

Exhibit D

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is entered into by and between Martin Insurance Services, Inc. and its Affiliates¹ (collectively, “Martin”) and [REDACTED] (“Business Associate” or “BA”), effective on the earlier of the last date written below or the date Business Associate and Martin first exchange Private Information (“Effective Date”).

RECITALS

A. The purpose of this Agreement is to comply with (1) the “business associate” requirements of the privacy regulations, the “business associate” requirements of the security regulations and the electronic data transaction and code sets requirements promulgated by the United States Department of Health and Human Services (“DHHS”) pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) (“Privacy Regulations,” “Security Regulations,” and “EDI Standards,” respectively), and (2) the “nonaffiliated third party” requirements of Title V of the Gramm-Leach Bliley Act (15 U.S.C. § 6801 *et seq.*) (“GLBA”) and, as applicable, state statutes and regulations implementing same (“GLBA Rules”).

B. BA is providing the following services for or on behalf of Martin that involve the use, disclosure and/or creation of certain Private Information: insurance brokerage services and administrative services, including enrollment transactions, in connection with Martin’s existing and future medical and ancillary insurance clients (collectively, the “Services”).

C. The parties desire to enter into this Agreement to prescribe the manner in which Private Information shall be handled by BA.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter addressed, the parties agree as follows:

1. **Definitions.** Capitalized terms used in this Agreement shall have the meaning ascribed to them in this Agreement or as set forth in HIPAA, the Privacy Regulations, Security Regulations, or the GLBA. For purposes of this Agreement, “Private Information” consists of the following information created or received on behalf of, or received from, Martin: Protected Health Information, Personal or Privileged Information (as defined by the New Jersey Information Practices Act), and Nonpublic Personal Information (as defined by GLBA and the GLBA Rules).

2. **Permitted Uses and Disclosures of Private Information.** Except as otherwise limited in this Agreement, BA may use and disclose Private Information to perform the Services for, or on behalf of, Martin as specified in this Agreement, provided that such use or disclosure would not constitute a violation of HIPAA, the Privacy Regulations, Security Regulations, or the GLBA Rules if so used or disclosed by Martin. Unless otherwise limited herein, BA may:

¹ “Affiliates” means any corporation, company or other entity that directly or indirectly controls, is controlled by, or is under common control with, a party. For purposes of this definition, the word “control” shall mean the direct or indirect ownership of at least fifty percent (50%) of the outstanding voting stock of the corporation, company, or other entity.

a. Use Private Information for the proper management and administration of BA or to carry out the legal responsibilities of Business Associate;

b. Disclose Private Information to third parties not employed by BA for the proper management and administration of BA or to carry out the legal responsibilities of BA if (i) the disclosure is Required by Law, or (ii) BA obtains reasonable assurances from the recipient of Private Information that: (A) Private Information shall be held confidential and shall be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the recipient, and (B) the recipient shall notify BA of any instances of which it is aware of a breach of confidentiality of Private Information; and

c. Upon the written request of Martin, provide data aggregation services related to the health care operations of Martin.

3. ***Obligations of Business Associate.*** With regard to the use and disclosure of Private Information, BA hereby agrees as follows:

a. **Use and Disclosure.** BA shall not use or disclose Private Information other than as permitted or required by this Agreement or as Required by Law.

b. **Safeguards.** BA shall implement and use all appropriate safeguards to protect the privacy of Private Information and to prevent any use or disclosure of Private Information other than as permitted by the terms of this Agreement.

c. **Policies and Standards.** BA will use and disclose Private Information in a manner consistent with any applicable policies and standards relating to privacy and security (collectively, "Privacy Policies"). For any BA that places policies with Horizon Healthcare Services, Inc., d/b/a Horizon Blue Cross Blue Shield of New Jersey ("Horizon") through Martin, the term "Privacy Polices" shall include, without limitation, such policies that Martin may adopt or be subject to by reason of its Master Broker and Services Agreement with Horizon. Martin shall provide BA with a copy of Martin's Privacy Policies upon reasonable request.

d. **Reporting.** BA shall report to Martin's Privacy Official, without unreasonable delay but in no event later than ten (10) business days of becoming aware of, any use or disclosure of Private Information not permitted under the terms of this Agreement and the remedial action taken or proposed to be taken with respect to such use or disclosure.

e. **Subcontractors.** BA shall enter into written agreements with all Subcontractors (as that term is defined in the Privacy Regulations) to whom BA provides Private Information requiring the Subcontractors to agree to the same restrictions and conditions that apply under this Agreement to BA with respect to Private Information.

f. **Mitigation.** BA shall take any and all actions necessary to promptly mitigate any harmful effect known to BA resulting from an unauthorized use or disclosure of Private Information by BA, or its Subcontractors. BA further agrees to reimburse Martin for its reasonable costs and expenses associated with reasonable mitigation steps taken by Martin in consultation with BA in response to an unauthorized use or disclosure of Private Information by BA, or its Subcontractors.

g. **Access to Private Information.** To enable Martin to comply with a member's request to access the member's Private Information maintained in a Designated Record Set, BA shall make the requested Private Information maintained by BA in a Designated Record Set available to Martin for inspection and copying within ten (10) business days of receiving Martin's request for access to enable Martin to fulfill its obligations under the Privacy Regulations.

h. Amendment of Private Information. To enable Martin to respond to a member's request for amendment of the member's Private Information maintained in a Designated Record Set, BA shall make the requested Private Information maintained by BA in a Designated Record Set available to Martin, within ten (10) business days of receiving a request from Martin, for amendment and incorporate any such amendment to enable Martin to fulfill its obligations under the Privacy Regulations.

i. Accounting of Disclosures. To enable Martin to respond to a member's request for an accounting of disclosures of the member's Private Information, BA shall (i) document all disclosures of Private Information by BA as would be required for Martin to respond to an accounting request in accordance with 45 CFR § 164.528, and (ii) within ten (10) business days of receiving a request for an accounting from Martin, make available to Martin the following information concerning such disclosures: (A) the date of disclosure, (B) the name of the recipient and, if known, the recipient's address, (C) a brief description of Private Information disclosed, and (D) a brief statement of the purpose of the disclosure.

j. Other Requests. In the event of a member's request (i) for communications by alternative means or at alternative locations ("confidential communications" under the Privacy Rules); (ii) for restrictions on the use and disclosure of Private Information for Treatment, Payment and Healthcare Operations purposes; and/or (iii) to treat another person as the member's personal representative, BA shall reasonably cooperate with Martin in responding to any such request. If BA reasonably believes that any such request agreed to by Martin may materially impair BA's ability to provide the Services, the parties will mutually agree upon any necessary modification of the Services; and if the parties cannot reach mutual agreement within seven (7) business days of the effective date of the policy or policies at issue, BA may terminate this Agreement and, at its election, the underlying agreement with Martin relating to the Services

k. Notification. In the event BA receives any of the requests set forth in subsections (g) through (j) above directly from an individual or an individual's representative, BA will notify Martin immediately – at which time Martin will, in its sole discretion, itself satisfy any such individual request directly. Under no circumstances shall BA itself satisfy an individual's request unless expressly directed to do so by Martin.

l. Disclosures to Martin and Secretary of DHHS. BA shall make all internal practices, books and records relating to the use and disclosure of Private Information received or created by BA on behalf of Martin available to the Secretary of DHHS for the purpose of determining Martin's and/or BA's compliance with the Privacy Regulations or the Security Regulations, subject to any legal privileges which BA reasonably believes applies to prevent or limit such access.

m. Compliance with EDI Standards. If BA conducts electronically any of the health care transactions identified as "standard transactions" in the EDI Standards for or on behalf of Martin, BA shall comply with all applicable requirements of the EDI Standards when conducting standard transactions for or on behalf of Martin.

n. Compliance with Security Regulations. If BA creates, receives, maintains or transmits Electronic Protected Health Information for or on behalf of Martin ("E PHI"), BA shall (i) implement and utilize administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of E PHI that BA receives, creates, maintains or transmits for or on behalf of Martin, (ii) report to Martin's Privacy Official in writing any Security Incident, as defined in 45 CFR § 164.304, without unreasonable delay but in no event later than ten (10) business days of becoming aware of such Security Incident; provided, however, unsuccessful attempts shall be reported only upon written request by Martin, and (iii) ensure that any Subcontractors, to whom BA provides Private Information implement the safeguards required by subsection (i) above. BA shall comply with the policies and procedures and documentation requirements of the Security Regulations including, but not limited to, 45 CFR § 164.316. If Required by Law, BA agrees to encrypt E PHI when the same is in motion or at rest.

o. Remuneration in Exchange for Private Information. BA shall not, directly or indirectly, receive remuneration in exchange for any Private Information unless (i) Martin obtained from the member in accordance with the Privacy Regulations a valid authorization that includes a specification of whether Private Information can be further exchanged for remuneration by the entity receiving Private Information of that member, or (ii) the purpose of the exchange is for one of the purposes provided under CFR § 164.502(a)(5)(ii)(B)(2). This prohibition shall not affect payment by Martin to BA, if any, for services provided.

p. Minimum Necessary. Until such time as DHHS promulgates guidance on what constitutes “minimum necessary” for purposes of the Privacy Regulations (at which time such guidance shall control and shall be incorporated herein by the parties pursuant to Section 10 below), BA shall request, use and disclose only the minimum amount of Private Information necessary to accomplish the purpose of the request, use or disclosure.

q. Breach of Unsecured Protected Health Information. BA shall provide written notice of any Breach of Unsecured Protected Health Information (“BA Notice”) to Martin without unreasonable delay but in no event later than ten (10) business days of discovering the Breach. The BA Notice shall include the following information: (i) the identification of each member whose Unsecured Protected Health Information has been, or is reasonably believed by BA to have been, accessed, acquired, used or disclosed during the Breach, (ii) a brief description of what happened, including the date of the discovery of the Breach, (iii) a description of the types of Unsecured Protected Health Information involved in the Breach, and (iv) any other relevant information. BA shall cooperate with Martin with respect to Martin’s obligations to provide any notification of the Breach as required by HIPAA.

r. Prohibition on Unauthorized Use or Disclosure of Consumer Lists. BA will not develop any list, description or other grouping of individuals using, or use or disclose any such list derived from, Nonpublic Personal Information received from, or created or received on behalf of, Martin, except as expressly permitted by this Agreement or in writing by Martin.

4. ***Term and Termination.***

a. Term. This Agreement shall become effective on the Effective Date and, unless earlier terminated pursuant to Section 4(b) below, shall continue in effect until the discontinuation of BA’s provision of services to Martin involving the use, disclosure or creation of Private Information.

b. Termination. This Agreement may be terminated as follows:

i. Upon mutual written agreement of the parties; or

ii. If Martin determines that BA materially breached any provision of this Agreement, Martin shall either (A) provide BA with a written notice of breach and terminate the Agreement if BA does not cure the breach within thirty (30) calendar days of receiving such notice, or (B) immediately terminate this Agreement if cure is not possible; or

iii. If BA determines that Martin materially breached any provision of this Agreement or is in violation of HIPAA, the Privacy Regulations, Security Regulations, or the GLBA Rules, BA shall either (A) provide Martin with a written notice of breach or violation and terminate the Agreement if Martin does not cure the breach or violation within thirty (30) calendar days of receiving such notice, or (B) immediately terminate this Agreement if cure is not possible.

c. Effect of Termination. Upon termination of this Agreement, BA shall return to Martin or destroy all Private Information in whatever form or medium (including in any electronic medium under BA’s custody or control). BA will complete such return or destruction as promptly as possible, but in no event later than thirty (30) days after the effective date of the termination of this Agreement or the business relationship, and shall

certify in writing to Martin that such return or destruction has been completed. If such return or destruction is infeasible, as determined by Martin, the obligations set forth in this Agreement with respect to Private Information shall survive termination and BA shall limit any further use and disclosure of Private Information to the purposes that make the return or destruction of Private Information infeasible.

5. **Indemnification.** BA shall indemnify and hold harmless Martin and its Affiliates, directors, officers, employees and agents against any and all claims, causes of action, losses, liabilities, judgments, penalties, damages, costs or expenses, including attorneys' fees and court or proceeding costs, arising out of or in connection with any non-permitted or violating use, disclosure or request of Private Information or other breach of this Agreement by BA or any subcontractor, agent, person or entity under BA's control.

6. **Right to Tender or Undertake Defense.** If Martin is named a party in any judicial, administrative or other proceeding arising out of or in connection with any non-permitted or violating use, disclosure or request of Private Information or other breach of this Agreement by BA or any subcontractor, agent, person or entity under BA's control, Martin will have the option at any time to either (i) tender its defense to BA, in which case BA will provide qualified attorneys to represent Martin's interests at BA's expense, or (ii) undertake its own defense, choosing the attorneys, consultants and other appropriate professionals to represent its interests, in which case Martin will be responsible for and pay the reasonable fees and expenses of such attorneys, consultants and other professionals.

7. **Right to Control Resolution.** Martin will have the sole right and discretion to settle, compromise or otherwise resolve any and all claims, causes of actions, liabilities or damages against it, notwithstanding that Martin may have tendered its defense to BA. Any such resolution will not relieve BA of its obligation to indemnify Martin under this Agreement.

8. **Injunctive Relief.** BA expressly agrees that a breach or threatened breach of any provision of this Agreement by BA, any Subcontractor of BA or employee of BA is highly likely to cause significant, irreparable harm to Martin and that Martin shall be entitled to temporary, preliminary and/or permanent injunctive relief to protect its interests and the interests of affected individuals; provided, however, that no specification of a particular legal or equitable remedy is to be construed as a waiver, prohibition, or limitation of any legal or equitable remedies in the event of a breach hereof.

9. **Independent Contractors.** Martin and BA shall be independent contractors and nothing in this Agreement is intended nor shall be construed to create an agency, partnership, employer-employee or joint venture relationship between them.

10. **Amendment.** This Agreement may be modified or amended only upon mutual written consent of the parties. Notwithstanding the foregoing, this Agreement shall automatically be amended to incorporate any change or modification of applicable state or federal law as of the effective date of the change or modification, and BA agrees to maintain compliance with all changes or modifications to applicable state or federal law.

11. **Entire Agreement; Assignment.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all other agreements, communications or understandings either oral or in writing, between the parties to this Agreement with respect to the subject matter hereof. BA may not assign its rights and obligations under this Agreement without the prior written consent of Martin.

12. **Data Ownership.** BA acknowledges and agrees that it has no ownership rights whatsoever with respect to Private Information; and that all such Private Information is owned by Martin.

13. **Notices.** Any notices to be given hereunder shall be deemed effectively given when personally delivered one (1) business day after being sent to the recipient by electronic means (including facsimile) or

overnight courier, or four (4) business days after being deposited in the United States mail, with postage prepaid thereon, certified or registered mail, return receipt requested, addressed as follows:

If to Martin:

With a copy to:

If to Business Associate:

With a copy to:

14. **No Third Party Beneficiaries.** Nothing expressed or implied in this Agreement is intended to confer, nor anything herein shall confer, upon any person other than the parties hereto any rights, remedies, obligations or liabilities whatsoever.

15. **Waiver.** A waiver by either party of a breach or failure to perform hereunder shall not constitute a waiver of any subsequent breach or failure.

16. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall be deemed one and the same instrument. This Agreement may be executed by facsimile or PDF signature and any such signature shall be deemed an original.

17. **Governing Law; Venue.** This Agreement shall be governed by, construed, interpreted and enforced under the laws of the State of New Jersey, without regard to its choice of law provisions. The parties hereby consent to the jurisdiction and venue of the state and federal courts located in Essex County, New Jersey.

18. **Conflicts and Severability.** The terms and conditions of this Agreement shall override and control any conflicting terms or conditions of any other agreement between the parties to the extent such conflict involves an issue related to HIPAA, the Privacy Regulations, the Security Regulations, the EDI Standards, and/or the GLBA Rules. If any provision(s) of this Agreement shall be held to be invalid, illegal or unenforceable, the same shall be deemed to be severable and deleted from this Agreement, and the remaining provisions construed so as to most nearly effectuate the original intention of the parties and HIPAA, the Privacy Regulations, the Security Regulations, the EDI Standards, and the GLBA Rules.

19. **Scope.** This Agreement applies to all present and future agreements and relationships, whether written, oral or implied, between Martin and BA, pursuant to which Martin provides Private Information to BA in any form or medium whatsoever. This Agreement shall automatically be incorporated into all subsequent agreements between Martin and BA involving the use or disclosure of Private Information, whether or not expressly referenced therein.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf as of the Effective Date.

[BUSINESS ASSOCIATE]

MARTIN INSURANCE SERVICES, INC.

Signature: _____

By: _____

Printed Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____