

BUSINESS ASSOCIATE AGREEMENT

This BUSINESS ASSOCIATE AGREEMENT (this "Agreement") is made as of **January 1, 2016** by and between **The City of West Allis** ("CLIENT") and **Willis of Wisconsin** ("WILLIS").

RECITALS:

A. CLIENT and WILLIS have entered into an arrangement or arrangements pursuant to which WILLIS provides certain services for and on behalf of CLIENT (the "Arrangement");

B. Under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and its implementing regulations which include the Standards for the Privacy of Individually Identifiable Health Information (the "Privacy Rule") (45 C.F.R. Parts 160 and 164) and the Security Standards for the Protection of Electronic Protected Health Information (the "Security Rule") (45 C.F.R. Parts 160 and 164), as amended by applicable provisions of the Health Information Technology for Economic and Clinical Health Act (Title XIII, Subtitle D) and its implementing regulations (the "HITECH Act") as amended by the Final HIPAA regulations at 78 Final Register 5566 (January 25, 2013) ("Final Omnibus Rule") (collectively, the "HIPAA Rules"), CLIENT and WILLIS must enter into a business associate agreement to enable WILLIS to carry out its obligations under the Arrangement since CLIENT discloses to WILLIS, and/or WILLIS creates and receives on behalf of CLIENT Individually Identifiable Health Information, as such term is defined in 45 C.F.R. 160.103; and

C. CLIENT and WILLIS desire to make this Agreement to the Arrangement in order to enable CLIENT to satisfy its obligations under the HIPAA Rules.

NOW, THEREFORE, for and in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

I. DEFINITIONS.

Capitalized terms used in this Agreement and not otherwise defined herein shall have that meaning given to them in the HIPAA Rules.

II. USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION BY WILLIS.

2.1 Confidentiality. WILLIS shall hold Protected Health Information confidentially, and shall not Use or Disclose it other than as permitted or required by this Agreement or as Required by Law. WILLIS may not use or disclose Protected Health Information in a manner that would violate the requirements of the HIPAA Rules, if done by the CLIENT, except for the

purposes specified under 45 C.F.R. § 164.504(e)(2)(i)(A) or (B) if such uses or disclosures are permitted by the Arrangement.

2.2 Use or Disclosure to Provide Services Under the Arrangement. WILLIS may Use and Disclose Protected Health Information as necessary to perform its obligations under the Arrangement; provided, however, that WILLIS shall not, and shall ensure that its directors, officers, employees, contractors and agents (the "Representatives") do not, Use or Disclose Protected Health Information in any manner that would violate the Privacy Rule, as amended from time to time, if done by CLIENT.

2.3 Use or Disclosure for WILLIS' Management and Administration. Notwithstanding Section 2.2 above, WILLIS may Use or Disclose Protected Health Information for its proper management and administration provided that, before Disclosing Protected Health Information to a third party for WILLIS' proper management and administration, WILLIS must obtain reasonable assurances from the third party that: (i) the Protected Health Information will be held confidentially and subject to the same restrictions and conditions that apply to WILLIS under this Agreement and will only be Used or Disclosed as Required by Law or for the purposes for which it was Disclosed to the third party; and (ii) the third party will immediately notify WILLIS of any instances of which it is aware in which the confidentiality of the Protected Health Information Disclosed to it has been breached.

2.4 Use or Disclosure to Provide Data Aggregation Services. WILLIS may Use or Disclose Protected Health Information to provide Data Aggregation services relating to the Health Care Operations of CLIENT.

2.5 De-Identification of Protected Health Information. WILLIS may de-identify any and all Protected Health Information provided that the de-identification conforms to the requirements of the Privacy Rule. The parties acknowledge and agree that de-identified data does not constitute Protected Health Information and is not subject to the terms of this Agreement.

III. RESPONSIBILITIES OF WILLIS.

3.1 Safeguards Against Misuse of Information. WILLIS agrees that it will implement appropriate safeguards to prevent the Use or Disclosure of Protected Health Information other than pursuant to the terms and conditions of this Agreement.

3.2 Reporting Disclosures of Protected Health Information. WILLIS shall, within fifteen (15) business days of becoming aware of a Disclosure of Protected Health Information in violation of this Agreement by WILLIS or its Representatives, report such Disclosure to CLIENT. WILLIS agrees to have procedures in place for mitigating, to the extent practicable, any harmful effect known to WILLIS and arising from such Use or Disclosure.

3.3 Agreements by Third Parties. In accordance with 45 C.F.R. § 164.502(e)(1)(ii), WILLIS shall enter into an agreement with any agent or Subcontractor that will have access to Protected Health Information pursuant to which such agent or contractor agrees to be bound by the same or substantially similar restrictions, terms, and conditions of this Agreement that apply to WILLIS with respect to such Protected Health Information.

3.4 Access to Information. WILLIS shall provide access, at the request of CLIENT or an Individual, to Protected Health Information maintained by WILLIS in a Designated Record Set(s), to CLIENT, or as directed by CLIENT, to an Individual in order to meet the requirements of 45 C.F.R. § 164.524, including, without limitation with respect to an Individual's request for an electronic copy of PHI. WILLIS shall use commercially reasonable efforts to provide such access within fifteen (15) business days of receiving such request.

3.5 Availability of Protected Health Information for Amendment. WILLIS shall make any amendment to Protected Health Information maintained in a Designated Record Set by WILLIS that is requested by CLIENT, or as directed by CLIENT, that is requested by an Individual. WILLIS shall use its best efforts to make such amendments within twenty (20) business days of receiving such request.

3.6 Accounting of Disclosures. WILLIS shall document such Disclosures of Protected Health Information and information related to such Disclosures as would be required for CLIENT to respond to a request by an Individual for an accounting of Disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.

WILLIS shall provide to CLIENT or, as directed by Client, to an Individual, information collected in accordance with the preceding paragraph to permit CLIENT to respond to a request by an Individual for an accounting of Disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528. WILLIS shall use commercially reasonable efforts to provide such information within twenty (20) days of receiving such written request.

3.7 Uses and Disclosures Required by Law. Except to the extent prohibited by law, WILLIS shall immediately notify CLIENT upon its receipt of a request for Use or

Disclosure of Protected Health Information with which WILLIS believes it is Required by Law to comply. WILLIS shall provide CLIENT with a copy of such request, shall consult and cooperate with CLIENT concerning the proper response to such request and shall provide CLIENT with a copy of any information Disclosed pursuant to such request.

3.8 Availability of Books and Records. WILLIS hereby agrees to make its internal practices, books, and records relating to the Use and Disclosure of Protected Health Information available to the Secretary of Health and Human Services (the "Secretary") for purposes of determining CLIENT's or WILLIS' compliance with the HIPAA Rules. Notwithstanding the foregoing, nothing herein shall be deemed to require WILLIS to waive any attorney-client, accountant-client, or other legal privilege.

3.9 Security Obligations for Electronic Protected Health Information. WILLIS shall, in accordance with the Security Rule, implement Administrative, Physical, and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information it creates, receives, maintains, or transmits on behalf of CLIENT. Further, WILLIS shall ensure that any agent, Subcontractor, or other party to whom WILLIS provides Electronic Protected Health Information agrees to implement reasonable and appropriate safeguards to protect such Electronic Protected Health Information. WILLIS shall comply, where applicable, with 45 C.F.R. Subpart C of the Security Rule. If WILLIS becomes aware of any Successful Security Incidents, WILLIS shall report the same in writing to CLIENT within fifteen (15) business days of such Successful Security Incident, and WILLIS agrees to reasonably mitigate, to the extent practicable, any harmful effect resulting from such Successful Security Incidents. To avoid unnecessary burden on either party, WILLIS shall report to CLIENT any Unsuccessful Security Incidents of which it becomes aware of only upon request of the CLIENT. The frequency, content and the format of the report of Unsuccessful Security Incidents shall be mutually agreed upon by the parties. If the definition of "Security Incident" is amended under the Security Rule to remove the requirement for reporting "unsuccessful" attempts to use, disclose, modify or destroy Electronic Protected Health Information, then this Section shall be amended so that the provisions relating to "Unsuccessful Security Incidents" no longer apply as of the effective date of such change to the law.

For the purposes of this Agreement, "Successful Security Incidents" mean Security Incidents that result in unauthorized access, use, disclosure, modification or destruction of Electronic Protected Health Information and "Unsuccessful Security Incidents" mean Security

Incidents that do not result in unauthorized access, use, disclosure, modification or destruction of Electronic Protected Health Information.

In the event that WILLIS has Knowledge or a Reasonable Belief that a Breach of Unsecured Protected Health Information of CLIENT has occurred or may have occurred, WILLIS shall promptly (but in no event more than fifteen (15) business days of Knowledge of the Breach or Reasonable Belief that a Breach has occurred) notify CLIENT of the identification of each individual who has been or is reasonably believed to have been affected by the Breach, along with any other information that CLIENT as a Covered Entity will be required to include its notification of the individual under the HITECH Act or its implementing regulations, including, without limitation, a description of the breach, the date of the breach and its discovery, types of Unsecured PHI involved and description of the WILLIS investigation, mitigation and prevention efforts.

3.10 Agreed to Restrictions. WILLIS shall abide by any restrictions, of which WILLIS is aware, relating to the Disclosure of Protected Health Information which CLIENT has agreed upon pursuant to the HIPAA Rules.

3.11 Client Instructions. In addition, to the extent that CLIENT instructs WILLIS to take or not to take certain actions in connection with PHI, and as a result of Willis complying with such instructions Willis incurs losses, fines, penalties or damages in connection with a third party claim, then CLIENT shall indemnify and hold Willis and its affiliates and their respective directors, officers, employees and agents, including permitted Subcontractors, harmless from any such losses, fines, penalties or liabilities, including reasonable attorneys' fees.

3.12 Minimum Necessary. WILLIS shall request, use and/or disclose only the minimum amount of PHI necessary to accomplish the purpose of the applicable request, use and/or disclosure.

IV. RESPONSIBILITIES OF CLIENT.

4.1 Requests for Uses or Disclosures. CLIENT shall not request WILLIS to Use or Disclose Protected Health Information in any manner that would violate this Agreement or the HIPAA Rules.

4.2 Notice of Privacy Practices. CLIENT hereby agrees to provide, to the extent required by 45 C.F.R. § 164.520 (or any successor provision of the Privacy Rule), a notice of privacy practices (the "Notice") to Individuals (or their personal representatives) who are the subject of the Protected Health Information, which Notice shall be sufficiently broad so as to permit the Uses and Disclosures of Protected Health Information by WILLIS contemplated by this Agreement and the Arrangement. CLIENT shall not amend such Notice unless the amended Notice is sufficiently broad so as to

permit the Uses and Disclosures of Protected Health Information contemplated by this Agreement and the Arrangement.

4.3 Written Permission. CLIENT hereby agrees to ensure that it obtains Individuals' permission or the permission of Individuals' personal representatives, to the extent required under the Privacy Rule and in the form required by the Privacy Rule, for WILLIS' Uses and Disclosures of Protected Health Information contemplated by this Agreement and the Arrangement and to inform WILLIS of any changes in, or withdrawal of, such written permission provided to CLIENT by Individuals or their personal representatives, including without limitation revocations of authorizations pursuant to 45 C.F.R. § 164.508.

4.4 Other Arrangements. CLIENT hereby agrees to promptly notify WILLIS, in writing and in a timely manner, of any arrangements permitted or required of CLIENT under the Privacy Rule that may impact in any manner the Use or Disclosure of Protected Health Information by WILLIS under this Agreement or the Arrangement, including without limitation restrictions on the Use or Disclosure of Protected Health Information agreed to by CLIENT, as provided for in 45 C.F.R. § 164.522 as amended by the HITECH ACT.

4.5 Compliance with HIPAA. To the extent required and at such time as required under applicable law, CLIENT agrees to comply with HIPAA, the Privacy Rule, Security Rule and HITECH Act.

V. TERMINATION.

5.1 Term. This Agreement shall become effective on the date on which CLIENT and WILLIS entered into the Arrangement and, unless otherwise terminated as provided herein, shall expire upon the expiration or termination of the Arrangement.

5.2 Termination by Either Party. The Arrangement may be terminated by either party, subject to the delivery of the written notice and the expiration of the cure period as may be provided in the Arrangement, in the event that a party breaches any material term of this Agreement.

5.3 Return or Destruction of Protected Health Information Upon Termination. Upon termination of the Arrangement, WILLIS shall, at the option of WILLIS, either return or destroy all Protected Health Information and Electronic Protected Health Information which WILLIS still maintains in any form, except for any such data that may be retained solely for archival purposes. WILLIS shall not retain any non-archival copies of such Protected Health Information or Electronic Protected Health Information. Notwithstanding the foregoing, to the extent that it is not feasible, in WILLIS' reasonable discretion, to return or destroy such Protected Health Information and

Electronic Protected Health Information (and including data retained for archival purposes), the terms and provisions of this Agreement shall survive the termination of the Arrangement with respect to such Protected Health Information and Electronic Protected Health Information, and such Protected Health Information and Electronic Protected Health Information shall be used or disclosed solely for such purpose or purposes which prevented its return or destruction.

VI. MODIFICATIONS TO COMPLY WITH STANDARDS.

In the event that additional standards are promulgated under the HIPAA Rules, or any existing standards are amended, the parties agree to enter into a mutually acceptable amendment to this Agreement to enable CLIENT to satisfy its obligations under such additional or amended standard(s).

VII. MISCELLANEOUS.

7.1 The parties agree and acknowledge that, as between CLIENT and WILLIS, CLIENT is the owner of the Protected Health Information and Electronic Protected Health Information. Nothing in this Agreement shall be construed to create (i) an agency relationship under federal common law, a partnership, joint venture or other joint business relationship between the parties or any of their affiliates, or (ii) a relationship of employer and employee between the parties.

7.2 In the event that a provision of this Agreement conflicts with a provision of the Arrangement, the provision of this Agreement shall control. Otherwise, this Agreement shall be construed under, and in accordance with, the terms of the Arrangement.

7.3 This Agreement may be amended only by written agreement between the parties. This Agreement shall be interpreted by and construed in accordance with the laws of the State of Wisconsin. The headings of

sections in this Agreement are for reference only and shall not affect the meaning of this Agreement.

7.4 Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors and assigns of the parties any rights, remedies, obligations, or liabilities whatsoever.

7.5 Any ambiguity in this Agreement shall be resolved to permit the applicable party to comply with HIPAA, Privacy Rule, Security Rule, and the HITECH Act. The parties acknowledge that the HITECH Act requires the Secretary to promulgate regulations and interpretative guidance that is not available at the time of executing this Agreement. In the event a party determines in good faith that any such regulation or guidance adopted or amended after the execution of this Agreement shall cause any paragraph or provision of this Agreement to be invalid, void or in any manner unlawful or subject either party to penalty, then the parties agree modify and amend this Agreement in a manner that would eliminate any such risk.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

City of West Allis

By: _____

Title: _____

Willis of Wisconsin

By: _____

Title: _____