

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is entered into this 5th day of November, 2013 ("Effective Date") between the City of Redlands (the "Covered Entity") and USI of Southern California Insurance Services, Inc. ("USI").

Whereas, USI has been retained by Covered Entity as its insurance broker and will perform certain services on behalf of the Covered Entity, in its capacity as a broker, consultant, or other service provider with respect to activities of Covered Entity as a "group health plan" as defined in 45 C.F.R. § 160.103; and

Whereas, in connection with the provision of such services by USI, Covered Entity may disclose to USI certain Protected Health Information (as defined below), concerning Covered Entity and its activities; and

Whereas, USI and Covered Entity desire to enter into a business associate agreement for the purpose of addressing the Privacy Rule, the Security Rule, and the Electronic Transaction Rule, (as those terms are defined below), for addressing the privacy and security provisions set forth in the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), contained in Title XIII, Subtitle D, of the American Recovery and Reinvestment Act of 2009, and for making appropriate updates in accordance with final regulations issued in January 2013;

Now, Therefore, in consideration of the mutual promises confirmed herein, and such other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, USI and the Covered Entity agree as follows:

ARTICLE 1. DEFINITIONS

- 1.1. **"Agreement"** shall mean this document, including all exhibits, attachments, and properly executed amendments and addendums.
- 1.2. **"Breach"** shall have the same meaning as the term "breach" in 45 C.F.R. § 164.402.
- 1.3. **"Electronic Health Record"** shall have the same meaning as the term "electronic health record" in § 13400(5) of the American Recovery and Reinvestment Act of 2009.
- 1.4. **"Electronic Protected Health Information"** shall have the same meaning as the term "electronic protected health information" in 45 C.F.R. § 160.103.

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

ARTICLE 2. SAFEGUARDING PRIVACY AND SECURITY OF PROTECTED HEALTH INFORMATION

- 2.1 Permitted Uses and Disclosures. USI hereby agrees that it shall be prohibited from using or disclosing Protected Health Information provided or made available by Covered Entity (or another business associate of

Covered Entity) for any purpose other than as expressly permitted or required by this Agreement.

- a. **Functions and Activities on Covered Entity's Behalf.** Except as otherwise set forth in this Agreement, the parties hereby agree that USI shall be permitted to use and/or disclose Protected Health Information provided or made available by Covered Entity (or another business associate of Covered Entity) only for the purpose of conducting the transactions contemplated under this Agreement and only for purposes within the scope of USI's representation of Covered Entity.
- b. **Business Operations.** USI is permitted to use and/or disclose Protected Health Information if necessary for the proper management and administration of USI's representation of Covered Entity, or to carry out any legal responsibilities of USI, provided that, with respect to any disclosure of Protected Health Information, either:
 - (1) the disclosure is Required By Law; or
 - (2) USI obtains reasonable assurances from the person to whom the Protected Health Information is disclosed that: (a) the Protected Health Information will be held in confidence and used or further disclosed only as for the purposes for which USI disclosed the Protected Health Information to the person or as Required by Law; (b) the person will use appropriate safeguards to prevent use or disclosure of the Protected Health Information; and (c) the person immediately notifies USI of any instance of which it is aware in which the confidentiality of the Protected Health Information has been breached.
- c. **Data Aggregation Services.** USI is permitted to use or disclose Protected Health Information to provide data aggregation services, as that term is defined by 45 C.F.R. § 164.501, relating to health care operations of Covered Entity.
- d. **Minimum Necessary.** USI will, in its performance of the functions, activities, services, and operations specified above, make reasonable efforts to use, to disclose, and to request only the minimum amount of Covered Entity's Protected Health Information reasonably necessary to accomplish the intended purpose of the use, disclosure or request, except that USI will not be obligated to comply with this minimum-necessary limitation if neither USI nor Covered Entity is required to limit its use, disclosure or request to

the minimum necessary. USI and Covered Entity acknowledge that the phrase "minimum necessary" shall be interpreted in accordance with the HITECH Act and HHS guidance.

2.2 Information Safeguards.

- a. **Privacy of Covered Entity's Protected Health Information.** USI will develop, implement, maintain, and use appropriate administrative, technical, and physical safeguards to protect the privacy of Covered Entity's Protected Health Information. The safeguards must reasonably protect Covered Entity's Protected Health Information from any intentional or unintentional use or disclosure in violation of the Privacy Rule and limit incidental uses or disclosures made pursuant to a use or disclosure otherwise permitted by this Agreement.
- b. **Security of Covered Entity's Electronic Protected Health Information.** USI will develop, implement, maintain, and use administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information that USI creates, receives, maintains, or transmits on Covered Entity's behalf as required by the Security Rule.

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

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

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

ARTICLE 3. COMPLIANCE WITH ELECTRONIC TRANSACTION RULE

If USI conducts in whole or part electronic Transactions on behalf of Covered Entity for which HHS has established standards, USI will comply, and will require any subcontractor or agent it involves with the conduct of such Transactions to comply, with each applicable requirement of the Electronic Transaction Rule. USI shall also comply with the National Provider Identifier requirements, if and to the extent applicable.

ARTICLE 4. INDIVIDUAL RIGHTS

- 4.1 Access. USI will make available to Covered Entity or, at Covered Entity's direction, to an Individual (or the Individual's personal representative) for inspection and obtaining copies Covered Entity's Protected Health Information about the Individual that is in USI's custody or control, so that Covered Entity may meet its access obligations under 45 C.F.R. § 164.524. If the Protected Health Information is held in an Electronic Health Record, then the Individual shall have a right to obtain from USI a copy of such information in an electronic format. USI shall provide such a copy to Covered Entity or, alternatively, to the Individual directly, if such alternative choice is clearly, conspicuously, and specifically made by the Individual or Covered Entity.
- 4.2 Amendment. USI will, upon receipt of written notice from Covered Entity, promptly amend or permit Covered Entity access to amend any portion of Covered Entity's Protected Health Information, so that Covered Entity may meet its amendment obligations under 45 C.F.R. § 164.526.
- 4.3 Disclosure Accounting. To allow Covered Entity to meet its disclosure accounting obligations under 45 C.F.R. § 164.528:
- a. Disclosures Subject to Accounting. USI will record the information specified below ("Disclosure Information") for each disclosure of Covered Entity's Protected Health Information, not excepted from disclosure accounting as specified below, that USI makes to Covered Entity or to a third party.
 - b. Disclosures Not Subject to Accounting. USI will not be obligated to record Disclosure Information or otherwise account for disclosures of Covered Entity's Protected Health Information if Covered Entity need not account for such disclosures.

- c. **Disclosure Information.** With respect to any disclosure by USI of Covered Entity's Protected Health Information that is not excepted from disclosure accounting, USI will record the following Disclosure Information as applicable to the type of accountable disclosure made:
- (1) **Disclosure Information Generally.** Except for repetitive disclosures of Covered Entity's Protected Health Information as specified below, the Disclosure Information that USI must record for each accountable disclosure is (i) the disclosure date, (ii) the name and (if known) address of the entity to which USI made the disclosure, (iii) a brief description of Covered Entity's Protected Health Information disclosed, and (iv) a brief statement of the purpose of the disclosure.
 - (2) **Disclosure Information for Repetitive Disclosures.** For repetitive disclosures of Covered Entity's Protected Health Information that USI makes for a single purpose to the same person or entity (including Covered Entity), the Disclosure Information that USI must record is either the Disclosure Information specified above for each accountable disclosure, or (i) the Disclosure Information specified above for the first of the repetitive accountable disclosures; (ii) the frequency, periodicity, or number of the repetitive accountable disclosures; and (iii) the date of the last of the repetitive accountable disclosures.
- d. **Availability of Disclosure Information.** USI will maintain the Disclosure Information for at least 6 years following the date of the accountable disclosure to which the Disclosure Information relates (3 years for disclosures related to an Electronic Health Record, starting with the date specified by HHS). USI will make the Disclosure Information available to Covered Entity within 15 calendar days following Covered Entity's request for such Disclosure Information to comply with an Individual's request for disclosure accounting. With respect to disclosures related to an Electronic Health Record, USI shall provide the accounting directly to an Individual making such a disclosure request, if a direct response is requested by the Individual.

- 4.4 **Restriction Agreements and Confidential Communications.** USI will comply with any agreement that Covered Entity makes that either (i) restricts use or disclosure of Covered Entity's Protected Health Information pursuant to 45 C.F.R. § 164.522(a), or (ii) requires confidential communication about Covered Entity's Protected Health Information pursuant to 45 C.F.R. § 164.522(b), provided that Covered Entity notifies USI in writing of the

restriction or confidential communication obligations that USI must follow. Covered Entity will promptly notify USI in writing of the termination of any such restriction agreement or confidential communication requirement and, with respect to termination of any such restriction agreement, instruct USI whether any of Covered Entity's Protected Health Information will remain subject to the terms of the restriction agreement. USI will comply with any restriction request if: (i) except as otherwise Required by Law, the disclosure is to a health plan for purposes of carrying out payment or health care operations (and is not for purposes of carrying out treatment); and (ii) the Protected Health Information pertains solely to a health care item or service for which the health care provider involved has been paid out-of-pocket in full.

ARTICLE 5. BREACHES

- 5.1 Privacy or Security Breach. USI will report to Covered Entity any use or disclosure of Covered Entity's Protected Health Information not permitted by this Agreement along with any Breach of Covered Entity's Unsecured Protected Health Information. USI will treat the Breach as being discovered in accordance with 45 CFR §164.410. USI will make the report to the Covered Entity not more than 15 calendar days after USI learns of such non-permitted use or disclosure. If a delay is requested by a law-enforcement official in accordance with 45 CFR §164.412, USI may delay notifying Covered Entity for the applicable time period. USI's report will at least:
- a. Identify the nature of the Breach or other non-permitted use or disclosure, which will include a brief description of what happened, including the date of any Breach and the date of the discovery of any Breach;
 - b. Identify Covered Entity's Protected Health Information that was subject to the non-permitted use or disclosure or Breach (such as whether full name, social security number, date of birth, home address, account number or other information were involved) on an individual basis;
 - c. Identify who made the non-permitted use or disclosure and who received the non-permitted disclosure;
 - d. Identify what corrective or investigational action USI took or will take to prevent further non-permitted uses or disclosures, to mitigate harmful effects and to protect against any further Breaches;

- e. Identify what steps the Individuals who were subject to a Breach should take to protect themselves;
 - f. Provide such other information, including a written report, as Covered Entity may reasonably request.
- 5.2 Security Incidents. USI will report to Covered Entity any attempted or successful (A) unauthorized access, use, disclosure, modification, or destruction of Covered Entity's Electronic Protected Health Information or (B) interference with Business Associate's system operations in Business Associate's information systems, of which USI becomes aware. USI will make this report once per month, except if any such Security Incident resulted in a disclosure not permitted by this Agreement or Breach of Covered Entity's Unsecured Protected Health Information, Business Associate will make the report in accordance with the provisions set forth in Section 5.1.

ARTICLE 6. TERM AND TERMINATION

- 6.1 Term. This Agreement shall commence on its Effective Date and shall terminate when all Protected Health Information provided by Covered Entity to USI, or created or received by USI on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this section.
- 6.2 Right to Terminate for Cause. Covered Entity may terminate this Agreement if it determines, in its sole discretion, that USI has breached any provision of this Agreement, and upon written notice to USI of the Breach, USI fails to cure the Breach within 30 calendar days after receipt of the notice. Any such termination will be effective immediately or at such other date specified in Covered Entity's notice of termination.
- 6.3 Return or Destruction of Covered Entity's Protected Health Information. Upon termination of this Agreement for any reason, USI, with respect to Protected Health Information received from the Covered Entity, or created, maintained, or received by USI on behalf of Covered Entity, shall:
- 1. retain only that Protected Health Information which is necessary for USI to continue its proper management and administration or to carry out its legal responsibilities;
 - 2. return to Covered Entity or, if agreed to by Covered Entity, destroy the remaining Protected Health Information that USI still maintains in any form;
 - 3. continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to Electronic Protected Health

Information to prevent use or disclosure of the Protected Health Information, other than as provided for in this section, for as long as USI retains the Protected Health Information;

4. not use or disclose the Protected Health Information retained by USI other than for the purposes for which such Protected Health Information was retained and subject to the same conditions set out at Section 2.1(b) which applied prior to termination; and
5. return to Covered Entity or, if agreed to by Covered Entity, destroy the Protected Health Information retained by USI when it is no longer needed by USI for its proper management and administration or to carry out its legal responsibilities.

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

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

ARTICLE 7. GENERAL PROVISIONS

- 7.1 Access to Books and Records. USI hereby agrees to make its internal practices, books and records relating to the use, disclosure, and safeguards for Protected Health Information received from, or created or received by USI on behalf of Covered Entity, available to the Secretary or the Secretary's designee for purposes of determining compliance with the Privacy Rule and/or the Security Rule.
- 7.2 Mitigation Procedures. USI agrees to have procedures in place for mitigating, to the extent practicable, any deleterious effect from the use or disclosure of Protected Health Information received from, or created or received by USI on behalf of Covered Entity, in a manner contrary to this Agreement or the Privacy Rule.
- 7.3 Amendment to Agreement. Upon the compliance date of any final regulation or amendment to final regulation promulgated by HHS that affects USI or Covered Entity's obligations under this Agreement, this Agreement will be automatically amended such that the obligations imposed on USI or Covered Entity remain in compliance with the final regulation or amendment to final regulation.

- 7.4 Choice of Law. Except to the extent superseded by the federal law, this Agreement shall be governed by the law of the State of California; provided, however, that for the purposes of privacy rights of Individuals, the law of the state in which the Individual resided during the event(s) giving rise to the need to determine the rights under this Agreement shall apply.
- 7.5 Injunctive Relief. Notwithstanding any rights or remedies provided for in this Agreement, Covered Entity retains all rights to seek injunctive relief to prevent or stop the unauthorized use or disclosure of Protected Health Information by USI or any agent, contractor, or third party that received Protected Health Information from USI.
- 7.6 Notices. Whenever under this Agreement one party is required to give notice to the other, such notice shall be deemed given if mailed by First Class United States mail, postage prepaid, and addressed as follows:
- Covered Entity:
- City of Redlands
35 Cajon Street, Suite 10
Redlands, CA 92373
- USI:
- USI of Southern California Insurance Services, Inc.
29A Technology Drive, Suite 100
Irvine, CA 92618
- 7.7 Binding Nature and Assignment. This Agreement shall be binding on USI and Covered Entity and their successors and assigns, but neither USI nor Covered Entity may assign this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld.
- 7.8 Headings. The headings in this Agreement are for reference and convenience only, and shall not enter into the interpretation of this Agreement.
- 7.9 Force Majeure. USI shall be excused from performance under this Agreement for any period USI is prevented from performing any services pursuant hereto, in whole or in part, as a result of an act of God, war, civil disturbance, court order, labor dispute or other cause beyond its reasonable control, and such non-performance shall not be grounds for termination.

7.10 Attorneys' Fees. In the event any action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, misrepresentation, or injunctive action, in connection with any of the provisions of this Agreement, the prevailing party in such action or proceeding, in addition to its costs and other relief, shall be entitled to recover its reasonable attorneys' fees.

7.11 Entire Agreement. This Agreement constitutes the entire agreement between the parties and shall replace any previous business associate agreement between the parties. There are no understandings or agreements relating to this Agreement which are not fully expressed in this Agreement and no change, waiver, or discharge of any obligation(s) arising under this Agreement shall be valid unless in writing and executed by the party against whom such change, waiver, or discharge is sought to be enforced.

IN WITNESS WHEREOF, USI and Covered Entity have caused this Agreement to be signed and delivered by their duly authorized representatives as of the Effective Date set forth above.

Covered Entity

By: _____

Print Name: _____

Title: _____

Date: _____

USI

By:



Print Name: Thom Lewis

Title: Regional CEO & Employee Benefits Practice Leader

Date: September 6, 2013