



# CLIENT SERVICE AGREEMENT

## Introduction

This Client Service Agreement ("Agreement") is made and entered into on September 01, 2020 ("Effective Date") by and between USI Southwest, Inc. ("USI") and City of Mansfield ("Client").

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

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

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

### **1. LINES OF INSURANCE COVERAGE AND OTHER BENEFITS**

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

### **2. SERVICES**

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

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

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



### **3. COMPENSATION**

#### **Fee & Commission Agreement**

USI will be compensated for the services outlined in this Agreement through the payment of a fee by Client to USI as well as the payment of commissions received from insurance companies as outlined in Exhibit B.

The commission is usually a percentage of the premium you pay for your insurance policy and it is paid by the insurance company. At your request, we will provide you with a detailed statement regarding our compensation on your account and the way the compensation is calculated. The amount of premium you pay for a policy may change over the term of the policy. For example, the number of enrolled employees will affect the premium. Should the premium for any of your policies change, the amount of compensation paid to us by the insurance company would change accordingly.

#### **Contingent, supplemental, or bonus commissions**

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

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

### **4. BUSINESS ASSOCIATE AGREEMENT**

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

USI and the Covered Entity desire to enter into a business associate agreement for the purpose of addressing the Privacy Rule, the Security Rule, and the Electronic Transaction Rule, (as those terms are defined below), and for addressing the privacy and security provisions set forth in the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act") contained in Title XIII, Subtitle D, of



the American Recovery and Reinvestment Act of 2009. In consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, USI and the Covered Entity agree as follows:

#### **4.1. BUSINESS ASSOCIATE DEFINITIONS**

- 4.1.1 "Agreement" shall mean this document, including all properly executed amendments.
- 4.1.2 "Breach" shall have the same meaning as the term "breach" in 45 C.F.R. § 164.402.
- 4.1.3 "Electronic Health Record" shall have the same meaning as the term "electronic protected health information" in § 13400(5) of the American Recovery and Reinvestment Act of 2009.
- 4.1.4 "Electronic Protected Health Information" shall have the same meaning as the term "electronic protected health information" in 45 C.F.R. § 160.103.
- 4.1.5 "Electronic Transaction Rule" shall mean the final regulations issued by the U.S. Department of Health and Human Services concerning standard transactions and code sets under 45 C.F.R. Parts 160 and 162.
- 4.1.6 "Individual" shall mean the person who is the subject of the Protected Health Information or a person who qualifies as the personal representative of the individual in accordance with 45 C.F.R. § 164.502(g).
- 4.1.7 "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E.
- 4.1.8 "Protected Health Information" shall mean any information, including genetic information, that:
  - (i) relates to the past, present, or future physical or mental health or condition of an Individual;
  - (ii) the provision of health care to an Individual; (c) or the past, present, or future payment for the provision of health care to an Individual; and that identifies the Individual or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual.
- 4.1.9 "Required by Law" shall have the same meaning as the term "required by law" in 45 C.F.R. § 160.103.
- 4.1.10 "Secretary" shall mean the Secretary of the Department of Health and Human Services ("HHS") and any other officer or employee of HHS to whom authority has been delegated.
- 4.1.11 "Security Incident" shall have the same meaning as the term "security incident" in 45 C.F.R. § 160.103.
- 4.1.12 "Security Rule" shall mean the Security Standards and Implementation Specifications at 45 C.F.R. Parts 160 and 164, Subparts A and C.
- 4.1.13 "Transaction" shall have the same meaning as the term "transaction" in 45 C.F.R. § 160.103.



4.1.14 “Unsecured Protected Health Information” shall have the same meaning as the term “unsecured protected health information” in 45 C.F.R. § 164.402.

## **4.2. SAFEGUARDING PRIVACY AND SECURITY OF PROTECTED HEALTH INFORMATION**

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

4.2.1(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 of the 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 the Covered Entity.

4.2.1(b) Business Operations. USI is permitted to use and/or disclose Protected Health Information, if necessary, for the proper management and administration of USI’s representation of the Covered Entity, or to carry out any legal responsibilities of USI provided that, with respect to any disclosure of Protected Health Information, either:

4.2.1(b)(1) the disclosure is Required by Law; or

4.2.1(b)(2) USI obtains reasonable assurances from the person to whom the Protected Health Information is disclosed that: (i) the Protected Health Information will be held in confidence and used or further disclosed only for the purposes for which USI disclosed the Protected Health Information to the person or as Required by Law; (ii) the person will use appropriate safeguards to prevent use or disclosure of the Protected Health Information; and (iii) the person immediately notifies USI of any instance of which it is aware in which the confidentiality of the Protected Health Information has been breached.

4.2.1(c) Data Aggregation Services. USI is permitted to use or disclose Protected Health Information to provide data aggregation services, as that term is defined by 45 C.F.R. § 164.501, relating to health care operations of the Covered Entity.

4.2.1(d) Minimum Necessary. USI will, in its performance of the functions, activities, services, and operations specified above, make reasonable efforts to use, to disclose, and to request only the minimum amount of Covered Entity’s Protected Health Information reasonably necessary to accomplish the intended purpose of the use, disclosure or request, except that USI will not be obligated to comply with this minimum-necessary limitation if neither USI nor Covered Entity is required to limit its use, disclosure or request to the minimum necessary. USI and Covered Entity acknowledge that the phrase “minimum necessary” shall be interpreted in accordance with the HITECH Act and HHS guidance.



#### 4.2.2 Information Safeguards.

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

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

4.2.3 Subcontractors and Agents. USI will require any of its subcontractors and agents to which USI is permitted by 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.

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

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

#### 4.3. **COMPLIANCE WITH ELECTRONIC TRANSACTION RULE**

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

#### 4.4. **INDIVIDUAL RIGHTS**



- 4.4.1 Access. USI will make available to Covered Entity or, at Covered Entity's direction, to an Individual (or the Individual's personal representative) for inspection and obtaining copies Covered Entity's Protected Health Information about the Individual that is in USI's custody or control, so that Covered Entity may meet its access obligations under 45 C.F.R. § 164.524. If the Protected Health Information is held in an Electronic Health Record, then the Individual shall have a right to obtain from USI a copy of such information in an electronic format. USI shall provide such a copy to Covered Entity or, alternatively, to the Individual directly, if such alternative choice is clearly, conspicuously, and specifically made by the Individual or Covered Entity.
- 4.4.2 Amendment. USI will, upon receipt of written notice from Covered Entity, promptly amend or permit Covered Entity access to amend any portion of Covered Entity's Protected Health Information, so that Covered Entity may meet its amendment obligations under 45 C.F.R. § 164.526.
- 4.4.3 Disclosure Accounting. To allow Covered Entity to meet its disclosure accounting obligations under 45 C.F.R. § 164.528:
- 4.4.3(a) Disclosures Subject to Accounting. USI will record the information specified below ("Disclosure Information") for each disclosure of Covered Entity's Protected Health Information, not excepted from disclosure accounting as specified below, that USI makes to Covered Entity or to a third party.
- 4.4.3(b) Disclosures Not Subject to Accounting. USI will not be obligated to record Disclosure Information or otherwise account for disclosures of Covered Entity's Protected Health Information if Covered Entity need not account for such disclosures.
- 4.4.3(c) Disclosure Information. With respect to any disclosure by USI of Covered Entity's Protected Health Information that is not excepted from disclosure accounting, USI will record the following Disclosure Information as applicable to the type of accountable disclosure made:
- 4.4.3(c)(1) Disclosure Information Generally. Except for repetitive disclosures of Covered Entity's Protected Health Information as specified below, the Disclosure Information that USI must record for each accountable disclosure is (i) the disclosure date, (ii) the name and (if known) address of the entity to which USI made the disclosure, (iii) a brief description of Covered Entity's Protected Health Information disclosed, and (iv) a brief statement of the purpose of the disclosure.
- 4.4.3(c)(2) Disclosure Information for Repetitive Disclosures. For repetitive disclosures of Covered Entity's Protected Health Information that USI makes for a single purpose to the same person or entity (including Covered Entity), the Disclosure Information that USI must record is either the Disclosure Information specified above for each accountable disclosure, or (i) the Disclosure Information



specified above for the first of the repetitive accountable disclosures; (ii) the frequency, periodicity, or number of the repetitive accountable disclosures; and (iii) the date of the last of the repetitive accountable disclosures.

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

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

## **4.5. BREACHES**

4.5.1 **Privacy or Security Breach.** USI will report to Covered Entity any use or disclosure of Covered Entity's Protected Health Information not permitted by 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:

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



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

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

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

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

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

4.5.2 Security Incidents. USI will report to Covered Entity any attempted or successful (i) unauthorized access, use, disclosure, modification, or destruction of Covered Entity's Electronic Protected Health Information or (ii) interference with 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 4.5.1.

#### **4.6. BUSINESS ASSOCIATE AGREEMENT TERM AND TERMINATION**

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

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

4.6.3 Return or Destruction of Covered Entity's Protected Health Information. Upon termination of 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:





- 4.6.3.1. retain only that Protected Health Information which is necessary for USI to continue its proper management and administration or to carry out its legal responsibilities;
- 4.6.3.2. return to Covered Entity or, if agreed to by Covered Entity, destroy the remaining Protected Health Information that USI still maintains in any form;
- 4.6.3.3. continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to Electronic Protected Health Information to prevent use or disclosure of the Protected Health Information, other than as provided for in this section, for as long as USI retains the Protected Health Information;
- 4.6.3.4. not use or disclose the Protected Health Information retained by USI other than for the purposes for which such Protected Health Information was retained and subject to the same conditions set out at Section 4.2.1(b) which applied prior to termination; and
- 4.6.3.5. return to Covered Entity or, if agreed to by Covered Entity, destroy the Protected Health Information retained by USI when it is no longer needed by USI for its proper management and administration or to carry out its legal responsibilities.

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

- 4.6.4 Continuing Privacy and Security Obligation. If return or destruction of the Protected Health Information is not feasible, USI agrees to extend the protections of 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.

#### **4.7. GENERAL PROVISIONS**

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

## **5. TERM AND TERMINATION**

**5.1. Term.** This Agreement shall commence on the Effective Date and shall continue for three years unless terminated in accordance with section 5.2 below. This Agreement shall renew automatically after the initial three year term for successive one year terms unless terminated in accordance with section 5.2 below. In the event of termination, USI will assist Client in arranging a smooth transition process. However, USI's obligation and the obligation of its affiliates to provide services to Client will cease upon the effective date of termination, unless otherwise agreed in writing.

**5.2. Termination.** After the initial three year term, either party shall have the right to terminate this Agreement upon 90 days prior written notice to the other.

## **6. ACCURACY OF INFORMATION**

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

## **7. ADDITIONAL SERVICES**

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

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

## **8. BOOKS AND RECORDS**

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



#### **9. NO FIDUCIARY STATUS**

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

#### **10. DATA SECURITY**

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

#### **11. DATA PRIVACY**

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

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

#### **12. ENTIRE AGREEMENT**

This Agreement contains the entire understanding of the parties with respect to the subject matter contained herein, superseding all prior agreements, understandings, and negotiations with respect to such matters. This Agreement may be modified or otherwise amended and the observance of any term of this Agreement may be waived only if such modification, amendment, or waiver is in writing and signed by the party to be charged with same. This Agreement shall be binding upon and inure to the benefit of the parties' respective successors. Notwithstanding the foregoing, any Billing and Collection Agreement (see Exhibit B) to which USI and Client are parties, together with any amendment thereto or replacement thereof, shall remain in effect and shall not be superseded.

#### **13. FORCE MAJURE**

Neither party shall have any liability for any failure or delay in performance of its obligations under this Agreement because of circumstances beyond its reasonable control including, without limitation, acts



of God, fires, floods, earthquakes, acts of war or terrorism, civil disturbances, sabotage, accidents, unusually severe weather, governmental actions, power failures, computer/network viruses that are not preventable through generally available retail products, catastrophic hardware failures, or attacks on its server.

#### **14. SELECTION OF ISSUING INSURANCE COMPANY**

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

#### **15. VALUE ADDED SERVICES**

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

#### **16. CONFIDENTIAL INFORMATION**

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

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

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

The obligations hereunder remain in full force and effect until and unless: (a) the Receiving Party can show that such Confidential Information was in the Receiving Party's possession prior to the date of the disclosure by Disclosing Party; or (b) such Confidential Information was obtained by the Receiving Party after the date of this Agreement from a party other than Disclosing Party, and the Receiving Party has no knowledge that said party is under an obligation of confidentiality to the Disclosing Party with



respect to such information; or (c) such Confidential Information becomes generally available to the trade, or to the public, through sources other than Receiving Party; or (d) such Confidential Information is developed at any time by the Receiving Party independent of information or materials disclosed by Disclosing Party to the Receiving Party.

In the event that the Receiving Party is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose any Confidential Information furnished by the Disclosing Party, it is agreed that the Receiving Party will cooperate with the Disclosing Party and provide the Disclosing Party with prompt notice of such request(s) or requirement(s) so that the Disclosing Party may seek an appropriate protective order, at its sole cost, or waive compliance by the Receiving Party with the provisions of this Agreement. If, in the absence of a protective order or the receipt of a waiver hereunder, the Receiving Party is nonetheless, in the opinion of the Receiving Party, legally required to disclose the Confidential Information forwarded by the Disclosing Party, the Receiving Party may disclose such information without liability hereunder, provided, however, that the Receiving Party shall disclose only that portion of such Confidential Information which it considers that it is legally required to disclose.

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

#### **17. INTELLECTUAL PROPERTY**

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

#### **18. GOVERNING LAW**

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

#### **19. NOTICES**



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

Client: 1200 E Broad St Mansfield, Texas 76063

USI: 101 Summit Ave, Suite 600, Fort Worth, TX 76102

**OTHER GENERAL LEGAL PROVISIONS**

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

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

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

USI Southwest, Inc.	City of Mansfield
_____	_____
Signature	Signature
_____	_____
Print Name	Print Name
_____	_____
Title	Title
_____	_____
Date	Date



## EXHIBIT A SERVICES

### Strategy

- Provide benchmarking benefit and contribution information regarding benefit programs of employers of similar industry and size
- Conduct planning session

### Underwriting/Financial

- Review Client's current benefit program
- Discuss Client's long-term and short-term goals
- Discuss Client's budget
- Review the employee/employer cost sharing structure
- Discuss how to manage cost trends
- Discuss vendor and network performance

### Clinical

- Discuss workplace wellness initiatives

### Compliance

- Provide checklist, compliance calendar, and business associate agreement
- Discuss any areas of concerns identified by the Client

### Management

- Discuss how to structure benefit programs to recruit and retain talent
- Discuss how to increase employee appreciation and satisfaction of benefit programs
- Develop an annual service calendar
- Present a benefits program that supports the above, including programs reflecting marketplace trends

### Marketing

- Coordinate renewal activities with all vendors
- Quantify financial impact of renewal and negotiate any variance between renewal and USI's pre-underwriting projection
- If necessary, market benefit programs to mutually agreed-upon vendors
  - Draft bid requests
  - Coordinate bid release to market
  - Respond to carrier questions and data requests
  - Negotiate best and final offers
  - Respond to carrier questions and data requests



- Prepare and present a detailed marketing and renewal report including:
  - Total and itemized costs
  - Rate guarantees
  - Network discount analysis
  - Provider disruption analysis
  - Performance guarantees, if available from the vendor or carrier
  - Benefit designs and variances
  - Carrier financial ratings
- Arrange for and conduct finalist meetings, if such meetings are requested by Client
- Manage implementation process
  - Review and negotiate final agreements and contracts to ensure they conform to bid specifications
  - Assist with open enrollment meetings
  - Review all vendor-provided employee communications, SPDs, and benefit booklets for negotiated terms
  - Coordinate the administrative set-up between the employer and vendors for reporting, billing, banking, and data transfers
  - Manage a post implementation debriefing with vendors to discuss performance and needed areas for improvement, when appropriate

**Underwriting/Financial** (Services below are subject to USI discretion, Client request, and data availability)

- Provide a trend analysis
- Provide a fixed cost and funding analysis
- Provide plan design modeling
- Present consumer-driven health care options
- Analyze reserves
- Review medical inflation trend reviews
- Perform stop loss limit review and enter into contract negotiations
- Provide cost/benefit analysis of ancillary benefit programs
- Calculate pre-renewal projection
- Calculate accruals and COBRA rates for self-insured plans
- Provide a financial reporting package:
  - Paid claims segregated by medical, dental, and pharmacy, by month
  - Enrollment, by month
  - High claimant activity report
  - Historical cost trend analysis
  - Report actual plan expenses compared to budget

**Clinical**

Population Health Management

- Provide sample forms, documents, and communications for health management programs
- Review carrier health management program offerings and disease management capabilities/effectiveness program and incentive management structure





### Medical Director

- Provide large claims intervention
- Provide medical director review and intervention, at USI's discretion

### **Compliance**

- Provide compliance updates regularly
- Provide webinars and/or seminars periodically
- Provide assistance with compliance questions raised by Client
- Provide checklists to aid in compliance (e.g., SPD content and distribution requirements)
- Provide sample forms (e.g., smoker/non-smoker affidavit)

### **Account Management**

- Provide claims, billing, and eligibility resolution
- Assist in resolving employees' escalated issues
- Manage the service calendar
- Provide annual stewardship report
  - Review prior year accomplishments vs. objectives
  - Provide industry overview and benefit trends
  - Develop goals and objectives for upcoming year
  - Solicit feedback on USI's services
- Schedule and participate in meetings with your staff to discuss issues, open items, and industry trends
- Facilitate service meetings with vendors to address particular concerns or needs and measure results against performance guarantees
- Meet when requested by Client and as recommended by USI to review financials and to discuss/review other open items
- Review vendor proposed updates to contracts, SPDs, and benefit summaries for accurate terms, plan requirements, and plan design
- Monitor and report on carrier financial ratings for contracted vendors
- Coordinate benefit decisions and plan details with vendor(s)
  - Plan design decisions
  - Facilitate meetings/conference calls between vendors
- Develop and manage implementation schedule for any plan changes and/or service changes



## EXHIBIT B FEE & COMMISSION SCHEDULE

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

Annual USI Fees:	\$125,000.00
Estimated Annual Commissions: <sup>1</sup>	\$ 30,000
Total Annual Compensation:	\$ 155,000

### DISCLOSURE STATEMENT

**CLIENT HEREBY ACKNOWLEDGES THAT USI HAS NOTIFIED CLIENT OF THE ABOVE FEE REQUIREMENT PRIOR TO PROVIDING THE SERVICES CONTEMPLATED BY THIS AGREEMENT.**

**CLIENT MAY CALL THE TOLL-FREE TELEPHONE NUMBER (1-800-252-3439) OF THE TEXAS DEPARTMENT OF INSURANCE TO OBTAIN INFORMATION ON HOW TO FILE A COMPLAINT IF CLIENT HAS A COMPLAINT REGARDING SUCH FEE.**

1. Fees will be billed by USI on a quarterly basis and are due by the beginning of the month for which services are provided. An additional service fee of \$50 per month will be charged to accounts more than thirty (30) days past due. Commissions are remitted by the carrier directly to USI upon payment of premium by the Client and are in the following amount:
  - a. Basic Life- 10%
  - b. Long Term Disability – 10%
  - c. Voluntary Life- 10%
2. Compensation will be in effect for the Term unless modified in accordance with Section 12 of the Agreement.
3. For specific services that are requested by the Client, but not outlined in the description of services to be provided by USI, the Client will be billed for work performed. The cost for these services will be billed on a per hour basis or per project basis and included in the next available monthly invoice. No services will be performed without prior written approval from the Client.

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<sup>1</sup> Estimated Annual Commissions are commissions payable to USI which are included in the premium and/or administrative costs payable by the Client to the insurance carriers.