AGREEMENT

Between

BROWARD COUNTY

and

_____________________________________________________

For

ADMINISTRATIVE MANAGEMENT SERVICES

For

SELF-INSURED GROUP HEALTH INSURANCE COVERAGE AND BENEFITS

For

Broward County Employees

Contract Year—_____________________________

RFP# ____________
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AGREEMENT

Between

BROWARD COUNTY

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For

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SELF-INSURED GROUP HEALTH INSURANCE COVERAGE AND BENEFITS

For

Broward County Employees

Contract Year—____________________________

RFP# __________________

This Agreement is made by and between Broward County (“County”) and [Corporate Name of Plan Manager], a __________ corporation [please note: if Plan Manager is not a Florida corporation, then Plan Manager must be licensed to conduct business in Florida], its successors and assigns, hereinafter referred to as “PLAN MANAGER.”

WHEREAS, County seeks to partner with an entity that can provide health benefits management, including plan administration, as well as wellness and disease management programs, in a first class, cost-effective manner; and

WHEREAS, County has selected _________________ to provide such plan administration and wellness and disease management services; NOW, THEREFORE,

In consideration of the mutual terms, conditions, promises, covenants and payments contained in this Agreement, together with all exhibits, County and _________________ (collectively, the “Parties”) agree as follows:
ARTICLE I  
Definitions and Identifications  

For the purposes of this Agreement, reference to one gender shall include the other, use of the plural shall include the singular, and use of the singular shall include the plural. 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. 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. The following definitions apply unless the context in which the word or phrase is used requires a different definition:

1.1 **Agreement** means this Second Amended and Restated Agreement, including all Exhibits.

1.2 **Benefit Eligible**: An employee, retiree, or dependent deemed by COUNTY to be eligible to receive county benefits and designated as "Benefit Eligible." Notwithstanding the foregoing, an eligible employee is an employee who works full time, having a normal work week of twenty (20) or more hours, and who has met any applicable waiting period or other requirements and, if covered, retired employees as of January 1, 2015 ("Effective Date"). Subject to any eligibility exceptions noted herein, an employee becomes eligible for coverage on the Effective Date. The waiting period is the length of time an employee must wait before becoming eligible for coverage.

1.3 **Board** means Broward County Board of County Commissioners.

1.4 **Calendar Quarter**: Each calendar quarter of the contract year divided as follows: first quarter being January 1 through March 31; the second quarter being April 1 through June 30; the third quarter being July 1 through September 30 and; the fourth quarter being October 1 through December 31.

1.5 **COBRA** means the Federal Consolidated Omnibus Budget Reconciliation Act of 1986, as amended.

1.6 **Consumer Driven Health Plan (CDH)**: Refers collectively to the CDH HMO and CDH POS plans described below:

1.6.1 **CDH Health Maintenance Organization Plan (CDH HMO)**. An open access health maintenance organization offered by ________________ which benefits are described in the Certificate of Coverage, Schedule of Benefits. The County funds a Health Reimbursement Account (HRA) which can be used by the insured to pay for specified care per the guidelines established by the County.

1.6.2 **CDH Point of Service Plan (CDH POS)**. A point of service plan offered by ___________ (in-network) and ___________ (out of network), which benefits are described in the Certificate of Coverage, Schedule of Benefits. The County funds a Health Reimbursement Account (HRA) which can
be used by the insured to pay for specified care per the guidelines established by the County.

1.7 **Consumer Health Account(s):** all spending accounts that the Plan Manager is providing on behalf of the County.

1.8 **Contract Administrator:** Whenever the term Contract Administrator is used herein, it is intended to mean the Broward County Human Resources Division Director or the Director's designee. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely on the instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.

1.9 **County:** Broward County, Florida, a body corporate and politic pursuant to Article I of the Broward County Charter, and a political subdivision of the State of Florida pursuant to Article VIII, § 1, of the Florida state Constitution.

1.10 **County Administrator:** the administrative head of County pursuant to Sections 3.02 and 3.03 of the Broward County Charter.

1.11 **County Attorney:** the chief legal counsel for County who directs and supervises the Office of the County Attorney pursuant to Section 2.10 of the Broward County Charter, or the designee of the County Attorney.

1.12 **Health Flexible Spending Account (HFSA):** an Internal Revenue Code Section 125 spending arrangement made available through County offering cafeteria plans. A HFSA provides Members the option of making annual benefit elections that are taken out of their pay on a pre-tax basis. This lowers their annual taxable income and provides pre-tax dollars to pay for medical services not reimbursed by the Plan.

1.13 **Health Savings Account (HSA):** a medical savings account made available to Members who are enrolled in the High Deductible Health Plan (HDHP). The funds contributed to the account are not subject to federal income tax at the time of deposit and unused dollars are allowed to carry over to the following Plan year. Funds may be used to pay for eligible medical expenses at any time without federal tax liability.

1.14 **High Deductible Health Plan (HDHP):** Refers to the HDHP Health Maintenance Organization Plan described below:

1.14.1 **HDHP Health Maintenance Organization Plan (HDHP HMO):** An open-access health maintenance organization plan offered by ____________, which complies with 26 U.S.C. § 223(c)(2)(A) of the Internal Revenue Code and is further described in the Certificate of Coverage, Schedule of Benefits. Once enrolled in the HDHP HMO, benefit-eligible persons will also participate in the County-funded Health Savings Account (HSA) unless they are not eligible; in such instances, HSA-ineligible persons will participate in the Health Reimbursement...
Account (HRA).

1.14.2 HDHP Out of Network Plan (HDHP OON). An open-access out of network plan offered by Humana Medical Plan, Inc. which complies with 26 U.S.C. § 223(c)(2)(A) of the Internal Revenue Code and is further described in the Certificate of Coverage, Schedule of Benefits. Once enrolled in the HDHP OON, benefit-eligible persons will also participate in the County-funded Health Savings Account (HSA) unless they are not eligible; in such instances, HSA-ineligible persons will participate in the Health Reimbursement Account (HRA).

1.15 HIPAA: The Health Insurance Portability and Accountability Act of 1996, as amended and the corresponding regulations thereof.

1.16 Mailing Time: Pursuant to this Agreement, performance deadlines have been established including an allowance for correspondence sent by United States mail. Mailing time is defined as six (6) calendar days except in the case of a performance deadline which falls on a Sunday or legal holiday. In such cases, delivery by mail shall be deemed to have occurred on the following calendar day.

1.17 Member: an eligible County employee, COBRA or Domestic Partner Continuation beneficiary, Retiree or Covered dependent(s) of these groups, who has elected to participate in health benefits offered by Plan.

1.18 Performance Standard Penalties: the assessment of penalties for Plan Manager’s failure to meet performance guarantees entitled “General Provisions/Performance Guarantees.”

1.19 Plan: the health care plan (or plans) maintained by the County, or portions of that plan (or plans), with respect to which administrative services are to be provided under this Agreement by the Plan Manager. The Plan is identified in Exhibit "A" of this Agreement as to proper name and as to type.

1.20 Plan Administrator: shall be the person named in the documents describing the Plan as responsible for the operation and administration of the Plan. If no such person is identified, then the person establishing or maintaining the Plan will be deemed to be the Plan Administrator.

1.21 Plan Manager means ________________, acting in accordance with this Agreement. Plan Manager, including but not limited to its employees, agents, or assigns, shall be responsible for the operation and the administration of the Plan under this Agreement.

ARTICLE II
Relationship Between the Parties

2.1 County, as the sponsor of the Plan, shall exercise business control over the Plan, including but not limited to determining the benefits and features offered by Plan, amending the Plan,
2.2 Plan Manager is an experienced and fully qualified administrative services provider for self-insured health plans. In performing its obligations under this Agreement, Plan Manager shall take all reasonable steps to implement the goals and objectives of the County. Plan Manager, in doing so, must use its discretion in administering and managing the Plan in accordance with the Agreement and County directives. Therefore, Plan Manager shall operate as Plan fiduciary for all of its responsibilities under this Agreement. Such responsibilities shall include, but are not limited to, final determination of claims, such as the evaluation of medical necessity, usual and customary rates of providers, fees and expenses, and final claims determinations.

2.3 In addition, Plan Manager’s fiduciary responsibilities shall also include, but not be limited to, acting solely in the interest of the County and Members with the exclusive purpose of providing benefits to them; carrying out its duties as Plan Manager in a prudent manner; exercising expertise in all areas of administrative services and health plan management, including wellness and disease management, as a reasonably prudent administrative services provider; following the Plan documents, including the Agreement; and paying only reasonable Plan expenses.

2.4 Plan Manager shall act as an agent of County authorized to perform actions or conduct necessary to achieve the performance guarantees and delineated objectives of this Agreement. The Plan Manager may act as an agent of the County authorized to perform specific actions or conduct specified transactions only as provided in this Agreement.

2.5 Plan Manager affirmatively accepts responsibility for complying with all relevant local, state, and federal laws, including the Internal Revenue Code, and any applicable laws and regulations governing or affecting the Plan or administrators of health plans, unless otherwise directed by the County.

2.6 Notwithstanding its fiduciary relationship with the County, the Plan Manager will not exercise discretionary authority or control respecting the disposition or management of assets of the Plan.

2.7 Accordingly, except as may otherwise be expressly provided herein, the Plan Manager is not a trustee, sponsor, or fiduciary with respect to directing the operation of the Plan or managing any assets of the Plan.

2.8 Plan benefits shall be funded exclusively through the Plan. The Plan Manager is not responsible or accountable for providing funds to pay Plan benefits under any circumstances, except as reimbursement under the stop loss agreement entered into between County and Plan Manager.

ARTICLE III
General Duties of County
3.1 County will identify and describe the Plan as to type on Exhibit "A" of this Agreement.

3.2 County shall make sufficient funds available on a timely basis to honor all claims reimbursements under the Plan. Sufficient funds for making claims payments must be made available, in accordance with this Agreement, to enable services under this Agreement to continue without interruption.

3.3 County shall use reasonable efforts to ensure that all methods employed to fund the Plan shall comply with all applicable laws or regulations.

3.4 County shall furnish each Member with written notification of the source of funding for Plan benefits to the extent required by applicable law.

3.5 County shall timely provide current copies of the documents describing the Plan to the Plan Manager along with other appropriate materials governing the administration of the Plan. These documents and materials may include employee booklets, summary descriptions, employee communications significantly affecting the Plan, and any amendments or revisions (“Plan Documents”). If the Plan Manager drafts and provides any of these Plan Documents to County as part of the services offered under this Agreement, County agrees to review, edit and provide its signature approving those Plan Documents in a timely manner. Plan Manager shall provide County with adequate prior notice regarding any and all deadlines for reviewing the Plan Documents and, pursuant to its fiduciary duties, shall make good faith efforts to assist County with meeting such deadlines. County understands that if Plan Manager does not receive County’s review and signature on any of the Plan Documents, Plan Manager cannot treat the respective Plan Documents as final. If any of the Plan Documents are not finalized and distributed to Members, due to County’s unreasonable delay in approving Plan Documents, County may be responsible for fines levied by the federal government when it requires the specific Plan Documents to be distributed timely to Members pursuant to federal law.

3.6 County shall provide reasonable prior notice to Plan Manager of the Plan’s management policies and practices, interpretations of the benefit provisions of the Plan, and changes in the Plan provisions. Plan Manager, as a fiduciary of Plan, shall advise County regarding Plan administration, including the amount of time Plan Manager needs to receive and implement Plan Documents and any amendments thereto. However, if County directs Plan Manager to administer Plan in a manner inconsistent with the advice provided by Plan Manager, then under such circumstances, Plan Manager shall not be responsible for failure to properly administer Plan regarding the areas of Plan affected by such County directive, including any required implementation of changes to Plan.

3.7 County shall provide accurate information to the Plan Manager as to the number and names of persons covered by the Plan and any other information necessary to enable the Plan Manager to provide the services required by this Agreement. This information shall be kept current on at least a monthly basis. The Plan Manager is not responsible for any claims paid in error due to inaccurate eligibility information. However, Plan Manager will use its
best efforts to pursue repayment of claims paid in error, once the County provided accurate eligibility information.

3.8 County acknowledges that the Plan Manager shall not provide professional tax or legal services to the County.

3.9 County shall comply with all applicable provisions of law addressing the County's duties in respect to the Plan. This includes compliance with all legal reporting and disclosure requirements, adoption and approval of all required documents respecting the Plan and compliance with state escheat and unclaimed or abandoned property laws. Even though the Plan Manager may be required to perform certain duties under this Agreement, such as preparing drafts of documents for approval and adoption, County agrees that the Plan Manager does not undertake the responsibility for legal compliance for any other person.

3.10 Plan Manager may submit invoices for services no more often than on a monthly basis. County shall pay Plan Manager by the 10th calendar day of the coverage month after receipt of Plan Manager’s accurate invoice. If the Plan Manager has not received payment by the due date, payment in full must be made before the end of a thirty (30) day grace period beginning the day after the due date, to ensure services under this Agreement continue without interruption. The Plan Manager reserves the right to issue written notice to County requesting payment of any deficiency in full within the thirty (30) day grace period. The schedule of fees for services under this Agreement is attached as Exhibit "F."

3.11 County shall not direct the Plan Manager to act or refrain from acting in any way which would violate any applicable law or regulation. County shall not behave in any way which could implicate or involve the Plan Manager in a violation of these laws. The Plan Manager shall not direct the County to act or refrain from acting in any way which would violate any applicable law or regulation. The Plan Manager shall not behave in any way which could implicate or involve the County in a violation of these laws.

3.12 County shall pay for services based on a payment roster that County has provided to the Plan Manager in advance. The payment roster must be sent via electronic transmission at a time and in a format agreed upon by the County and the Plan Manager. The Plan Manager will take the County’s payment roster and reconcile with the Plan Manager’s invoice and provide the County with a list of discrepancies. The County and the Plan Manager agree to work together to resolve discrepancies in a timely manner and they will be handled as a credit or debit when the next payment is due. The County shall pay for its administrative fees by check or wire transfer equal to the monthly invoice. The amount of the fees may be adjusted monthly to reflect enrollment changes. The County can arrange wire transfers by completing a form provided by the Plan Manager. Wire transfers will only be activated each month with prior approval from the County. If paying by check, the County should submit the check to the address listed on the invoice and should be accompanied by the return portion of the invoice. The Plan Manager must receive payment by the due date on the invoice.

3.13 The County and the Plan Manager will, on at least a quarterly basis, reconcile enrollment
data to ensure service is being properly administered to Members and that administrative
fees have been correctly billed and paid. If notice of a change in enrollment data is received
by the Plan Manager more than ninety (90) days after the effective date of the change, the
retroactive credit against fees will be limited to three (3) months.

ARTICLE IV
General Duties of Plan Manager

4.1 The Plan Manager shall process claims and make payments in accordance with the
provisions of the Plan and related interpretations of the benefit provisions of the Plan which
are made or approved by the Plan Administrator on a timely basis and confirmed in writing.

4.2 The Plan Manager shall be entitled to rely and act based upon documents, letters, electronic
communications, or telephone communications which are confirmed in writing and
provided to it by the County or the Plan Administrator. Reliance will continue until the
time the County or the Plan Administrator notifies the Plan
Manager in writing of any
change or amendment to those communications.

4.3 The Plan Manager shall provide claimants who have had a claim wholly or partially denied
with a written explanation of the reason for the denial. The Plan Manager shall provide
claimants with information about what steps may be taken if the claimant wishes to submit
the denied claim for review. These obligations of the Plan Manager will be discharged in
accordance with the provisions of the Plan or authorization by the Plan Administrator.

4.4 The Plan Manager shall not be responsible for any delay or lack of performance of services
under this Agreement attributable to the County's failure to provide any material
information as required under this Agreement.

4.5 The Plan Manager will perform its duties under this Agreement using the same degree of
care, skill, prudence, and diligence that an experienced and fully qualified provider of
administrative services would use in similar circumstances. This includes making a good
faith effort to correct any mistake or clerical error which may occur due to actions or
inaction by the Plan Manager undertaken in good faith once the error or mistake is
discovered.

4.6 Plan Manager shall comply with all applicable federal, state, and local laws, codes,
ordinances, rules, and regulations in performing its duties, responsibilities, and obligations
pursuant to this Agreement.

4.7 Plan Manager shall provide at its sole cost, on a primary and non-contributory basis,
liability and workers’ compensation coverage in force and effect during the term of this
Agreement.

4.7.1 Should the Plan Manager maintain a self-insurance program, for any or all
insurance coverage, Plan Manager will provide information regarding its self-
insurance program to the County’s Risk Management Division, including, but not limited to, the amount of the self-insured retention, the limits in excess of the self-insured retention, the carrier providing excess limits and coverages, Plan Manager’s financial status, including financial statements and annual report, and such other information as County may reasonably request. At all times during the term of this Agreement, the Plan Manager shall maintain self-insurance reserves that are adequate to meet any and all liabilities in connection with this Agreement. Plan Manager’s self-insurance retention must be acceptable to the County’s Risk Management Division, acting in good faith and taking into account ordinary and customary financial assurances to address a scope of risk reasonably commensurate with the Agreement and the insurance requirements set forth herein.

4.7.2 Should the Plan Manager at any time during this agreement cease to be self-insured, or elect not to self-insure any or all coverage required, then in any such event, Plan Manager, shall provide the minimum insurance coverage set forth in Exhibit "J," in accordance with the following terms and conditions. Such policy or policies shall be without any deductible amount (except as may be expressly authorized herein) and shall be issued by companies authorized to do business in the State of Florida with a minimum AM Best financial rating of A–, or with approval by County’s Risk Management Division. Plan Manager is responsible to pay all deductibles. Plan Manager shall specifically protect County and the Broward County Board of County Commissioners by naming the Broward County as an additional insured under the General Liability policy and Excess Liability policy unless the Excess policy provides coverage on a true and pure follow-form basis.

4.7.2.1. Plan Manager shall provide to County proof of insurance per Exhibit "J". Coverage shall remain in force until the County determines all performance required of Plan Manager is completed. For any coverage provided on a, “claims-made” basis, coverage shall remain in force for two (2) years after the completion of services. County shall be notified of any restriction or cancellation of coverage within thirty (30) days. If any of the insurance coverage will expire prior to the completion of the work, proof of insurance renewal shall be provided to County upon expiration.

4.7.2.2. County reserves the right to review and revise any insurance requirements at the time of renewal or amendment of this Agreement, including, but not limited to, deductibles, limits, coverage, and endorsements.

ARTICLE V
Claims Administration

5.1 The County hereby delegates to the Plan Manager authority to make determinations on behalf of the County or the Plan Administrator with respect to benefit payments under the Plan and to pay such benefits, as specified in this Article V. This section shall not apply
to claims that involve eligibility issues only; such eligibility-only issues, if known by the Plan Manager, shall be forwarded to the Plan Administrator for resolution in a timely manner.

5.2 The Plan Manager will accept claims for benefits under the Plan which are made in accordance with procedures established in the Plan documents and submitted for payment during the term of this Agreement.

5.3 The Plan Manager will process claims in accordance with the provisions of the Plan which are in effect and which have been communicated to the Plan Manager by the County at the time the services are provided. However, if the County modifies the Plan provisions retroactively, the Plan Manager shall adjust the payment of applicable claims to reflect the respective Plan modifications.

5.4 Claims will be processed using the Plan Manager’s normal claims processing procedures, practices, and rules unless they are inconsistent with the provisions of the Plan. The Plan Manager shall comply with applicable U.S. Department of Labor claims procedures regulations and guidance with respect to notice procedures and content of a notice of adverse benefit determinations.

5.5 The Plan Manager will timely approve or deny claims submitted for payment in accordance with an initial determination by the Plan Manager or an appeal of a denied claim.

5.6 In the event a claim is wholly or partially denied in accordance with Article 5.5, above, the Plan Manager shall provide the Member with a written explanation of the reason for the denial, and information as to what steps may be taken if the Member wishes to appeal the claim denial.

5.7 Appeals of denied claims shall be processed in accordance with the applicable provisions of the Plan. The Plan Manager shall have the ultimate responsibility and authority to make final determinations with respect to claims and is responsible for providing Members with a written explanation of that decision.

5.8 The Plan Manager shall accept requests for external review of appeals. The Plan Manager shall comply with applicable U.S. Department of Labor claims procedures regulations and guidance with respect to external review.

5.9 With respect to claims for which provider discounts are available ("Provider Discounts"), the Plan Manager shall process claims under this Agreement taking the maximum Provider Discounts into account.

5.10 Payment of covered expenses for services rendered by a provider is subject to the Plan Manager’s claims processing edits. The amount determined to be payable under the Plan Manager’s claims processing edits depends on the existence and interaction of several factors. Because the mix of these factors may be different for every claim, the amount paid for a covered expense may vary depending on the circumstances.
5.10.1 Accordingly, it is not feasible to provide an exhaustive description of the claims processing edits that will be used to determine the amount payable for a covered expense, but examples of the most commonly used factors are:

(a) The intensity and complexity of a service;

(b) Whether a service is one of multiple services performed at the same service session such that the cost of the service to the provider is less than if the service had been provided in a separate service session. For example:

(i) Two or more surgeries occurring at the same service session that do not require two preparation times; or
(ii) Two or more radiologic imaging views performed on the same body part;

(c) Whether an assistant surgeon, physician assistant, registered nurse, certified operating room technician or any other health care professional who is billing independently is involved;

(d) When a charge includes more than one claim line, whether any service is part of or incidental to the primary service that was provided, or if these services cannot be performed together;

(e) If the service is reasonably expected to be provided for the diagnosis reported;

(f) Whether a service was performed specifically for the Member;

(g) Whether services can be billed as a complete set of services under one billing code.

5.10.2 The Plan Manager develops claims processing edits based on review of one or more of the following sources, which are considered “industry standards,” including but not limited to:

(a) Medicare laws, regulations, manuals and other related guidance;

(b) Appropriate billing practices;

(c) National Uniform Billing Committee (NUBC);

(d) American Medical Association (AMA)/Current Procedural Technology (CPT);

(e) UB-04 Data Specifications Manual;
(f) International Classification of Diseases of the U.S. Department of Health and Human Services and the Diagnostic and Statistical Manual of Mental Disorders;

(g) Medical and surgical specialty certification boards;

(h) The Plan Manager’s medical coverage policies; and/or

(i) Generally accepted standards of medical, behavioral health and dental practice based on credible scientific evidence recognized in published peer reviewed medical or dental literature.

5.10.3 Changes to any one of the sources may or may not lead the Plan Manager to modify current or adopt new claims processing edits. Any such modifications or new claims processing edits will be applied consistently throughout Plan Manager’s claims processing edits with its other clients, and not solely applied to the County.

5.10.4 Non-participating providers may bill Members for any amount this Plan does not pay even if such amount exceeds these claims processing edits. Any amount that exceeds the claims processing edits paid by the Member will not apply to deductibles, out-of-pocket limits or Plan maximum out-of-pocket limits, if applicable. The Member will also be responsible for any applicable deductible, coinsurance amount or copayment.

ARTICLE VI
Reports, Records, and Audits

6.1 The Plan Manager will provide standard reports to the Plan Administrator and County’s third-party benefits consultant, currently ____________________________, or other consultant as designated by the County. Reports requested outside of the standard reports are considered “ad hoc reports” and may be made available for an additional cost, upon mutual agreement between the Client and the Plan Manager. However, any information not contained in the standard reports that are required by the County to comply with any federal, state, or local laws or regulations will be provided by Plan Manager at no cost to the County.

6.2 The Plan Manager agrees to provide a monthly report of each claim to which the Shared Savings Program Provider Discounts are applied, as further described in Exhibit "D-1".

6.3 The Plan Manager will keep and maintain accounts and records pertaining to its activities under this Agreement which are required by law or by mutual agreement of the parties.

6.4 The Plan Manager will prepare and make available records required to assist the County or the Plan Administrator regarding legal action or regulatory review and reporting, upon
reasonable request by the County.

6.5 County shall have the right to audit the books, records, and accounts of Plan Manager and its subcontractors that are related to this Agreement. Plan Manager and its subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement. All books, records, and accounts of Plan Manager and its subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, Plan Manager or its subcontractor, as applicable, shall make same available at no cost to County in written form.

6.5.1 Plan Manager, through its on-site representative with the County, will provide a thorough explanation of how a claim was paid per the claim data report inclusive of the provider’s agreement as it relates to the County, upon request from Plan Administrator and at no cost to the County.

6.5.2 Plan Manager and its subcontractors shall preserve and make available, at reasonable times within Broward County for examination and audit by County all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for a minimum period of three (3) years after expiration or termination of this Agreement, until resolution of any audit findings, or the period set forth in any other applicable state and/or federal law, including but not limited to HIPAA, whichever is longer the time. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined to be applicable to Plan Manager's and its subcontractors’ records, Plan Manager and its subcontractors shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by Plan Manager or its subcontractors. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for County's disallowance and recovery of any payment upon such entry. County audits and inspections pursuant to this Section may be performed by any County representative (including any outside representative engaged by County). County reserves the right to conduct such audit or review at Plan Manager’s place of business, if deemed appropriate by County, with seventy-two (72) hours’ advance notice.

6.5.3 Any audit may require a cross section of up to three hundred (300) claims representing a cross-section of all provider types and services, and if a pattern of inaccurate or inconsistent adjudication of claims is found, as determined by County, the claim review may be increased at no cost to the County. If a pattern of inaccurate or inconsistent adjudication of claims is found, as determined by the County, then the County at its option may have Plan Manager conduct a self-audit (at no cost to the County). The most recent report by the Plan Manager’s independent accountant
on the controls over claims adjudication (known as a SSAE 16 report) will be provided upon request at no cost to the County.

6.5.4 Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for County's disallowance and recovery of any payment upon such entry. If an audit or inspection in accordance with this Section discloses overpricing or overcharges to County of any nature by Plan Manager in excess of five percent (5%) of the total contract billings reviewed by County, the reasonable actual cost of the County’s audit shall be reimbursed to County by Plan Manager in addition to making adjustments for the overcharges. Any adjustments and/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 Plan Manager.

6.5.5 Plan Manager shall ensure that the requirements of this Section are included in all agreements with its subcontractor(s).

6.5.6 Plan Manager and its subcontractors shall preserve and make available, at reasonable times for examination and audit by County, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for County's disallowance and recovery of any payment upon such entry.

6.6 Claims records shall be maintained in legible micro-photographic or electronic media format for no less than six (6) years from the date of claims generation, rather than original hard copy. If the County desires that original hard copy records be maintained, the County must notify the Plan Manager in writing no later than forty-five (45) days after the effective date of this Agreement. The Plan Manager will then ship the original documents to a location specified by the County, and the County agrees to pay the cost for this service.

6.7 Public Records. County is a public agency subject to Chapter 119, Florida Statutes. To the extent Plan Manager is a contractor acting on behalf of the County pursuant to Section 119.0701, Florida Statutes, Plan Manager shall:

6.7.1 Keep and maintain public records that ordinarily and necessarily would be required to be kept and maintained by County were County performing the services under this Agreement;

6.7.2 Provide the public with access to such public records on the same terms and conditions that County would provide the records and at a cost that does not exceed
that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

6.7.3 Ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law; and

6.7.4 Meet all requirements for retaining public records and transfer to County, at no cost, all public records in possession of Plan Manager upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to County in a format that is compatible with the information technology systems of County.

The failure of Plan Manager to comply with the provisions set forth in this Section 6.7 shall constitute a default and breach of this Agreement and County shall enforce the default in accordance with the provisions set forth in Section 11.2.

ARTICLE VII
Additional Administrative Services

7.1 Plan Manager will provide a Summary Plan Description (SPD) or standard language concerning Plan benefits to assist the Plan Administrator in the preparation of the SPD. This service will be available at the commencement of this Agreement and on an as needed basis throughout the Plan year to assist the County when language changes are made necessary from changes in Plan design, new federal legislation or other governmental requirements. The Plan Manager will also provide the County, a Summary of Benefits and Coverage (“SBC”) document for the County’s yearly enrollment period. The County will provide the Plan Manager with final approval of the SPD and SBC documents.

7.2 The Plan Manager will work with the COBRA Service Provider in providing administrative services regarding COBRA continuation coverage provided under the Plan only as specified in Exhibit "B". The County or the Employer shall continue to have all liability for funding of COBRA coverage benefits under the Plan.

7.3 The Plan Manager will assist the County or the Plan Administrator in arranging to provide Clinical Program services with respect to the Plan only as specified in Exhibit "C".

7.4 The Plan Manager will provide the following miscellaneous administrative services:

(a) Production of basic Member identification cards.

(b) Routine claims processing audit controls.

(c) Fraud investigation services.

7.5 The Plan Manager will provide "Subrogation/Recovery" services (in addition to routine application of the coordination of benefits provisions of the Plan) for identifying and
obtaining recovery of claims payments from all appropriate parties through operation of the subrogation or recovery provisions of the Plan.

(a) Subrogation/Recovery services will be provided by the Plan Manager unless the County proposes exceptions that are acceptable to the Plan Manager. Such services may only be performed by the Plan Manager or by subcontractors and/or counsel selected by the Plan Manager.

(b) Subrogation/Recovery services include the following activities:

   (1) Investigation of claims and obtaining additional information to determine if a person or entity may be the appropriate party for payment;

   (2) Presentation of appropriate claims and demands for payment to parties determined to be liable;

   (3) Notification to Members that recovery or subrogation rights will be exercised with respect to a claim; and

   (4) Filing and prosecution of legal proceedings against any appropriate party for determination of liability and collection of any payments for which such appropriate party may be liable.

(c) In the event of termination of this Agreement, Subrogation/Recovery services will be continued only in respect to claims processed under this Agreement and those continued services will be provided by Plan Manager until completion. Subrogation/Recovery services will cease immediately if the termination of this Agreement results from a material default in the delivery of such subrogation services.

(d) The cost to the County for providing services under this Article 7.5 is presented within Exhibit “F3.1 (a)”, in accordance with Article IX. However, there will be no cost to the County for recovery of claims payments made in error by the Plan Manager exclusive of any other cause. Also in this context, the Plan Manager may not be obligated to file and prosecute legal proceedings against persons for determination of liability and collection of any payments.

(e) Subrogation/Recovery services will be provided by the Plan Manager when a group has contracted with a third party vendor (ex. Stop Loss carrier). Any recoveries are reported to the County. The County is responsible for any required notifications/reimbursements to their contracted third parties. In the event the Plan Manager is also the contracted Stop-Loss carrier, the required notifications/reimbursements will be provided to the Stop-Loss carrier.

7.6 The Plan Manager may retain or coordinate with service providers, experts, or professional advisors to assist the Plan Manager in providing services under this Agreement. The County shall not be obligated to reimburse the Plan Manager for these services, unless
expressly agreed to in writing by the County prior to Plan Manager’s retention of the above mentioned service providers, experts, or professional advisors.

7.7 The Plan Manager, within the scope of its professional ability and its duties under this Agreement, will serve in the limited capacity of Plan fiduciary for final determination of claims.

7.8 The Plan Manager will arrange access to one or more networks of health care providers which are presently available through an arrangement with the Plan Manager only as specified in Exhibit "D".

If County requests or Plan Manager is offering a separate alternative provider network arrangements outside those agreed to in this Article 7.8 and Exhibit "D", such as an incentive program, the County understands that a special access fee may apply, depending upon the network or arrangement, when mutually agreed to by the County and Plan Manager.

7.9 The Plan Manager will arrange access for the County to certain Shared Savings Program Provider Discounts established by the Plan Manager which may be available at the time services are rendered only as specified in Exhibit "D-1".

7.10 Pursuant to the Medicare, Medicaid and SCHIP Extension Act of 2007 (“MMSEA”), the Plan Manager and the County agree to the following:

(a) The Plan Manager will register with the Centers for Medicare & Medicaid Services’ Coordination of Benefits Contractor (COBC), and will continually collect and report specified information regarding the County’s group health Plan arrangements to CMS, in compliance with the Section 111 Medicare Secondary Payer provisions of the Act.

(b) The Plan Manager agrees to register with the COBC as a “Responsible Reporting Entity” (RRE), if necessary, in order to report specified information regarding group health Plan arrangements to the U.S. Department of Health and Human Services (HHS) and the Centers for Medicare & Medicaid Services (CMS).

(c) The Plan Manager agrees to use best efforts to collect from the County and Plan Members any information as specified by HHS and CMS.

(d) The Plan Manager agrees to submit to HHS and CMS all necessary information and data elements in the required form, manner and frequency as specified by the Section 111 Medicare Secondary Payer Mandatory Reporting Provisions.

(e) The County shall cooperate with the Plan Manager and use its best efforts to obtain and provide any necessary data to assist the Plan Manager in complying with Section 111 Medicare Secondary Payer Reporting Provisions. The County will agree to allow the Plan Manager to take any steps reasonably necessary to compel cooperation from Members.
7.11 The Plan Manager will monitor the quality of services which it is obligated to perform under this Agreement and apply internal controls to assure quality. Accordingly, the Plan Manager represents that it will perform certain obligations under the Agreement in accordance with the performance criteria presented exclusively in Exhibit "H".

7.12 The Plan Manager will provide an incentive-based health and wellness program as specified in Exhibit "I".

**ARTICLE VIII**

**Banking**

8.1 The rights and obligations of the County and the Plan Manager under this Article VIII shall be regulated through a "Banking Arrangement" substantially in the form presented in Exhibit "E".

8.2 The County promises that sufficient funds will be available on a timely basis to honor all claims reimbursements under the Plan. Upon notice from the Plan Manager that additional funds are required, the County promises that adequate funds will be immediately provided to fund claims approved.

8.3 The County agrees that funds provided to honor all claims reimbursements under the Plan will be United States money, which may be transmitted by wire transfer or other medium agreed to by the Plan Manager and the County.

**ARTICLE IX**

**Costs of Administrative Services**

9.1 The Plan Manager shall be entitled to a fee for services provided under this Agreement described on Exhibit "F" to this Agreement.

9.2 Payments received after the grace period (see Article 3.10) are subject to a late charge of ___% per month (or the maximum amount allowed by applicable law, if less) multiplied by the past due amount. The County must pay the late charge along with all amounts due to the Plan Manager in order to bring the account current.

9.3 The Plan Manager may assess additional fees for administrative costs associated with substantial change requests and/or document revision requests received from the County after the Plan effective date, and for administrative costs associated with required federal or state legislation (if applicable) implementation. The Plan Manager will provide advance notice with an itemized written proposal to the County in the event that an additional fee is required. The Plan Manager shall not be obligated to implement requested changes until mutual agreement of fee amount has been reached between the County and the Plan Manager.
ARTICLE X
Contract Period

10.1 This Agreement shall commence on January 1, 20__, and terminate on December 31, 20__, unless termination occurs earlier pursuant to the terms of this Agreement. However, if the term of this Agreement extends beyond a single fiscal year of COUNTY, 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.

10.2 County has the option to renew this Agreement for two (2) additional renewal terms upon written mutual consent of both County and Plan Manager. The first renewal term shall commence on January 1, 20__ and shall end on December 31, 20__ (the “First Renewal Term”). The second renewal term shall commence on January 1, 20__ and shall end on December 31, 20__ (the “Second Renewal Term”). If VENDOR intends to enter into renewal negotiations with County, Plan Manager shall notify County of its intent to do so at least two hundred seventy (270) days prior to the expiration of the initial term of this Agreement and any renewal term thereof.

10.3 Notwithstanding the above, County shall have the right, by and through its Contract Administrator and at his/her sole discretion, to extend the term of this Agreement on a month to month basis, for a maximum of six (6) months (“Extension Term”), due to ongoing negotiations and/or to allow time for transition to a new vendor on the same benefits and pricing terms as existed during the preceding term. However, if either party proposes any changes to the terms and conditions of the Agreement which would become effective during the Extension Term, the County Administrator’s decision to extend the Agreement shall be subject to Board approval.

ARTICLE XI
Termination

11.1 This Agreement may be terminated by the Plan Manager at the end of the contract period upon advance written notice to the County of at least one hundred eighty (180) days.

11.2 This Agreement may be terminated for convenience by the Board. Termination for convenience by the Board shall be effective on the termination date stated in written notice provided by County, which termination date shall be not less than thirty (30) days after the date of such written notice. 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.

11.3 In the event this Agreement is terminated for convenience, Plan Manager shall be paid for
any services properly performed under the Agreement through the termination date specified in the written notice of termination. Plan Manager acknowledges that it has received good, valuable and sufficient consideration from County, the receipt and adequacy of which are, hereby acknowledged by Plan Manager, for County's right to terminate this Agreement for convenience.

11.4 This Agreement may be terminated for cause by County for reasons including, but not limited to, Plan Manager's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to suitably perform the work, or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement. The Agreement may also be terminated for cause if Plan Manager is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes, or if Plan Manager provides a false certification submitted pursuant to Section 287.135, Florida Statutes.

11.5 The Plan Manager, in its discretion, may terminate this Agreement before the end of any contract period upon thirty (30) days written notice, if the County fails to cure any one or more of the following deficiencies before the end of the thirty (30) day notice period:

(a) Failure to pay all or part of the fees payable under Article IX of this Agreement when due.

(b) Failure to provide adequate funds to honor claims reimbursement payments on a timely basis.

11.6 Either party may terminate this Agreement immediately upon written notice in the event of:

(a) The bankruptcy, insolvency or liquidation of the other party; or

(b) The commission by the other party of any material breach of this Agreement which is not cured in connection with the performance of its duties under this Agreement. However, a material breach of this Agreement may be cured within thirty (30) days after written notice from the other party.

11.7 In the event of the termination of this Agreement, the Plan Manager will provide the County or the Plan Administrator with access to records or information concerning the Plan in its possession, upon written request. The Plan Manager will within a reasonable time honor requests for copies of records and information provided they are reasonable and the County agrees to pay for the services as outlined under the administration fees in Exhibit "F". The Plan Manager shall have the right to retain copies of such property and records as agreed to by the County or as otherwise required by law.

11.8 Upon termination of this Agreement, Plan Manager will process claims for a run-out period of twelve (12) months. The County agrees that the Plan Manager will have no obligation
to process claims beyond the end date of the run-out period. The obligations of this section, 11.8, shall survive the expiration or earlier termination of this Agreement.

11.9 Termination under this Article XI shall not cause either party to waive any rights it may have to exercise any remedies available to it under any other Article or Exhibit in this Agreement or under any applicable law.

ARTICLE XII
Confidentiality

12.1 The obligations of the Plan Manager, Plan Administrator, and the County regarding information of a confidential or personal nature about individuals with respect to whom benefits may be or become payable under the provisions of the Plan are identified in a separate executed document entitled Business Associate Agreement.

ARTICLE XIII
Indemnification

13.1 Plan Manager shall at all times hereafter indemnify, hold harmless and, at the County Attorney's option, defend or pay for an attorney selected by the County Attorney to defend County, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by any intentional, negligent, or reckless act of, or omission of, Plan Manager, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against County by reason of any such claim, cause of action, or demand, Plan Manager shall, upon written notice from County, resist and defend such lawsuit or proceeding by counsel satisfactory to County or, at County's option, pay for an attorney selected by County Attorney to defend County. 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 Plan Manager 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.

13.2 Except as otherwise explicitly provided in this Agreement and to the full extent permitted by Florida law, the County agrees to indemnify Plan Manager up to the monetary limits of Section 768.28, Florida Statutes (inclusive of attorney’s fees), from any liability or loss suffered by Plan Manager resulting from claims or judgments against Plan Manager arising out of the following acts of the County or its employees pursuant to this Agreement: (1) the failure to abide by the written provisions of the Plan; (2) the failure to administer the
Plan or assets and funds of the Plan in a prudent and proper manner; (3) the failure to comply with applicable laws related to the County’s or Plan Administrator’s preparation or adoption of the Plan; (4) fraud, embezzlement, willful misconduct, or intentional disregard on the part of the County or its employees, agents or representatives, when acting within the scope of their employment; or (5) actions taken by the Plan Manager in compliance with the written directive of the Plan Administrator.

However, as to any such claim or judgment where there is a final adjudication by a court of competent jurisdiction that Plan Manager has breached any fiduciary duty with respect to the Plan, Plan Manager wrongfully denied a benefit, or if or if any such claim is settled by Plan Manager or at its request, then Plan Manager shall be responsible for all amounts and expenses (including attorney’s fees and costs).

Except with regard to the reimbursement obligation stated above, the County’s agreement to reimburse Plan Manager is not intended to serve as a waiver of the County’s sovereign immunity or of any rights or limits to liability existing under Section 768.28, Florida Statutes, or otherwise existing under applicable law.

13.3 This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

ARTICLE XIV
Taxes and Assessments

14.1 If a tax or other assessment is imposed upon the Plan Manager when it is the obligation of the County, as a self-funded Employer, to pay (for example, a tax related to the Affordable Care Act that is the responsibility of the self-funded Plan, but collected by the Plan Manager on behalf of the Plan), the Plan Manager will provide written notification to the County together with a copy of the tax bill or assessment within ten (10) business days of receipt. If County directs Plan Manager to pay the tax or assessment, the County shall reimburse the Plan Manager for any amounts paid on the County’s behalf.

ARTICLE XV
Defense of Actions

15.1 The County and the Plan Manager agree to cooperate with respect to (a) the determination, settlement, and defense of any and all claims for benefits undertaken by the Plan Manager pursuant to this Agreement, and (b) the settlement of and conduct of a defense against any claim for benefits which has been denied, which may include attending hearings and trials and assisting in securing the attendance of witnesses and giving of evidence.

15.2 The payment of legal fees arising out of any transaction or activity under this Agreement
shall be the responsibility of the person incurring the expense, except as provided in Article XIII. However, legal fees incurred by the Plan Manager and attributable to a request, direction, or demand by the Plan Administrator that are not made pursuant to Article XIII shall be the responsibility of the person making the request, direction or demand.

ARTICLE XVI
Miscellaneous

16.1 Ancillary Agreements. The County agrees to execute or cause to be executed all ancillary agreements appropriate and necessary, as determined by the County, to enable the services described in this Agreement to be performed. All executed ancillary agreements containing Plan information shall be incorporated herein. In the event that language within ancillary agreements is in conflict with the terms of this Agreement, the more specific and comprehensive provision shall be given effect.

16.2 Entire Agreement. This document represents the final and complete understanding of the Parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

16.3 Assignment and Performance. Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other Party. In addition, Plan Manager shall not subcontract any portion of the work required by this Agreement. Notwithstanding the Termination provision of this Agreement, County may terminate this Agreement, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by Plan Manager of this Agreement or any right or interest herein without County's written consent.

Plan Manager represents that each person who will render services pursuant to this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services.

Plan Manager shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of Plan Manager’s performance and all interim and final product(s) provided to or on behalf of County shall be comparable to the best local and national standards.

16.4 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 section.
For the present, the Parties designate the following:

For the County:

Attn: ______________________________
__________________________________
__________________________________
__________________________________
__________________________________
__________________________________

For the Plan Manager:

Attn: ______________________________
__________________________________
__________________________________
__________________________________
__________________________________
__________________________________

16.5 Compliance with Laws. Plan Manager shall comply with all applicable federal, state, and
local laws, codes, ordinances, rules, and regulations in performing its duties,
responsibilities, and obligations pursuant to this Agreement.

16.6 Severance. In the event a portion of this Agreement is found by a court of competent
jurisdiction to be invalid, the remaining provisions shall continue to be effective unless
County or Plan Manager elects to terminate this Agreement. An election to terminate this
Agreement based upon this provision shall be made within seven (7) days of final court
action, including all available appeals.

16.7 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, to the extent not preempted by federal law, and venue for
litigation arising out of this Agreement shall be exclusively in such state courts, forsaking
any other jurisdiction which either party may claim by virtue of its residency or other
jurisdictional device. BY ENTERING INTO THIS AGREEMENT, PLAN MANAGER
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.

16.8 Amendment. The Parties may amend this Agreement to conform to changes in federal, state, or local laws, regulations, directives, and objectives. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by County and Plan Manager or others delegated authority to or otherwise authorized to execute same on their behalf.

16.9 Representation of Authority. Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

16.10 Payable Interest.

16.10.1 Payment of Interest. Except as required by the Broward County Prompt Payment Ordinance, County shall not be liable for interest for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Plan Manager waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim based on or related to this Agreement.

16.10.2 Rate of Interest. In any instance where the prohibition or limitations of Section 16.10 are determined to be invalid or unenforceable, the annual rate of interest payable by County under this Agreement, whether as prejudgment interest or for any other purpose, shall be .025 percent simple interest (uncompounded).

16.11 Interpretation. 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.

16.12 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 Articles 1 through 16 of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 16 shall prevail and be given effect.

16.13 **Joint Preparation.** The Parties and their counsel have participated fully in the drafting of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

16.14 **Materiality and Waiver of Breach.** Each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement, and 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.

16.15 **Conflicts.** Neither Plan Manager nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Plan Manager’s loyal and conscientious exercise of judgment and care related to its performance under this Agreement.

None of Plan Manager’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 Plan Manager 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 Plan Manager 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 Plan Manager is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, Plan Manager shall require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as Plan Manager.

16.16 **Third Party Beneficiaries.** Neither Plan Manager 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.
16.17 Public Entity Crime Act. Plan Manager represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, which essentially provides that a person or affiliate who is a contractor, consultant, or other provider and who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to County, may not submit a bid on a contract with County for the construction or repair of a public building or public work, may not submit bids on leases of real property to County, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with County, and may not transact any business with County in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases. Violation of this section shall result in termination of this Agreement and recovery of all monies paid by County pursuant to this Agreement, and may result in debarment from County's competitive procurement activities.

In addition to the foregoing, SECOND PARTY further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a “public entity crime” 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 SECOND PARTY has been placed on the convicted vendor list.

16.18 Nondiscrimination, Equal Employment Opportunity, and Americans with Disabilities Act. Plan Manager shall not unlawfully discriminate on the basis of race, color, national origin, sex, religion, age, marital status, political affiliation, disability, sexual orientation, pregnancy, or gender identity and expression (including but not limited to any other protected category in Broward County Code, Chapter 16½, as may be amended from time to time) in the performance of this Agreement, the solicitation for or purchase of goods or services relating to this Agreement, or in subcontracting work (if authorized) in the performance of this Agreement. Plan Manager shall include the foregoing or similar language in its agreements with any subcontractors, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 CFR Parts 23 and 26, as amended. Failure to comply with the foregoing requirements is a material breach of the Agreement, which may result in termination of this Agreement or such other remedy as County deems appropriate.

Plan Manager 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. Plan Manager 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, Plan Manager shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

By execution of this Agreement, Plan Manager represents that it has not been placed on
the discriminatory vendor list (as provided in Section 287.134, Florida Statutes, as may be amended from time to time). County hereby materially relies on such representation in entering into this Agreement. An untrue representation of the foregoing shall entitle County to terminate this Agreement and recover from Plan Manager all monies paid by County pursuant to this Agreement, and may result in debarment from County’s competitive procurement activities.

16.19 Rights in Documents and Work. Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of County, and, if a copyright is claimed, Plan Manager grants to County a non-exclusive license to use the copyrighted item(s) indefinitely, to prepare derivative works, and to make and distribute copies to the public. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by Plan Manager, whether finished or unfinished, shall become the property of County and shall be delivered by Plan Manager to the Plan Administrator within seven (7) days of termination of this Agreement by either party. Any compensation due to Plan Manager shall be withheld until all documents are received as provided herein.

16.20 Contingency Fee. Plan Manager warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Plan Manager, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Plan Manager, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For a breach or violation of this provision, County shall have the right, at its discretion, to terminate this Agreement without liability, or to deduct from this Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift, or consideration.

16.21 Additional Services and Changes in Scope of Services. County or Plan Manager may request changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under Article __ of this Agreement entitled “Scope of Services.” Such changes must be contained in a written amendment, prepared and executed consistent with Section 16.8 of this Agreement entitled “Amendments,” prior to any deviation from the terms of this Agreement, including the initiation of any additional services. County shall compensate Plan Manager for such additional services as mutually agreed to by the parties.

16.22 Legislative, Regulatory, or Administrative Change. In the event there shall be a change in the relevant federal or state statutes or regulations, the adoption of new federal or state legislation, or a change in any reimbursement system, any of which are reasonably likely to materially and adversely affect the manner in which either party may perform under this Agreement or which shall make this Agreement unlawful, the parties shall immediately enter into good faith negotiations regarding a new service agreement that complies with the law, regulation or policy and that approximates as closely as possible the position of the parties prior to the change.
16.23 Plan Manager Representations and Warranties. Plan Manager warrants and guarantees unto County the following:

16.23.1 Neither Plan Manager nor any officer, stockholder, director, or employee of Plan Manager, nor any affiliate of Plan Manager (hereinafter collectively referred to as FBMC), is subject to any present or past litigation or administrative proceeding of or before any court or administrative body which would have a materially adverse effect on Plan Manager, or its ability to discharge its responsibilities under this Agreement, or which would impair the ability of Plan Manager to act as a fiduciary, nor, to its knowledge, is any such litigation or proceeding presently threatened against any of them or their property.

16.23.2 Plan Manager is presently in compliance with all existing laws and regulations, a violation of which would or could materially adversely affect Plan Manager’s operations or would or could materially adversely affect its ability to fulfill its obligations and undertakings set forth in this Agreement.

16.23.3 Plan Manager is in good standing with the State of Florida and all departments and agencies thereof, and is appropriately licensed under the laws of the State of Florida to perform all obligations imposed upon Plan Manager under this Agreement, including functioning as a third party contract administrator. Plan Manager warrants and guaranties that it is properly licensed and authorized to do business in Broward County as required by the laws of the State of Florida, and the administrative rules and regulations.

16.23.4 Plan Manager has and shall maintain the capability to adequately carry out the record keeping and reporting requirements of the Plan including access to the necessary computer and data retention equipment needed to provide such record keeping and reporting.

16.23.5 The officer who signs this Agreement on Plan Manager’s behalf, his or her name and signature appearing on the signature page corresponding to Plan Manager hereto, has full power and authority to execute this Agreement, and such officer’s execution and Plan Manager’s performance of the Agreement is a valid and binding obligation of Plan Manager which does not conflict with Plan Manager’s respective articles of incorporation, by-laws, or any other Agreements to which Plan Manager is bound.

16.23.6 All employee records, accounts and information therein regarding the Plan Manager shall be the property of County and Plan Manager shall not sell, provide, or in any way disseminate such information without the prior written consent of County.

"G," "H," "I," "J," "J-1," "K," "L," and "M" are incorporated into and made a part of this Agreement.

16.25 **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 workplace in accordance with Section 21.31(a)(2) of the Broward County Procurement Code. Execution of this Agreement by Plan Manager shall serve as Plan Manager’s required certification that it either has or that it will establish a drug-free workplace in accordance with Section 287.087, Florida Statutes, and Section 21.31(a)(2) of the Broward County Procurement Code.

16.26 **Truth-in-Negotiation Representation.** Plan Manager’s compensation under this Agreement is based upon representations supplied to County by Plan Manager, and Plan Manager certifies that the information supplied is accurate, complete, and current at the time of contracting. County shall be entitled to recover any damages it incurs to the extent such representation is untrue.

16.27 **Escheatment.** The State of Florida requires escheatment of unclaimed moneys which, as it pertains to this Agreement, would be represented by uncashed checks unprocessed by the Participants within the statutory time period relative to their participation in the Plan. Plan Manager shall provide an accounting of such checks to County, in a format acceptable to State standards, within one hundred eighty (180) days after the close of the Plan Year. Upon receipt of such accounting, County shall require Plan Manager to take all necessary steps to comply with the State of Florida’s escheatment procedures.

16.28 **Use of County Logo.** Plan Manager 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.

16.29 **Signature.** This Agreement shall be considered executed by the Plan Manager and the County, upon signature of both the Plan Manager and the County.

16.30 **Multiple Originals.** Multiple copies of this Agreement may be executed by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

(The remainder of this page is intentionally left blank.)
IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature: 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 ____________, 20__, and ______________ signing by and through its ________________ on the ____ day of ____________, 20__.  

COUNTY

ATTEST:

BY______________________________ Mayor

BROWARD COUNTY, through its BOARD OF COUNTY COMMISSIONERS

Broward County Administrator, as Ex-Officio Clerk of the Board of County Commissioners of Broward County, Florida____ day of ____________, 20__.

Insurance requirements approved by Broward County Risk Management Division

By______________________________ Assistant County Attorney

Approved as to form by Joni Armstrong Coffey Broward County Attorney Governmental Center, Suite #423 115 South Andrews Avenue Fort Lauderdale, Florida 33301 Telephone: (954) 357-7600 Telecopier: (954) 357-7641

By______________________________ (Date) Assistant County Attorney

Print Name and Title above

By______________________________ (Date) Assistant County Attorney
AGREEMENT FOR ADMINISTRATIVE MANAGEMENT SERVICES BETWEEN BROWARD COUNTY AND ________________ FOR SELF-INSURED GROUP HEALTH INSURANCE COVERAGE AND BENEFITS INSURING BROWARD COUNTY EMPLOYEES

[PLAN MANAGER]

ATTEST: [CORPORATE NAME OF PLAN MANAGER]

______________________________
Secretary

(CORPORATE SEAL)

____ 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 _________ at Large
Commission No.__________________

My Commission Expires:
EXHIBIT "A"

IDENTIFICATION OF THE PLAN

Broward County Board of County Commissioners Medical Plan

(Medical Coverage)

(A Non-Federal Governmental Plan)

[To be determined; subject to negotiations]
EXHIBIT "B"

COBRA/RETIREE ADMINISTRATION SERVICES

[To be determined; subject to negotiations]
EXHIBIT "C"

CLINICAL PROGRAM SERVICES

[To be determined; subject to negotiations]
EXHIBIT "D"

NETWORKS

[To be determined; subject to negotiations]
EXHIBIT "D-1"

SHARED SAVINGS PROGRAM PROVIDER DISCOUNTS

[To be determined; subject to negotiations]
EXHIBIT "E"

BANKING AGREEMENT

[To be determined; subject to negotiations]
EXHIBIT "F"

SCHEDULE OF FEES

[To be determined; subject to negotiations]
EXHIBIT "G"

PERSONS AUTHORIZED TO RECEIVE PRIVATE HEALTH INFORMATION

[To be determined; subject to negotiations]
EXHIBIT "H"

GENERAL PROVISIONS/PERFORMANCE GUARANTEES

[To be determined; subject to negotiations]
EXHIBIT "I"

WELLNESS PROGRAM

[To be determined; subject to negotiations]
EXHIBIT "J"

MINIMUM INSURANCE REQUIREMENTS FOR PLAN MANAGER

[To be provided in accordance with Insurance Requirements stated in the RFP (Attachments) issued by Broward County Risk Management Division]

Commercial General Liability Insurance
   Combined single limit for bodily injury and property damage:
   $___________ (____ Million Dollars) minimum limits per occurrence
   $___________ (____ Million Dollars) minimum limits per aggregate

   Includes coverage for:
   Premises/operations
   Products/Completed Operations
   Broad form Property Damage
   Personal and Advertising Injury

Business Automobile Liability Insurance
   Combined single limit for bodily injury and property damage:
   $___________ (____ Million Dollars) minimum limits per occurrence

   Includes coverage for:
   Owned, Non-owned, Hired, Scheduled and Any Autos

Workers’ Compensation Insurance
   In compliance with state statutes and all federal laws
   Operations in Florida comply with Chapter 440 FSS

Employer’s Liability Insurance
   $___________ (____ Million Dollars) minimum limits each accident

Professional Liability Insurance
   $___________ (____ Million Dollars) minimum limits per occurrence
   $___________ (____ Million Dollars) per aggregate

(The remainder of this page is left intentionally blank.)
Certificate of Liability Insurance listing Broward County Board of County Commissioners as Certificate Holder will be added upon receipt.

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

AUDITING SECURITY DOCUMENTS

[To be determined; subject to negotiations]
EXHIBIT "L."

STOP LOSS INSURANCE

[To be determined; subject to negotiations]
EXHIBIT "M"

BUSINESS ASSOCIATE AGREEMENT
BUSINESS ASSOCIATE AGREEMENT BETWEEN
BROWARD COUNTY, FLORIDA AND BENEFITS OUTSOURCE, INC.

This BUSINESS ASSOCIATE AGREEMENT ("BAA") is entered into by and between Broward County, Florida ("County"), and ________________________________, a ____________________________ authorized to do business in the State of Florida with its principal office located at ____________________________________________ ("Business Associate") in connection with the Agreement ____________________________________________, RFP # R1412304P1 (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 CFR Parts 160, 162, 164, and 42 U.S.C. § 17921.

1.2 “HIPAA Laws” mean collectively HIPAA, HITECH, 42 CFR 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 CFR 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 CFR 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 CFR § 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 CFR § 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 CFR § 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 CFR § 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 CFR § 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 CFR § 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 BUSINESS ASSOCIATE, 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 BUSINESS ASSOCIATE, 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 ___________________________, 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  
Broward County, Florida  
Joni Armstrong Coffey,  
County Attorney  
Governmental Center, Suite #423  
115 South Andrews Avenue  
Fort Lauderdale, Florida  33301  
Telephone:  (954) 357-7600  
Telescopier:  (954) 357-7641

By______________________________  
Tricia D. Brissett  (Date)  
Assistant County Attorney
BUSINESS ASSOCIATE

By: __________________________

Print __________________________

Title: __________________________

___ day of ___________, 20___.

STATE OF _________ )
COUNTY OF _________ ) SS

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: