

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is entered into between South Central Trust (“Covered Entity”) and USI Insurance Services (“Business Associate”), with its principal headquarters located at 100 Summit Lake Drive, Suite 400, Valhalla, New York, 10595.

Background

Business Associate has agreed to perform certain services for or on behalf of Covered Entity that may involve the creation, maintenance, use, transmission or disclosure of protected health information within the meaning of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), and its implementing regulations, 45 CFR Parts 160 and 164 (“HIPAA Rules”). To the extent necessary to comply with the requirements of the privacy and security regulations under the Health Insurance Portability and Accountability Act of 1996, as amended (the “Privacy Rule” and the “Security Rule”, respectively), Covered Entity and Business Associate desire to enter into this Business Associate Agreement documenting the permitted uses and disclosures of Protected Health Information (as defined below) by Business Associate and other rights and obligations of each of the parties to this Business Associate Agreement (collectively the “Parties”). Business Associate undertakes the responsibilities set forth herein if and to the extent that it qualifies as a business associate as defined by HIPAA.

Definitions

1. **General Definitions.** The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: *Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.*

2. **Specific Definitions.**

2.1 **Agreement** shall mean the agreement or other arrangement, whether written or unwritten, between Business Associate and Covered Entity under which Business Associate may have access to certain Protected Health Information maintained by Covered Entity. If Covered Entity and Business Associate have multiple written agreements under which Protected Health Information is shared by Covered Entity, this Business Associate Agreement shall apply to each such agreement as if a separate Business Associate Agreement has been executed for each such agreement between Business Associate and Covered Entity.

2.2 **Business Associate** shall generally have the same meaning as the term “business associate” at 45 CFR § 160.103, and in reference to the party to this Agreement, shall mean Business Associate.

2.3 **Covered Entity** shall generally have the same meaning as the term “covered entity” at 45 CFR § 160.103, and in reference to the party to this Agreement, shall mean Covered Entity.

2.4 **Notification Rule** shall mean the Standards for Notification in the Case of Breach of Unsecured Protected Health Information at 45 C.F.R. Part 164, Subpart D.

2.5 **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, as currently in effect.

2.6 Protected Health Information (PHI) shall generally have the same meaning as the term “protected health information” at 45 CFR § 160.103, and shall include any individually identifiable information that is created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity that relates to an individual’s past, present, or future physical or mental health, health care, or payment for health care, whether such information is in oral, hard copy, electronic, or any other form or medium.

2.7 Security Rule shall mean the Standards for Security of Individually Identifiable Health Information, codified at 45 C.F.R. Part 164, Subpart C.

2.8 Terms used but not otherwise defined in this Agreement shall be defined as set forth in 45 C.F.R. Part 160 and Part 164, Subparts A, C, D, and E, as they shall be amended.

Agreement

3. Relationship of the Parties. Business Associate is and at all times during this Agreement shall act as an independent contractor to Covered Entity, and not as Covered Entity’s agent. Covered Entity shall not have authority to control the method or manner in which Business Associate performs its services on behalf of Covered Entity, provided that Business Associate complies with the terms of this Agreement and the HIPAA Rules.

4. Business Associate Responsibilities. Business Associate agrees to:

4.1 Fully comply with the HIPAA Rules as they apply to business associates.

4.2 Not use or disclose protected health information except as permitted by this Agreement or as otherwise required by law.

4.3 Use appropriate safeguards to prevent the use or disclosure of protected health information other than as permitted by this Agreement. Business Associate shall comply with the requirements in 45 CFR Part 164, Subpart C applicable to business associates, including the use of administrative, physical and technical safeguards to protect electronic protected health information. In addition, if Business Associate performs activities related to Covered Entity’s covered accounts as defined in 16 C.F.R. § 681.2, Business Associate will implement and comply with reasonable policies to identify, prevent, and mitigate any instance of identity theft relating to the covered accounts.

4.4 Within a reasonable time following discovery, Business Associate shall report to Covered Entity’s Privacy Officer any use or disclosure of protected health information not permitted by this Agreement or the HIPAA Rules of which Business Associate becomes aware, including reporting breaches of unsecured protected health information as required by 45 CFR § 164.410, and reporting security incidents as required by 45 CFR § 164.314(e)(2)(i)(C). Finally, if Business Associate performs activities related to Covered Entity’s covered accounts as defined in 16 C.F.R. § 681.2, Business Associate will report to Covered Entity any actual instance of identity theft involving a Covered Entity covered account. Business Associate shall report the information necessary and in such manner as to enable Covered Entity to investigate the incident and comply with Covered Entity’s obligations under applicable law.

4.5 Mitigate, to the extent practicable, any harmful effect caused by a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement. Also, to fully cooperate with Covered Entity’s efforts to promptly investigate, mitigate, and notify third parties of breaches of unsecured protected health information or security incidents as required by the HIPAA Rules.

4.6 Ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of Business Associate agree to the same restrictions, conditions, and

requirements set forth in this Agreement and the HIPAA Rules applicable to such subcontractors. Business Associate may fulfill this requirement by executing a written agreement with the subcontractor incorporating the terms of this Agreement and otherwise complying with the requirements in 45 CFR §§ 164.502(e)(2)(ii) and 164.308(b)(2)(i)-(iii).

4.7 Make available protected health information in a designated record set to the Covered Entity, within a reasonable time following the request, to satisfy Covered Entity's obligations under 45 CFR 164.524. Should Business Associate or its subcontractors receive a direct request from an individual, Business Associate will promptly forward the individual's request to the Covered Entity.

4.8 Make any amendment(s) to protected health information in a designated record set, within a reasonable time following the request, as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526. Should Business Associate or its subcontractors receive a direct request from an individual, Business Associate will promptly forward the individual's request to the Covered Entity.

4.9 Maintain and make available the information required to provide an accounting of disclosures to the Covered Entity, within a reasonable time following the request, to satisfy Covered Entity's obligations under 45 CFR 164.528. Should Business Associate or its subcontractors receive a direct request from an individual, Business Associate will promptly forward the individual's request to the Covered Entity.

4.10 To the extent Business Associate is to carry out Covered Entity's obligations under 45 CFR Part 164, Subpart E, comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligations.

4.11 Business Associate acknowledges that Covered Entity maintains a "Red Flags" program under the Federal Trade Commission's Identity Theft Prevention Red Flag rule, 16 CFR 681.1 et seq. Business Associate agrees to take such specific actions to participate in Covered Entity's Red Flags program as reasonably requested by Covered Entity and agreed to in writing by Business Associate.

4.12 Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

5. Uses and Disclosures by Business Associate.

5.1 Permissible Uses and Disclosures. Business Associate may use or disclose protected health information as follows:

5.1.1 As necessary to perform the services set forth in the Service Agreement.

5.1.2 As authorized, to de-identify protected health information in accordance with 45 CFR § 164.514(a)-(c).

5.1.3 As required by law.

5.1.4 Business Associate may not use or disclose protected health information in a manner that would violate 45 CFR Part 164, Subpart E, if done by Covered Entity.

5.1.5 Business Associate agrees to use or disclose the minimum amount of protected health information necessary for a permitted purpose pursuant to this Section 5, Covered Entity's policies and procedures, and 45 CFR § 164.502(b).

5.2 Additional Use and Disclosure Provisions

5.2.1 Except as otherwise limited in the underlying Agreement, Business Associate may use protected health information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

5.2.2 Except as otherwise limited in the underlying Agreement, Business Associate may disclose protected health information for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, provided that any disclosures for these purposes (i) are required by law, or (ii)(a) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and (ii)(b) the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

5.2.3 Except as otherwise limited in the underlying Agreement, Business Associate may use protected health information to provide data aggregation services relating to the health care operations of Covered Entity as defined in 45 CFR § 164.501.

6. Term and Termination. This Business Associate Agreement shall terminate upon the first to occur of the following: (i) the termination of the Agreement; or (ii) the termination of this Business Associate Agreement.

6.1 Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate or any subcontractor, Covered Entity shall either:

(1) Provide an opportunity for Business Associate to cure the breach and end the violation within a reasonable time designated by Covered Entity (but not more than thirty (30) days), and terminate this Business Associate Agreement and the Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;

(2) Immediately terminate this Business Associate Agreement and the Agreement if Business Associate has breached a material term of this Business Associate Agreement and Covered Entity has reasonably determined that cure is impossible; or

(3) If Covered Entity has reasonably determined that neither termination nor cure is feasible, Covered Entity may report the violation to the Secretary.

6.2 Notwithstanding Section 6.1.1, Covered Entity may terminate this Agreement immediately if Business Associate or any subcontractor engages in any conduct that Covered Entity reasonably believes may result in adverse action against Covered Entity by any governmental agency or third party.

6.3 Obligations of Business Associate Upon Termination. Upon termination of this Agreement for any reason, Business Associate shall, with respect to protected health information received from Covered Entity, or created, maintained, used, or received by Business Associate on behalf of Covered Entity:

6.3.1 If feasible, return all protected health information to Covered Entity or, if Covered Entity agrees, destroy such protected health information.

6.3.2 If the return or destruction of protected health information is not feasible, continue to extend the protections of this Agreement and the HIPAA Rules to such information and not use or further disclose the information in a manner that is not permitted by this Agreement or the HIPAA Rules.

6.4 Survival. Business Associate's obligations under Section 6 shall survive termination of this Agreement.

7. Regulatory References. A reference in this Agreement to a section in the HITECH Act or HIPAA Rules means the section as in effect or as amended.

8. Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time to comply with the requirements of the HITECH Act, HIPAA Rules, the FTC Identity Theft "Red Flag" Rules, and any other applicable laws and regulations.

9. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HITECH Act, HIPAA Rules, and other applicable law.

10. Governing Law. This Agreement shall be construed to comply with the requirements of the HIPAA Rules, and any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules. All other aspects of this Agreement shall be governed under the laws of the State of New York.

11. Assignment/Subcontracting. This Agreement shall inure to the benefit of and be binding upon the parties and their respective legal representatives, successors and assigns. Business Associate may assign or subcontract rights or obligations under this Agreement to subcontractors or third parties without the express written consent of Covered Entity provided that Business Associate complies with the terms of this agreement. Covered Entity may assign its rights and obligations under this Agreement to any successor or affiliated entity.

12. Cooperation. The parties agree to cooperate with each other's efforts to comply with the requirements of the HITECH Act, the HIPAA Rules, the FTC Identity Theft Rules, and other applicable laws; to assist each other in responding to and mitigating the effects of any breach of protected health information in violation of the HIPAA Rules or this Agreement; and to assist the other party in responding to any investigation, complaint, or action by any government agency or third party relating to the performance of this Agreement. In addition to any other cooperation reasonably requested by Covered Entity, Business Associate shall make its officers, members, employees, and agents available without charge for interview or testimony.


13. No Third Party Beneficiaries. Nothing in this Agreement is intended to nor shall it confer any rights on any other persons except Covered Entity and Business Associate and their respective successors and assigns.

14. Entire Agreement. This Agreement contains the entire agreement between the parties as it relates to the use or disclosure of protected health information, and supersedes all prior discussions, negotiations and services relating to the same to the extent such other prior communications are inconsistent with this Agreement.


15. Encryption. Business Associate and its subcontractors, if applicable, shall employ adequate data and device (desktop, laptop, USB thumb drive, CD/DVD, etc.) encryption to render the Covered Entity's protected health information data unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology tested by the National Institute of Standards and Technology and judged to meet the standard. Such protection shall also extend to any databases or collections of PHI containing information derived from the PHI as well as to PHI backups and archives.

16. Effective Date. The Effective Date of this Agreement shall be July 1, 2018.

COVERED ENTITY

Sign: 
Print Name: Roger Carl
Print Title: President, South Central Trust
Date: 9/26/2018

BUSINESS ASSOCIATE

Sign: 
Print Name: William R. Hartz
Title: Senior VP, Practice Leader
Email Address: bill.hartz@usi.com
Date: 9/26/2018