safeguards shall include written policies, procedures, a security risk assessment, training of Business Associate employees, and sanctions that are in compliance with HIPAA Laws.

3.5 Business Associate shall require all of its subcontractors, agents, and other third parties that receive, use, transmit, maintain, store, or have access to PHI to agree, in writing, to the same restrictions and conditions that apply to Business Associate pursuant to this BAA, including implementation of administrative, physical, and technical safeguards.

Access of Information; Amendment of Information; Accounting of Disclosures

3.6 Business Associate shall make available to the County all PHI in Designated Record Sets within ten (10) days of the County's request for the County to meet the requirements under 45 C.F.R. § 164.524.

3.7 Business Associate shall make any amendments to PHI in a Designated Record Set as directed or agreed to by the County pursuant to 45 C.F.R. § 164.526 in the time and manner reasonably designated by the County.

- 3.8 Business Associate shall timely document such disclosures of PHI and information related to such disclosures as would be required for the County to respond to an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. Further, Business Associate shall provide to the County an accounting of all disclosure of PHI during the term of this BAA within ten (10) days of termination of this BAA, or sooner if reasonably requested by the County for purposes of any monitoring/auditing of the County for compliance with HIPAA Laws.
- 3.9 Business Associate shall provide the County, or an individual under procedures approved by the County, information and documentation collected in accordance with the preceding paragraph to respond to an individual requesting an accounting for disclosures as provided under 45 C.F.R. § 164.528 and HIPAA Laws.

Mitigation

- 3.10 Business Associate shall mitigate, to the extent possible and at its own expense, any harmful effect that is known to Business Associate of a use or disclosure of PHI by the Business Associate in violation of the requirements of this BAA or applicable law.
- 3.11 Business Associate shall take appropriate disciplinary action against any members of its workforce who use or disclose PHI in any manner not authorized by this BAA or applicable law.

Reporting of Breaches and Mitigation of Breach

- 3.12 Business Associate shall notify the County's HIPAA Privacy Official at (954) 357-6500 of any impermissible access, acquisition, use or disclosure of any unsecured PHI within twenty-four (24) hours of Business Associate becoming aware of such access, acquisition, use or disclosure. Unsecured PHI shall refer to such PHI that is not secured through use of a technology or methodology specified by the Secretary of HHS that renders such PHI unusable, unreadable, or indecipherable to unauthorized individuals. A breach of unsecured PHI shall be treated as discovered by Business Associate as of the first day on which such breach is known to the Business Associate or, by exercising reasonable diligence, would have been known to Business Associate, including any employee, officer, contractor, subcontractor, or other agent of Business Associate.
- 3.13 Business Associate shall submit a written report of a breach to the County within ten (10) business days after initial notification, and shall document the following:
- a. The identification of each individual whose PHI has been, or is reasonably believed by Business Associate, to have been accessed, acquired, used, or disclosed during the breach;

- b. A brief description of what occurred, including the date of the breach and the date of the discovery of the breach, if known;
 - c. A description of the types of PHI that are involved in the breach (such as full name, social security number, date of birth, home address, account number, diagnosis, etc.)
 - d. A description of what is being done to investigate the breach, to mitigate harm to individuals, and the reasonable and appropriate safeguards being taken to protect against future breaches;
 - e. Any steps the County or the individual impacted by the breach should take to protect himself or herself from potential harm resulting from the breach;
 - f. Contact procedures for the Business Associate to enable individuals to ask questions or learn additional information, which may include, in the discretion of the County, a toll-free telephone number, e-mail address, website, or postal address, depending upon the available contact information that the Business Associate has for the affected individuals; and
 - g. Any other reasonable information requested by the County.
- 3.14 In the event of a breach, Business Associate shall, in consultation with and at the direction of the County, assist the County in conducting a risk assessment of the breach and mitigate, to the extent practicable, any harmful effect of such breach known to Business Associate.
- 3.15 The County, in its sole discretion, will determine whether the County or Business Associate shall be responsible to provide notification to individuals whose unsecured PHI has been disclosed, as well as to the Secretary of HHS and the media.
- a. Notification will be by first-class mail, or by electronic mail, if the individual has specified notice in the manner as a preference.
 - b. Information may be posted on the County and Business Associate's website where the Business Associate experienced, or is reasonably believed to have experienced, an impermissible use or disclosure of unsecured PHI that compromised the security or privacy of more than ten (10) individuals when no other current information is available to inform such individuals.

- c. Notice shall be provided to prominent media outlets with information on an incident where the Business Associate experienced an impermissible use and disclosure of unsecured PHI that compromised the security or privacy of more than five hundred (500) individuals within the same state or jurisdiction during the incident.
 - d. The County may report, at least annually, any impermissible use and disclosure of unsecured PHI by the Business Associate to the Secretary of HHS as required by HIPAA Laws.
- 3.16 Business Associate agrees to pay the costs for notification to the County, individuals, and their representatives of any security or privacy breach that should be reported by Business Associate to the County. Business Associate also agrees to pay the costs for mitigating damages, including, but not limited to, the expenses for credit monitoring, if the County determines that the breach warrants such measures.
- 3.17 Business Associate agrees to have established procedures to investigate a breach, mitigate losses, and protect against any future breaches, and to provide such procedures and any specific findings of the investigation to the County in the time and manner reasonably requested by the County.
- 3.18 Business Associate is liable to the County for any civil penalties imposed on the County under the HIPAA laws in the event of a violation of the HIPAA Laws as a result of any practice, behavior, or conduct of Business Associate.

Available Books and Records

- 3.19 Business Associate shall make its internal practices and books, related to the Agreement and the BAA, including all policies and procedures required by HIPAA Laws, available to the County Contract Grants Administrator within five (5) business days of the Agreement.
- 3.20 Business Associate shall make its internal practices, books, and records, including all policies and procedures required by HIPAA Laws and PHI, relating to the use and disclosure of PHI received from the County or created or received on behalf of the County available to the County or to the Secretary of HHS or its designee within five (5) business days of request for the purposes of determining the Business Associate's compliance with HIPAA Laws.

Section 4: Obligations of the County

- 4.1 The County shall notify Business Associate of any limitations in its notice of privacy practices in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect the Business Associate's use of PHI.
- 4.2 The County shall notify Business Associate of any changes in, or revocation of, permission by an individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use of PHI.
- 4.3 The County shall notify Business Associate of any restriction to the use or disclosure of PHI to which the County has agreed in accordance with 45 C.F.R. § 164.522, to the extent that such changes may affect Business Associate's use of PHI.
- 4.4 The County shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Laws if done by the County.

Section 5: Term and Termination

Term

- 5.1 The term of this BAA shall be effective upon execution by all Parties, and shall terminate upon the latter of termination or expiration of the Agreement, or the return or destruction of all PHI within the possession or control of the Business Associate as a result of the Agreement.

Termination

- 5.2 Upon the County's knowledge of a material breach of this BAA by Business Associate, the County shall either:
 - a. Provide an opportunity for Business Associate to cure the breach or terminate this BAA and the Agreement if the Business Associate does not cure the breach within the time specified by the County;
 - b. Immediately terminate this BAA and the Agreement if Business Associate has breached a material term of this BAA and a cure is not possible; or
 - c. If neither termination nor cure is feasible, the County's HIPAA Privacy Official shall report the violation to the Secretary of HHS.

Effect of Termination

- 5.3 Upon completion or termination of the Agreement, Business Associate agrees, at County's option, to return to the County or destroy all PHI gathered, created, received or processed pursuant to the Agreement. No PHI related to the Agreement will be retained by Business Associate, or a contractor, subcontractor, or other agent of Business Associate, unless retention is required by law and specifically permitted in writing by the County.
- 5.4 In the event that returning or destroying PHI is infeasible, Business Associate shall provide to the County a written statement that it is infeasible to return or destroy the PHI and describe the conditions that make return or destruction of the PHI infeasible. Under that circumstance, Business Associate shall extend the protections of this BAA to the PHI retained and limit further uses and disclosures of such PHI to those purposes that make return or destruction infeasible, for so long as Business Associate maintains the PHI, in which case Business Associate's obligations under this section shall survive termination of this BAA.

Section 6: Miscellaneous

- 6.1 Amendment. The County and Business Associate shall take such action as is necessary to amend this BAA for the County to comply with the requirements of HIPAA Laws or other applicable law.
- 6.2 Interpretation. Any ambiguity in this BAA shall be resolved to permit the County to comply with HIPAA Laws.

(The remainder of this page is intentionally left blank.)

BUSINESS ASSOCIATE AGREEMENT TO EXISTING AGREEMENT BETWEEN BROWARD COUNTY, FLORIDA AND USI INSURANCE SERVICES NATIONAL, INC., ENUMERATING THE RESPONSIBILITIES OF EACH REGARDING COMPLIANCE WITH HIPAA LAWS.

WHEREAS, the Parties have made and executed this Business Associate Agreement between BROWARD COUNTY and USI INSURANCE SERVICES NATIONAL, INC., on the respective dates under each signature: BROWARD COUNTY through its County Administrator, authorized to execute same, and BUSINESS ASSOCIATE signing by and through its Vice President, duly authorized to execute same.

COUNTY

BROWARD COUNTY, through its
County Administrator

BY _____

____ day of _____, 20__.

Approved as to form by

Office of the County Attorney
Andrew J. Meyers,
Broward County Attorney
115 South Andrews Avenue, Suite 423
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By _____

(Date)

Assistant County Attorney

BUSINESS ASSOCIATE

USI INSURANCE SERVICES NATIONAL, INC

By: _____

Print

Title: _____

_____ day of _____, 20____.

STATE OF _____)

) SS

County OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____, as _____, of the _____, who is personally known to me or who has produced _____ as identification.

Print Name:

Notary Public, State of

Commission No.

Commission Expires:

EXHIBIT E
INSURANCE REQUIREMENTS

Insurance Requirement

The following coverage is deemed the minimum insurance required for this project. The selected firm must be prepared to provide proof of insurance commensurate with or in excess of this requirement. Any deviation is subject to the approval of Risk Management.

TYPE OF INSURANCE	MINIMUM LIABILITY LIMITS		
		Each Occurrence	Aggregate
COMMERCIAL GENERAL LIABILITY Broad form or equivalent <i>With no exclusions or limitations for:</i> <input checked="" type="checkbox"/> Premises-Operations <input type="checkbox"/> Explosion, Collapse, Underground Hazards <input checked="" type="checkbox"/> Products/Completed Operations Hazard <input checked="" type="checkbox"/> Contractual Insurance <input checked="" type="checkbox"/> Independent Contractors <input checked="" type="checkbox"/> Personal Injury <input type="checkbox"/> Other:	Bodily Injury		
	Property Damage		
	Combined single limit Bodily Injury & Property Damage	\$1 mil	\$2 mil
	Personal Injury		
BUSINESS AUTO LIABILITY* COMPREHENSIVE FORM <input checked="" type="checkbox"/> Owned *MAY BE WAIVED <input checked="" type="checkbox"/> Hired IF NO AUTOS WILL <input checked="" type="checkbox"/> Non-owned BE USED IN <input checked="" type="checkbox"/> Scheduled PERFORMANCE OF <input checked="" type="checkbox"/> Any Auto SERVICES	Bodily Injury (each person)		
	Bodily Injury (each accident)		
	Property Damage		
	Combined single limit Bodily Injury & Property Damage	\$ 1 mil	
EXCESS/UMBRELLA LIABILITY <i>May be used to supplement minimum liability coverage requirements.</i>	Follow form basis or Add'l insd endorsement is required	\$	
<input checked="" type="checkbox"/> WORKERS' COMPENSATION <input checked="" type="checkbox"/> EMPLOYERS' LIABILITY <input checked="" type="checkbox"/> PROFESSIONAL LIABILITY ~ E&O	Chapter 440 FS (each accident) (each accident) Extended reporting period	STATUTORY \$ 1 mil \$ 2 mil 3 years	U.S. Longshoremen & Harbor Workers' Act & Jones Act is required for any activities on or about navigable water
<input type="checkbox"/> CRIME AND FIDELITY <input type="checkbox"/> Installation floater Coverage must be "All Risk", completed value. Coverage must remain in force until written final acceptance by County	Maximum Deductible: CONTRACTOR IS RESPONSIBLE FOR DEDUCTIBLE	\$10 k	Completed Value form
<small>DESCRIPTION OF OPERATIONS/LOCATION/VEHICLES- BROWARD COUNTY IS LISTED AS AN ADDITIONAL INSURED ON THE COMMERCIAL GENERAL LIABILITY AND THE BUSINESS AUTOMOBILE LIABILITY POLICY. WAIVER OF SUBROGATION IN THE FAVOR OF THE CERTIFICATE HOLDER APPLIES TO GENERAL LIABILITY AUTOMOBILE LIABILITY AND WORKERS COMPENSATION.</small>			
REFERENCE: Employee Benefits – Benefits Consulting Services for 2018			

CERTIFICATE HOLDER:
Broward County
 115 South Andrews Avenue
 Fort Lauderdale, FL 33301
 Attn: Tracy Gordon–Human Resources

Digitally signed by TIMOTHY CROWLEY
 DN: cn=timothy.crowley, o=Broward County, ou=Organization, ou=BCC, ou=HR, ou=Users, cn=TIMOTHY CROWLEY
 Date: 2017.04.17 17:39:58 -0400

Timothy Crowley

Risk Management Division

Revised 2015. VALID ONE YEAR FROM THE DATE OF SIGNATURE

**BUSINESS ASSOCIATE AGREEMENT BETWEEN
BROWARD COUNTY, FLORIDA AND USI INSURANCE SERVICES NATIONAL, INC.**

This BUSINESS ASSOCIATE AGREEMENT ("BAA") is entered into by and between Broward County, Florida ("County"), and USI Insurance Services National, Inc. ("Business Associate") in connection with the AGREEMENT BETWEEN BROWARD COUNTY AND USI INSURANCE SERVICES NATIONAL, INC. FOR EMPLOYEE BENEFITS CONSULTING SERVICES RFP # R2114673P1 (the "Agreement").

RECITALS

1. Business Associate provides services related to the operation of certain activities/programs that involve the use or disclosure of Protected Health Information ("PHI");
2. The operation of such activities/programs is subject to the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act ("HITECH");
3. HIPAA and HITECH mandate that certain responsibilities of contractors with access to PHI be documented through a written agreement; and
4. The County and Business Associate desire to comply with the requirements of HIPAA and HITECH and acknowledge their respective responsibilities.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1: Definitions

- 1.1 All terms used in this BAA not otherwise defined herein shall have the meanings stated in the Privacy and Security Rules, 45 C.F.R. Parts 160, 162, 164, and 42 U.S.C. § 17921.
- 1.2 "HIPAA Laws" mean collectively HIPAA, HITECH, 42 C.F.R. Part 2 (if applicable), and the related regulations and amendments.
- 1.3 When the term "PHI" is used in this BAA, it includes the term "Electronic Protected Health Information" or "EPHI."
- 1.4 Penalties as used in Section 3.18 below are defined as civil penalties that may be applied to the Business Associate and its workforce members by the Secretary of Health and Human Services (HHS). The amount of the penalties range depending on the type of violation. In determining penalties, the Secretary may take into account:

- a. the nature and extent of the violation;
- b. the nature and extent of harm resulting from such violation;
- c. the degree of culpability of the covered entity or business associate;
- d. the history of prior compliance with the administrative simplification provision including violations by the covered entity or business associate;
- e. the financial condition of the covered entity or business associate, and
- f. such other matters as justice may require.

Section 2: Confidentiality

- 2.1 County and Business Associate shall comply with all federal and state laws governing the privacy and security of PHI.
- 2.2 ☐ If this box is checked, the County and Business Associate are required to comply with 42 C.F.R. Part 2 with respect to patient identifying information concerning alcohol and substance abuse treatment.

Section 3: Obligations and Activities of the Business Associate

Use and Disclosure of PHI

- 3.1 The Business Associate shall not use or disclose PHI other than as permitted or required by this BAA or as required by law. Business Associate may:
 - a. Use and disclose PHI only as necessary to perform its obligations under the Agreement, provided that such use or disclosure would not violate HIPAA Laws if done by the County;
 - b. Use the PHI received in its capacity as a Business Associate of the County for its proper management and administration and to fulfill any legal responsibilities of Business Associate;
 - c. Disclose PHI in its possession to a third party for the proper management and administration of Business Associate, or to fulfill any legal responsibilities of Business Associate, provided that the disclosure would not violate HIPAA Laws if made by the County, or is required by law, and Business Associate has received from the third party written assurances that (i) the information will be kept confidential and used or further disclosed only for the purposes for which it was disclosed to the third party or as required by law; (ii) the third party will notify Business Associate of any instances of which it becomes aware in which the

confidentiality of the information may have been breached; and (iii) the third party has agreed to implement reasonable and appropriate steps to safeguard the information;

- d. Use PHI to provide data aggregation activities relating to the operations of the County; and
- e. De-identify any and all PHI created or received by Business Associate under the Agreement, provided that the de-identification conforms to the requirements of the HIPAA Laws.

- 3.2 Business Associate shall limit its use and disclosure of, and request for PHI when practical or as required by law, to the information making up a Limited Data Set, as defined by HIPAA, and in all other cases subject to the requirements of 45 C.F.R. 164.502(b), to the minimum amount of PHI necessary to accomplish the intended purpose of the use, disclosure, or request.
- 3.3 Business Associate is prohibited from selling PHI, using PHI for marketing purposes, or attempting to re-identify any PHI information in violation of HIPAA Laws.

Administrative, Physical, and Technical Safeguards

- 3.4 Business Associate shall implement administrative, physical, and technical safeguards that protect the confidentiality, integrity and availability of PHI that it creates, receives, maintains, or transmits on behalf of the County. The safeguards shall include written policies, procedures, a security risk assessment, training of Business Associate employees, and sanctions that are in compliance with HIPAA Laws.
- 3.5 Business Associate shall require all of its subcontractors, agents, and other third parties that receive, use, transmit, maintain, store, or have access to PHI to agree, in writing, to the same restrictions and conditions that apply to Business Associate pursuant to this BAA, including implementation of administrative, physical, and technical safeguards.

Access of Information; Amendment of Information; Accounting of Disclosures

- 3.6 Business Associate shall make available to the County all PHI in Designated Record Sets within ten (10) days of the County's request for the County to meet the requirements under 45 C.F.R. § 164.524.
- 3.7 Business Associate shall make any amendments to PHI in a Designated Record Set as directed or agreed to by the County pursuant to 45 C.F.R. § 164.526 in the time and manner reasonably designated by the County.

- 3.8 Business Associate shall timely document such disclosures of PHI and information related to such disclosures as would be required for the County to respond to an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. Further, Business Associate shall provide to the County an accounting of all disclosure of PHI during the term of this BAA within ten (10) days of termination of this BAA, or sooner if reasonably requested by the County for purposes of any monitoring/auditing of the County for compliance with HIPAA Laws.
- 3.9 Business Associate shall provide the County, or an individual under procedures approved by the County, information and documentation collected in accordance with the preceding paragraph to respond to an individual requesting an accounting for disclosures as provided under 45 C.F.R. § 164.528 and HIPAA Laws.

Mitigation

- 3.10 Business Associate shall mitigate, to the extent possible and at its own expense, any harmful effect that is known to Business Associate of a use or disclosure of PHI by the Business Associate in violation of the requirements of this BAA or applicable law.
- 3.11 Business Associate shall take appropriate disciplinary action against any members of its workforce who use or disclose PHI in any manner not authorized by this BAA or applicable law.

Reporting of Breaches and Mitigation of Breach

- 3.12 Business Associate shall notify the County's HIPAA Privacy Official at (954) 357-6500 of any impermissible access, acquisition, use or disclosure of any unsecured PHI within twenty-four (24) hours of Business Associate becoming aware of such access, acquisition, use or disclosure. Unsecured PHI shall refer to such PHI that is not secured through use of a technology or methodology specified by the Secretary of HHS that renders such PHI unusable, unreadable, or indecipherable to unauthorized individuals. A breach of unsecured PHI shall be treated as discovered by Business Associate as of the first day on which such breach is known to the Business Associate or, by exercising reasonable diligence, would have been known to Business Associate, including any employee, officer, contractor, subcontractor, or other agent of Business Associate.
- 3.13 Business Associate shall submit a written report of a breach to the County within ten (10) business days after initial notification, and shall document the following:
- a. The identification of each individual whose PHI has been, or is reasonably believed by Business Associate, to have been accessed, acquired, used, or disclosed during the breach;

- b. A brief description of what occurred, including the date of the breach and the date of the discovery of the breach, if known;
 - c. A description of the types of PHI that are involved in the breach (such as full name, social security number, date of birth, home address, account number, diagnosis, etc.)
 - d. A description of what is being done to investigate the breach, to mitigate harm to individuals, and the reasonable and appropriate safeguards being taken to protect against future breaches;
 - e. Any steps the County or the individual impacted by the breach should take to protect himself or herself from potential harm resulting from the breach;
 - f. Contact procedures for the Business Associate to enable individuals to ask questions or learn additional information, which may include, in the discretion of the County, a toll-free telephone number, e-mail address, website, or postal address, depending upon the available contact information that the Business Associate has for the affected individuals; and
 - g. Any other reasonable information requested by the County.
- 3.14 In the event of a breach, Business Associate shall, in consultation with and at the direction of the County, assist the County in conducting a risk assessment of the breach and mitigate, to the extent practicable, any harmful effect of such breach known to Business Associate.
- 3.15 The County, in its sole discretion, will determine whether the County or Business Associate shall be responsible to provide notification to individuals whose unsecured PHI has been disclosed, as well as to the Secretary of HHS and the media.
- a. Notification will be by first-class mail, or by electronic mail, if the individual has specified notice in the manner as a preference.
 - b. Information may be posted on the County and Business Associate's website where the Business Associate experienced, or is reasonably believed to have experienced, an impermissible use or disclosure of unsecured PHI that compromised the security or privacy of more than ten (10) individuals when no other current information is available to inform such individuals.

- c. Notice shall be provided to prominent media outlets with information on an incident where the Business Associate experienced an impermissible use and disclosure of unsecured PHI that compromised the security or privacy of more than five hundred (500) individuals within the same state or jurisdiction during the incident.
 - d. The County may report, at least annually, any impermissible use and disclosure of unsecured PHI by the Business Associate to the Secretary of HHS as required by HIPAA Laws.
- 3.16 Business Associate agrees to pay the costs for notification to the County, individuals, and their representatives of any security or privacy breach that should be reported by Business Associate to the County. Business Associate also agrees to pay the costs for mitigating damages, including, but not limited to, the expenses for credit monitoring, if the County determines that the breach warrants such measures.
- 3.17 Business Associate agrees to have established procedures to investigate a breach, mitigate losses, and protect against any future breaches, and to provide such procedures and any specific findings of the investigation to the County in the time and manner reasonably requested by the County.
- 3.18 Business Associate is liable to the County for any civil penalties imposed on the County under the HIPAA laws in the event of a violation of the HIPAA Laws as a result of any practice, behavior, or conduct of Business Associate.

Available Books and Records

- 3.19 Business Associate shall make its internal practices and books, related to the Agreement and the BAA, including all policies and procedures required by HIPAA Laws, available to the County Contract Grants Administrator within five (5) business days of the Agreement.
- 3.20 Business Associate shall make its internal practices, books, and records, including all policies and procedures required by HIPAA Laws and PHI, relating to the use and disclosure of PHI received from the County or created or received on behalf of the County available to the County or to the Secretary of HHS or its designee within five (5) business days of request for the purposes of determining the Business Associate's compliance with HIPAA Laws.

Section 4: Obligations of the County

- 4.1 The County shall notify Business Associate of any limitations in its notice of privacy practices in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect the Business Associate's use of PHI.
- 4.2 The County shall notify Business Associate of any changes in, or revocation of, permission by an individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use of PHI.
- 4.3 The County shall notify Business Associate of any restriction to the use or disclosure of PHI to which the County has agreed in accordance with 45 C.F.R. § 164.522, to the extent that such changes may affect Business Associate's use of PHI.
- 4.4 The County shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Laws if done by the County.

Section 5: Term and Termination

Term

- 5.1 The term of this BAA shall be effective upon execution by all Parties, and shall terminate upon the latter of termination or expiration of the Agreement, or the return or destruction of all PHI within the possession or control of the Business Associate as a result of the Agreement.

Termination

- 5.2 Upon the County's knowledge of a material breach of this BAA by Business Associate, the County shall either:
 - a. Provide an opportunity for Business Associate to cure the breach or terminate this BAA and the Agreement if the Business Associate does not cure the breach within the time specified by the County;
 - b. Immediately terminate this BAA and the Agreement if Business Associate has breached a material term of this BAA and a cure is not possible; or
 - c. If neither termination nor cure is feasible, the County's HIPAA Privacy Official shall report the violation to the Secretary of HHS.

Effect of Termination

- 5.3 Upon completion or termination of the Agreement, Business Associate agrees, at County's option, to return to the County or destroy all PHI gathered, created, received or processed pursuant to the Agreement. No PHI related to the Agreement will be retained by Business Associate, or a contractor, subcontractor, or other agent of Business Associate, unless retention is required by law and specifically permitted in writing by the County.
- 5.4 In the event that returning or destroying PHI is infeasible, Business Associate shall provide to the County a written statement that it is infeasible to return or destroy the PHI and describe the conditions that make return or destruction of the PHI infeasible. Under that circumstance, Business Associate shall extend the protections of this BAA to the PHI retained and limit further uses and disclosures of such PHI to those purposes that make return or destruction infeasible, for so long as Business Associate maintains the PHI, in which case Business Associate's obligations under this section shall survive termination of this BAA.

Section 6: Miscellaneous

- 6.1 Amendment. The County and Business Associate shall take such action as is necessary to amend this BAA for the County to comply with the requirements of HIPAA Laws or other applicable law.
- 6.2 Interpretation. Any ambiguity in this BAA shall be resolved to permit the County to comply with HIPAA Laws.

(The remainder of this page is intentionally left blank.)

BUSINESS ASSOCIATE AGREEMENT TO EXISTING AGREEMENT BETWEEN BROWARD COUNTY, FLORIDA AND USI INSURANCE SERVICES NATIONAL, INC., ENUMERATING THE RESPONSIBILITIES OF EACH REGARDING COMPLIANCE WITH HIPAA LAWS.

WHEREAS, the Parties have made and executed this Business Associate Agreement between BROWARD COUNTY and USI INSURANCE SERVICES NATIONAL, INC., on the respective dates under each signature: BROWARD COUNTY through its County Administrator, authorized to execute same, and BUSINESS ASSOCIATE signing by and through its Vice President, duly authorized to execute same.

COUNTY

BROWARD COUNTY, through its
County Administrator

BY _____

____ day of _____, 20__.

Approved as to form by

Office of the County Attorney
Andrew J. Meyers,
Broward County Attorney
115 South Andrews Avenue, Suite 423
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By  _____
(Date)
Assistant County Attorney

BUSINESS ASSOCIATE

USI INSURANCE SERVICES NATIONAL, INC

By: 

Print

Title:

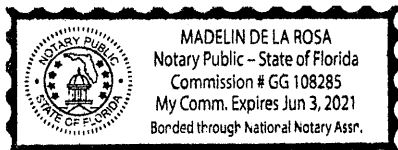
Vice President
7th day of June, 2018

STATE OF Florida)


) SS

County OF Broward)

The foregoing instrument was acknowledged before me this 7 day of
June, 2018, by Susan L. White, as _____, of the
_____, who is personally known to me or
who has produced FL. Drivers License as identification.



Commission Expires: June 3, 2021

Madelin De la Rosa 
Print Name: Madelin De la Rosa
Notary Public, State of Florida
Commission No. GG 108285