RESOLUTION NO. 2023–30

A RESOLUTION AUTHORIZING THE FIRE CHIEF TO ENTER INTO AN AGREEMENT WITH CUSTOM DESIGN BENEFITS, LLC TO ADMINISTER BENEFIT OPTIONS REQUIRED BY THE CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT.

WHEREAS, the City of Miamisburg, Ohio and Miami Township, Montgomery County, Ohio created the Miami Valley Fire District (the "District") consistent with Ohio Revised Code Section 505.371 via Joint Resolution, City Resolution No. 2786 and Township Resolution No. 121-2011; and

WHEREAS, the Fire Chief recommends that the Miami Valley Fire District Board of Trustees authorize the Fire Chief to enter into a written agreements with the Custom Design Benefits, LLC to serve as a third-party administrator for employee benefits required by under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA").

NOW, THEREFORE, BE IT RESOLVED BY THE MIAMI VALLEY FIRE DISTRICT BOARD OF TRUSTEES THAT:

Section1.

The Miami Valley Fire District Board of Trustees authorizes the Fire Chief to enter into a written agreement (summarily "the Agreement") with Custom Design Benefits, LLC for the purpose of providing third-party administrator services. Such services include (but are not limited to) administering benefits to employees after separation of employment and meeting compliance requirements for communications related thereto.

Section 2.

The Agreement requires a one-year service commitment and has an anticipated cost of $1,020 per year (minimum of $85.00 per month).

Section 3. This Board hereby finds and determines that all formal actions relative to the adoption of this resolution were taken in an open meeting of this Board, and that all deliberations of this Board and of its committees, if any, which resulted in formal action, were taken in meetings open to the public, in full compliance with applicable legal requirements, including Ohio Revised Code Section121.22.

Section 4.

This resolution shall be in full force and effect from and immediately after its adoption and shall supersede any prior resolution or act of this Board, which may be inconsistent or duplicative with the provisions of this resolution.

Adopted this 12th Day of October 2023.

John Stalder, President — Yes/No

Absent

Terry Posey, Trustee — Yes/No

Ann-Lisa Allen, Trustee — Yes/No

Greg Bell, Trustee — Yes/No

Frank Fritsch, Trustee — Yes/No

COBRA ADMINISTRATIVE SERVICES AGREEMENT

This COBRA Administrative Services Agreement ("Agreement") is dated October 1, 2023 ("Effective Date"), and is between Custom Design Benefits, LLC, an Ohio limited liability company ("COBRA Administrator") and Miami Valley Fire District ("Plan Sponsor").

WHEREAS, the Plan Sponsor sponsors an employee welfare benefit plan ("Plan") within the meaning of the Employee Retirement Income Security Act of 1974 (ERISA), as amended and is subject to The Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 and its modifications, additions and deletions; and

WHEREAS, the Plan Sponsor wishes to contract with an independent third party to perform certain COBRA administrative services with respect to the Plan as enumerated below; and

WHEREAS, the COBRA Administrator desires to contract with the Plan Sponsor to perform certain services with respect to the Plan and its requirements under COBRA as enumerated below; and

THEREFORE, in consideration of the premises and mutual covenants contained herein, the Plan Sponsor and the COBRA Administrator enter into this Agreement for administrative services for COBRA.

ARTICLE I. DEFINITIONS

For the purposes of this Agreement, the following words and phrases have the meanings set forth below, unless the context clearly indicates otherwise and wherever appropriate, the singular shall include the plural and the plural shall include the singular.

1.1 COBRA means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

1.2 ERISA means the Employee Retirement Income Security Act of 1974, as amended.

1.3 Employee means a benefit eligible, active Employee of the Plan Sponsor who has enrolled in a COBRA eligible plan.

1.4 Dependent means a spouse and/or child that is covered under one or more COBRA eligible plans on the day prior to the Qualifying Event.

1.5 Insurer means an insurance company providing benefits to the Plan Sponsor that is subject to the COBRA legislation.

1.6 Insurance Plan means a group health plan such as (but not limited to) medical, dental, long-term care, vision, hearing, free-standing psychiatric and alcohol/drug dependency plans.

1.7 Participant means an Employee and/or Dependent that has notified the Plan Sponsor or COBRA Administrator of his or her desire to continue coverage, completed the necessary applications, and has made premium payments in a timely manner.

1.8 Qualified Beneficiary means an Employee and/or Dependent who experienced a Qualifying Event and is eligible to continue coverage under COBRA.

1.9 Qualifying Event means any of the following six events than an Employee and/or Dependent has experienced. In addition to experiencing this event, there must be a subsequent loss of coverage:

(a) Termination of employment
(b) Reduction in work hours
(c) Death of Employee
(d) Divorce or legal separation of an Employee
(e) Employee becomes entitled to Medicare
(f) Loss of Dependent status

ARTICLE II. RELATIONSHIP OF PARTIES

2.1 Limitations on Service. The Plan Sponsor delegates to the COBRA Administrator only those powers and responsibilities with respect to the COBRA legislation which are specifically enumerated in this Agreement. Any function not specifically delegated to and assumed by the COBRA Administrator pursuant to this Agreement shall remain the sole responsibility of the Plan Sponsor.

2.2 Independent Contractor. The parties enter into this Agreement as independent contractors and not as agents of each other. Neither party shall have any authority to act in any way as the representative of the other, or to bind the other to any third party, except as specifically set forth herein.

2.3 The parties acknowledge that

(a) this is a contract for COBRA administrative services only as specifically set forth herein;

(b) this Agreement shall not be deemed a contract of insurance under any laws or regulations. The COBRA Administrator does not insure, guarantee, or underwrite the liability of the Plan.

2.4 Subcontractors. The work to be performed by the COBRA Administrator under this Agreement may, at its discretion and with the prior approval of the Plan Sponsor, be performed directly by it or wholly or in part through a subsidiary or affiliate of the COBRA Administrator or under an agreement with an organization, agent, advisor, or other person of its choosing.

2.5 COBRA Administrator Licensure. The COBRA Administrator represents that it is duly licensed as a Third Party Administrator to the extent required under applicable law and agrees to maintain such licensure throughout the term of this Agreement.

2.6 Indemnification.

(a) COBRA Administrator. The COBRA Administrator will indemnify, defend, save, and hold the Plan Sponsor harmless from and against any and all claims, suits, actions, liabilities, losses, fines, penalties, damages, and expenses of any kind including, but not limited to, court costs and attorney's fees, with respect to the Plan which directly result from or arise out of the dishonest, fraudulent, grossly negligent, or criminal acts of the COBRA Administrator or its employees, except for acts taken at the specific direction of the Plan Sponsor. The COBRA Administrator shall be entitled to rely, without investigation or inquiry, upon any written or oral information or communication of the Plan Sponsor or agents of the Plan Sponsor.

(b) Plan Sponsor. The Plan Sponsor will indemnify, defend, save, and hold the COBRA Administrator harmless from and against any and all claims, suits, actions, liabilities, losses, fines, penalties, damages, and expenses of any kind including, but not limited to, court costs and attorney's fees, to the extent that such claims, losses, liabilities, damages, and expenses arise out of or are based upon the Plan Sponsor's negligence in the performance of its duties under this Agreement.

ARTICLE III. THE COBRA ADMINISTRATOR'S RESPONSIBILITIES

3.1 Notifications. The COBRA Administrator will provide the following notifications that are required by COBRA to be distributed by first class mail through the US Postal Service to both Employees and their Dependents, where applicable:

(a) Termination of Employment, Reduction in Work Hours or Employees Death. Upon receiving notification by the Plan Sponsor of the occurrence of one of these Qualifying Events, the COBRA Administrator shall send the Employee and any Dependents a COBRA Qualifying Event letter which explains their rights under the law. The letter will be sent to the address provided by the Plan Sponsor within fourteen (14) days from the date the COBRA Administrator receives notice of the Qualifying Event by the Plan Sponsor.

(b) Employee's Divorce or Legal Separation, Medicare Entitlement, or Loss of Dependent Status. It is the responsibility of the Employee/Dependent to notify the Plan Sponsor of the Qualifying Event within sixty (60) days from the date of the Qualifying Event. Upon receiving notification by the Plan Sponsor that it has been informed (or not informed but is aware of the event) by the Employee or Dependent, the COBRA Administrator shall send a COBRA Qualifying Event letter to the affected Dependent(s) within fourteen (14) days from the date the COBRA Administrator receives notice by the Plan Sponsor.

(c) Conversion Privilege Notification. If available to active Employees, Participants will be sent a conversion notification letter approximately one-hundred eighty (180) days prior to the end of the Participant's COBRA term (either eighteen or thirty-six months). Participants shall be directed to contact the appropriate Insurer for further notification on conversion coverage.

3.2 Premium. Once a Qualified Beneficiary has notified the COBRA Administrator of his/her desire to continue coverage, the COBRA Administrator shall obtain the needed COBRA application and collect required premiums as provided by the Plan Sponsor. Participants shall be charged the group rate (the amount charged by the Insurer for a similarly situated active Employee) plus an administration charge of 2% of premiums.

3.3 Termination from COBRA. The COBRA Administrator shall terminate COBRA continuation coverage on behalf of the Plan Sponsor upon one or more of the following events:

(a) Insurance Plan Termination. If Plan Sponsor terminates a group Insurance Plan for active Employees, Participants shall be notified and terminated from that plan only. If Plan Sponsor offers a new similar type of Insurance Plan, the COBRA Administrator shall send a notice offering Participants the right to enroll in the new plan.

(b) Nonpayment of COBRA Premiums. Participants will be notified in writing of the termination from COBRA for nonpayment of premiums if premiums are not postmarked within the applicable grace period allowed by the Plan Sponsor.

(c) Coverage Under Another Group Plan. For Participants that obtain similar coverage under another group plan, the COBRA Administrator will notify the Participant of their termination from the Plan Sponsor's Insurance Plan.

(d) Medicare Entitlement. Once a Participant becomes entitled to Medicare (Part A and/or B), the COBRA Administrator may terminate COBRA continuation coverage. Prior to termination, the COBRA Administrator shall contact the Participant, establish a date of termination so that there will be no lapse in coverage. Dependents enrolled on the Medicare entitled person's plan may continue to the end of their COBRA term.

(e) Out of Insurance Company's Service Area. If a Participant is enrolled in an Insurance Plan that requires members to reside in a specific geographical area and the Participant moves from that area, the COBRA Administrator shall notify the Participant and terminate coverage. If another similar plan is available in that area, the COBRA Administrator shall notify the Participant.

(f) Termination for Cause. Coverage may be terminated "for cause" for fraudulent claims or other activities in which a similarly situated active Employee would be terminated. The COBRA Administrator shall notify the Participant of his or her termination upon receiving written notification by the Plan Sponsor.

(g) Removal of Disability. If a disabled COBRA Participant is deemed to no longer be disabled during the eleven (11) month extension, the COBRA Administrator will notify the Participant of his or her termination.

(h) End of COBRA Term. Once the Participant has reached the end of his or her COBRA time frame (either 18, 29 or 36 months), the COBRA Administrator shall send a termination notice. The Participant shall be offered the right to convert to an individual plan if the right to convert is provided by the Plan Sponsor.

3.4 Respond to Inquiries. Respond to inquiries by Participants, the estate of a Participant, an authorized member of a Participant's family unit, or an authorized health care provider.

3.5 Confidentiality. Maintain information that identifies a Participant in a confidential manner. The COBRA Administrator agrees to take all reasonable precautions to prevent disclosure or the use of information for a purpose unrelated to the COBRA administration.

3.6 Maintenance of Records. Maintain a file (paper or electronic) on every Participant reported to it by the Plan Sponsor. Such files shall be made available to the Plan Sponsor for consultation, review, and audit upon reasonable notice and request, during the business day and at the office of the COBRA Administrator. Any such audit will be at the sole expense of the Plan Sponsor.

3.7 Reports. Employer portal gives access to these and other reports:
(a) New Hire Report
(b) Remittance Report
(c) Member Status and Qualified Beneficiary Plan Members
(d) Generated Letters Detail

3.8 Qualified Beneficiary Premiums. Forward to the Plan Sponsor on a monthly basis any premiums collected on behalf of Qualified Beneficiaries.

3.9 Records. Upon termination of this Agreement, all files, reports, and plan documentation will be remitted to the Plan Sponsor, if requested. Until that time, these records will be maintained at the COBRA Administrator's principal administrative office or secure storage facilities for at least seven (7) years following the termination of a Plan Year. At the end of the seven (7) year period or termination of this agreement, if earlier, the COBRA Administrator shall notify the Plan Sponsor that these records will be destroyed unless the Plan Sponsor requests, in writing, that all or some of the records be forwarded to the Plan Sponsor.

3.10 Initial Notice. Provide required COBRA initial notice to new hires and Participants upon initial eligibility to participate in a Plan Sponsor Insurance Plan.

ARTICLE IV. THE PLAN SPONSOR'S RESPONSIBILITIES

The Plan Sponsor will:

4.1 Maintenance of Eligibility and Coverage Records. Maintain current and accurate Plan eligibility and coverage records. Notify the COBRA Administrator, as agreed upon during implementation, of COBRA Qualifying Events.

This information shall be provided in a format reasonably acceptable to the COBRA Administrator and include the following for each Participant: name and address, Social Security number, date of birth, type of coverage, sex, relationship to Employee, changes in coverage, date coverage begins or ends, date of all Qualifying Events.

The Plan Sponsor assumes the responsibility for the erroneous disbursement of information or benefits by the COBRA Administrator in the event of error or neglect on the Plan Sponsor's part of providing eligibility and coverage information to the COBRA Administrator, including but not limited to, failure to give timely notification of ineligibility of a former Participant.

4.2 Compliance with Applicable Law. Provide and timely distribute all notices and information required to be given to Participants, maintain and operate the Plan in accordance with applicable law, maintain all recordkeeping, and file all forms relative thereto pursuant to any federal, state, or local law, unless this Agreement specifically assigns such duties to the COBRA Administrator.

4.3 Plan Administrator. Acknowledge that it is the Plan Sponsor, Plan Administrator, and Named Fiduciary, as these terms are defined in ERISA. As such, Plan Sponsor retains full discretionary control and authority and discretionary responsibility in the operation and administration of the Plan. Plan Sponsor will resolve all Plan ambiguities and disputes relating to the Plan eligibility of a Participant or Plan coverage, or any other interpretation questions.

4.4 Confidentiality. Hold confidential information obtained that is proprietary to the COBRA Administrator.

4.5 COBRA Administrator's Fees. Pay, in accordance with the Fee Schedule outlined in Exhibit A, the COBRA Administrator's fees for services rendered.

4.6 Reports. Review all reports and reconcile COBRA premium payments received from COBRA Administrator with their primary carrier's invoice and notify COBRA Administrator of any error or discrepancy within three (3) months that the error occurred.

ARTICLE V. DURATION OF AGREEMENT

5.1 Term. This Agreement shall commence beginning on the Effective Date for an initial term of one year ("Agreement Term"). This Agreement shall automatically renew each year for a one-year period unless modified or terminated as described below.

5.2 Termination. This Agreement may be terminated by either the Plan Sponsor or the COBRA Administrator at any time, upon giving 90 days' advance written notice to the other party unless both parties agree to waive such advance notice. At the option of the

party initiating the termination, the other party may be permitted a cure period (of a length determined by the party initiating the termination) to cure any default.

ARTICLE VI. MISCELLANEOUS

6.1 Assignment. Neither party shall have the right to assign, sublet, delegate, or transfer this Agreement without the prior written consent of the other party.

6.2 Notices. All notice required to be given pursuant to the terms and provisions hereof shall be in writing and shall be sent by certified mail, return receipt requested, postage prepaid or by recognized courier service, as addressed as follows:

If to Plan Sponsor: Miami Valley Fire District
2710 Lyons Road
Miamisburg, OH 45342

If to COBRA Administrator: Custom Design Benefits, LLC
5589 Cheviot Road
Cincinnati, OH 45247
Attn: Julie D. Mueller, President & CEO

6.3 Entire Agreement. As of such Effective Date, but not before, this Agreement contains all of the terms and conditions agreed upon by the parties hereto and supersedes all other agreements, oral or otherwise, of the parties hereto, regarding the subject matter of this Agreement.

6.4 Amendment. This Agreement may be amended at any time by mutual written agreement of the parties. If any such amendment increases the COBRA Administrator's cost of administering the Plan, the Plan Sponsor agrees to pay any increase in administrative fees or other costs which the COBRA Administrator reasonably expects to incur as a result of such modification.

6.5 No Third Party Beneficiaries. Except as specifically provided herein, the terms and conditions of this Agreement shall be for the sole and exclusive benefit of COBRA Administrator and Plan Sponsor. Nothing herein, express or implied, is intended to be construed or deemed to create any rights or remedies in any third party.

6.6 Severability. The invalidity or unenforceability of any term or provision of this Agreement will in no way affect the validity of enforceability of any other term or provision.

6.7 Waiver of Breach. The waiver by either party of the violation of any provision or obligation of this Agreement shall not constitute the waiver of any subsequent violation of the same or other provision or obligation.

6.8 Headings. The headings of the various sections of this Agreement are inserted merely for the purpose of convenience and do not, expressly or by implication, limit, define or extend the specific terms of the section so designated.

6.9 Multiple Originals. This Agreement may be executed in multiple originals, each of which shall be binding upon the party whose signature it contains, and the combined total of which shall constitute the entire document.

6.10 Authority. The parties whose signatures are set forth below represent and warrant that they are duly empowered to execute this Agreement.

6.11 Exhibits. The Exhibits attached to this Agreement are an integral part of this Agreement and are incorporated herein by reference.

6.12 Force Majeure. Neither party shall be liable or deemed to be in default for any delay or failure to perform any act under this Agreement resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquake, flood, strikes or other work stoppages by either party's employees, or any other similar cause beyond the reasonable control of such party.

6.13 Governing Law. This Agreement shall be interpreted and construed in accordance with the laws of the state of Ohio except to the extent superseded by federal law.

[*SIGNATURE PAGE TO FOLLOW*]

IN WITNESS WHEREOF, the parties are signing this agreement on the date stated in the introductory clause.

Miami Valley Fire District

BY:_____

PRINTED NAME: _____

TITLE: _____

CUSTOM DESIGN BENEFITS, LLC

BY: _____

NAME: Julie D. Mueller

TITLE: President & CEO

FULL LEGAL NAME OF PLAN SPONSOR:

_____

AFFILIATES AND/OR SUBSIDIARIES OF PLAN SPONSOR SUBJECT TO THIS AGREEMENT:

_____

_____

_____

_____

EXHIBIT A
COBRA ADMINISTRATION FEES

Monthly Administration Fee based on number of employees enrolled in medical plans:

: $0.75 per employee per month with a minimum monthly fee of $85.00
: Even monthly billing is based on the first month's medical enrollment.
: Custom Design Benefits retains 2%; no additional fees per notice.
: All correspondence sent via First Class Mail.

Summary of COBRA Procedures:

- Employer is assigned to a dedicated qualified COBRA Specialist who handles all aspects of their account.

- Custom Design Benefits (CDB) provides the Initial COBRA Notice to new hires after administration begins. This task can be discussed during implementation. CDB can send the Initial Notice to all plan participants that had not been previously informed upon request and only charge for the cost of postage.

- Employer notifies Insurance Carriers of termination or other COBRA Qualifying Event and then completes a CDB Qualifying Event Notification form and forwards by email or fax to Custom Design Benefits or enters directly into the Employer's COBRA portal. CDB is also able to accept files from the employer's payroll or benefits enrollment vendor. This can be discussed at implementation.

- CDB will mail the COBRA packet to the COBRA eligible person(s) via First Class mail. If COBRA is elected, the participant completes the election form and returns to CDB with payment or elects using the portal and can choose to make electronic or mail payment. CDB notifies carrier and Employer of election, if that is the method decided at implementation.

- Participants make COBRA checks payable to CDB and send to a lockbox or make electronic payments through the portal. Monthly Custom Design Benefits issues a single COBRA check made payable to the Employer and sends a report of participants who have paid COBRA premiums for that month on the "COBRA Premiums Reimbursement Report".

- If a COBRA participant does not pay their COBRA premium or COBRA benefits are exhausted, Custom Design notifies the Employer contact or carrier, whichever has been decided at implementation.

- If a person has exhausted their COBRA benefits Custom Design Benefits notifies the participant of their right of a conversion policy, if offered by the insurance carrier.

- At Open Enrollment, broker or Employer is responsible for notifying Custom Design Benefits on a timely basis of new plan(s) offered or any changes to existing plans and Custom Design will notify the participants.

EXHIBIT B
BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum to the Administrative Services Agreement ("Addendum") between Miami Valley Fire District ("Covered Entity") and Custom Design Benefits, LLC ("Business Associate") is effective as of the effective date of the Administrative Services Agreement ("Agreement").

Covered Entity and Business Associate (jointly "the Parties") wish to modify the Agreement to incorporate the terms of this Addendum to comply with the requirements of: (i) the implementing regulations at 45 C.F.R Parts 160, 162, and 164 for the Administrative Simplification provisions of Title II, Subtitle F of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") (*i.e.,* the HIPAA Privacy, Security, Electronic Transaction, Breach Notification, and Enforcement Rules ("the Implementing Regulations")), (ii) the requirements of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (the "HITECH Act") that are applicable to business associates, and (iii) the requirements of the final modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules as issued on January 25, 2013 and effective March 26, 2013 (75 Fed. Reg. 5566 (Jan. 25, 2013)) ("the Final Regulations"). The Implementing Regulations, the HITECH Act, and the Final Regulations are collectively referred to in this Addendum as "the HIPAA Requirements."

Covered Entity and Business Associate agree to incorporate into this Addendum any regulations issued by the U.S. Department of Health and Human Services ("DHHS") with respect to the HIPAA Requirements that relate to the obligations of business associates and that are required to be (or should be) reflected in a business associate agreement. Business Associate recognizes and agrees that it is obligated by law to meet the applicable provisions of the HIPAA Requirements and that it has direct liability for any violations of the HIPAA Requirements.

ARTICLE I. DEFINITIONS

The following words and phrases have the meanings set forth below, unless the context clearly indicates otherwise. All other capitalized terms used in this Agreement shall have the meanings set forth in the applicable definitions under the HIPAA Requirements.

1.01 **Breach** shall mean, as defined in 45 C.F.R. § 164.402, the acquisition, access, use or disclosure of Unsecured Protected Health Information in a manner not permitted by the HIPAA Requirements that compromises the security or privacy of that Protected Health Information.

1.02 **Business Associate Subcontractor** shall mean, as defined in 45 C.F.R. § 160.103, any entity (including an agent) that creates, receives, maintains or transmits Protected Health Information on behalf of Business Associate.

1.03 **Electronic PHI** shall mean, as defined in 45 C.F.R. § 160.103, Protected Health Information that is transmitted or maintained in any Electronic Media.

1.04 **Limited Data Set** shall mean, as defined in 45 C.F.R. § 164.514(e), Protected Health Information that excludes the following direct identifiers of the individual or of relatives, employers, or household members of the individual: (1) Names; (2) Postal address information, other than town or city, State, and zip code; (3) Telephone numbers; (4) Fax numbers; (6) Electronic mail addresses; (7) Social security numbers; (8); Medical record numbers; (9) Health plan beneficiary numbers; (10) Account numbers; (11) Certificate/license numbers; (12) Vehicle identifiers and serial numbers, including license plate numbers; (13) Device identifiers and serial numbers; (14) Web Universal Resource Locators (URLs); (15) Internet Protocol (IP) address numbers; (16) Biometric identifiers, including finger and voice prints; (17) Full face photographic images and any comparable images; and (18) Any other unique identifying number, characteristic, or code, except as otherwise permitted.

1.05 **Protected Health Information** or **PHI** shall mean, as defined in 45 C.F.R. § 160.103, information created or received by a Health Care Provider, Health Plan, employer, or Health Care Clearinghouse, that: (i) relates to the past, present, or future physical or mental health or condition of an individual, provision of health care to the individual, or the past, present, or future payment for provision of health care to the individual; (ii) identifies the individual, or with respect to which there is a reasonable basis to believe the information can be used to identify the individual; and (iii) is transmitted or maintained in an electronic medium, or in any other form or medium. The use of the term "Protected Health Information" or "PHI" in this Addendum shall mean both Electronic PHI and non-Electronic PHI, unless another meaning is clearly specified.

1.06 **Security Incident** shall mean, as defined in 45 C.F.R. § 164.304, the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

1.07 **Unsecured Protected Health Information** shall mean, as defined in 45 C.F.R. § 164.402, Protected Health Information that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology specified by DHHS.

ARTICLE II. GENERAL TERMS

2.01 In the event of an inconsistency between the provisions of this Addendum and a mandatory term of the HIPAA Requirements (as these terms may be expressly amended from time to time by the DHHS or as a result of interpretations by DHHS, a court, or another regulatory agency with authority over the Parties), the interpretation of DHHS, such court or regulatory agency shall prevail. In the event of a conflict among the interpretations of these entities, the conflict shall be resolved in accordance with rules of precedence.

2.02 Where provisions of this Addendum are different from those mandated by the HIPAA Requirements, but are nonetheless permitted by the HIPAA Requirements, the provisions of this Addendum shall control.

2.03 Except as expressly provided in the HIPAA Requirements or this Addendum, this Addendum does not create any rights in third parties.

ARTICLE III. SPECIFIC REQUIREMENTS

3.01 **Flow-Down of Obligations to Business Associate Subcontractors.** Business Associate agrees that as required by the HIPAA Requirements, Business Associate will enter into a written agreement with all Business Associate Subcontractors that: (i) requires them to comply with the Privacy and Security Rule provisions of this Addendum in the same manner as required of Business Associate, and (ii) notifies such Business Associate Subcontractors that they will incur liability under the HIPAA Requirements for non-compliance with such provisions. Accordingly, Business Associate shall ensure that all Business Associate Subcontractors agree in writing to the same privacy and security restrictions, conditions and requirements that apply to Business Associate with respect to PHI.

3.02 **Privacy of Protected Health Information**

(a) *Permitted Uses and Disclosures of PHI.* Business Associate agrees to create, receive, use, disclose, maintain or transmit PHI only in a manner that is consistent with this Addendum or the HIPAA Requirements and only in connection with providing the services to Covered Entity identified in the Agreement. Accordingly, in providing services to or for the Covered Entity, Business Associate, for example, will be permitted to use and disclose PHI for "Treatment, Payment, and Health Care Operations," as those terms are defined in the HIPAA Requirements. Business Associate further agrees that to the extent it is carrying out one or more of the Covered Entity's obligations under the Privacy Rule (Subpart E of 45 C.F.R. Part 164), it shall comply with the requirements of the Privacy Rule that apply to the Covered Entity in the performance of such obligations.

(i) Business Associate shall report to Covered Entity any use or disclosure of PHI that is not provided for in this Addendum, including reporting Breaches of Unsecured Protected Health Information as required by 45 C.F.R. § 164.410 and required by Section 3.05(b).

(ii) Business Associate shall establish, implement and maintain appropriate safeguards, and comply with the Security Standards (Subpart C of 45 C.F.R. Part 164) with respect to Electronic PHI, as necessary to prevent any use or disclosure of PHI other than as provided for by this Addendum.

(b) *Business Associate Obligations.* As permitted by the HIPAA Requirements, Business Associate also may use or disclose PHI received by the Business Associate in its capacity as a Business Associate to the Covered Entity for Business Associate's own operations if:

(i) the *use* relates to: (1) the proper management and administration of the Business Associate or to carry out legal responsibilities of the Business Associate, or (2) data aggregation services relating to the health care operations of the Covered Entity; or

(ii) the *disclosure* of information received in such capacity will be made in connection with a function, responsibility, or services to be performed by the Business Associate, and such disclosure is required by law or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidential and the person agrees to notify the Business Associate of any breaches of confidentiality.

(c) *Minimum Necessary Standard and Creation of Limited Data Set.* Business Associate's use, disclosure, or request of PHI shall utilize a Limited Data Set if practicable. Otherwise, in performing the functions and activities as specified in the Agreement and this Addendum, Business Associate agrees to use, disclose, or request only the minimum necessary PHI to accomplish the intended purpose of the use, disclosure, or request.

(d) *Access.* In accordance with 45 C.F.R. § 164.524 of the HIPAA Requirements, Business Associate will make available to the Covered Entity (or as directed by the Covered Entity, to those individuals who are the subject of the PHI (or their designees)), their PHI in the Designated Record Set. Business Associate shall make such information available in an electronic format where directed by the Covered Entity.

(e) *Disclosure Accounting.* Business Associate shall make available the information necessary to provide an accounting of disclosures of PHI as provided for in 45 C.F.R. § 164.528 of the HIPAA Requirements by making such information available to the Covered Entity or (at the direction of the Covered Entity) making such information available directly to the individual.

(f) *Amendment.* Business Associate shall make PHI in a Designated Record Set available for amendment and, as directed by the Covered Entity, incorporate any amendment to PHI in accordance with 45 C.F.R. § 164.526 of the HIPAA Requirements.

(g) *Right to Request Restrictions on the Disclosure of PHI and Confidential Communications.* If an individual submits a Request for Restriction or Request for Confidential Communications to the Business Associate, Business Associate and Covered Entity agree that Business Associate, on behalf of Covered Entity, will evaluate and respond to these requests according to Business Associate's own procedures for such requests.

(h) *Return or Destruction of PHI.* Upon the termination or expiration of the Agreement or this Addendum, Business Associate agrees to return the PHI to Covered Entity, destroy the PHI (and retain no copies), or if Business Associate determines that

return or destruction of the PHI is not feasible, (a) continue to extend the protections of this Addendum and of the HIPAA Requirements to the PHI, and (b) limit any further uses and disclosures of the PHI to the purpose making return or destruction infeasible.

(i) *Availability of Books and Records.* Business Associate shall make available to DHHS or its agents the Business Associate's internal practices, books, and records relating to the use and disclosure of PHI in connection with this Addendum.

(j) *Termination for Breach.*

(i) Business Associate agrees that Covered Entity shall have the right to terminate this Addendum or seek other remedies if Business Associate violates a material term of this Addendum.

(ii) Covered Entity agrees that Business Associate shall have the right to terminate this Addendum or seek other remedies if Covered Entity violates a material term of this Addendum.

3.03 **Information and Security Standards**

(a) Business Associate will develop, document, implement, maintain, and use appropriate Administrative, Technical, and Physical Safeguards to preserve the Integrity, Confidentiality, and Availability of, and to prevent non-permitted use or disclosure of, Electronic PHI created or received for or from the Covered Entity.

(b) Business Associate agrees that with respect to Electronic PHI, these Safeguards, at a minimum, shall meet the requirements of the HIPAA Security Standards applicable to Business Associate.

(c) More specifically, to comply with the HIPAA Security Standards for Electronic PHI, Business Associate agrees that it shall:

(i) Implement Administrative, Physical, and Technical Safeguards consistent with (and as required by) the HIPAA Security Standards that reasonably protect the Confidentiality, Integrity, and Availability of Electronic PHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity. Business Associate shall develop and implement policies and procedures that meet the documentation requirements as required by the HIPAA Requirements;

(ii) As also provided for in Section 3.01 above, ensure that any Business Associate Subcontractor agrees to implement reasonable and appropriate safeguards to protect the Electronic PHI;

(iii) Report to Covered Entity any unauthorized access, use, disclosure, modification, or destruction of PHI (including Electronic PHI) not permitted by this Addendum, applicable law, or permitted by Covered

Entity in writing ("Successful Security Incidents" or Breaches) of which Business Associate becomes aware. Business Associate shall report such Successful Security Incidents or Breaches to Covered Entity as specified in Section 3.05(c)(i);

(iv) For Security Incidents that do not result in unauthorized access, use, disclosure, modification, or destruction of PHI (including, for purposes of example and not for purposes of limitation, pings on Business Associate's firewall, port scans, attempts to log onto a system or enter a database with an invalid password or username, denial-of-service attacks that do not result in the system being taken off-line, or malware such as worms or viruses) (hereinafter "Unsuccessful Security Incidents"), aggregate the data and, upon the Covered Entity's written request, report to the Covered Entity in accordance with the reporting requirements identified in Section 3.05(c)(ii);

(v) Take all commercially reasonable steps to mitigate, to the extent practicable, any harmful effect that is known to Business Associate resulting from any unauthorized access, use, disclosure, modification, or destruction of PHI;

(vi) Permit termination of this Addendum if the Covered Entity determines that Business Associate has violated a material term of this Addendum with respect to Business Associate's security obligations and Business Associate is unable to cure the violation; and

(vii) Upon Covered Entity's request, provide Covered Entity with access to and copies of documentation regarding Business Associate's safeguards for PHI and Electronic PHI.

3.04 **Compliance with HIPAA Transaction Standards**

(a) *Application of HIPAA Transaction Standards.* Business Associate will conduct Standard Transactions consistent with 45 C.F.R. Part 162 for or on behalf of the Covered Entity to the extent such Standard Transactions are required in the course of Business Associate's performing services under the Agreement and this Addendum for the Covered Entity. As provided for in Section 3.01 above, Business Associate will require any Business Associate Subcontractor involved with the conduct of such Standard Transactions to comply with each applicable requirement of 45 C.F.R. Part 162. Further, Business Associate will not enter into, or permit its Subcontractors to enter into, any trading partner agreement in connection with the conduct of Standard Transactions for or on behalf of the Covered Entity that:

(i) Changes the definition, data condition, or use of a data element or segment in a Standard Transaction;

(ii) Adds any data element or segment to the maximum defined data set;

(iii) Uses any code or data element that is marked "not used" in the Standard Transaction's implementation specification or is not in the Standard Transaction's implementation specification; or

(iv) Changes the meaning or intent of the Standard Transaction's implementation specification.

(b) *Specific Communications.* Business Associate, Plan Sponsor and Covered Entity recognize and agree that communications between the parties that are required to meet the Standards for Electronic Transactions will meet the Standards set by that regulation. Communications between Plan Sponsor and Business Associate, or between Plan Sponsor and the Covered Entity, do not need to comply with the HIPAA Standards for Electronic Transactions. Accordingly, unless agreed otherwise by the Parties in writing, all communications (if any) for purposes of "Enrollment" as that term is defined in 45 C.F.R. Part 162, Subpart O or for "Health Covered Entity Premium Payment Data," as that term is defined in 45 C.F.R. Part 162, Subpart Q, shall be conducted between the Plan Sponsor and either Business Associate or the Covered Entity. For all such communications (and any other communications between Plan Sponsor and the Business Associate), Plan Sponsor shall use such forms, tape formats, or electronic formats as Business Associate may approve. Plan Sponsor will include all information reasonably required by Business Associate to affect such data exchanges or notifications.

(c) *Communications Between the Business Associate and the Covered Entity.* All communications between the Business Associate and the Covered Entity that are required to meet the HIPAA Standards for Electronic Transactions shall do so. For any other communications between the Business Associate and the Covered Entity, the Covered Entity shall use such forms, tape formats, or electronic formats as Business Associate may approve. The Covered Entity will include all information reasonably required by Business Associate to affect such data exchanges or notifications.

3.05 **Notice and Reporting Obligations of Business Associate**

(a) *Notice of Non-Compliance with the Addendum.* Business Associate will notify Covered Entity within 30 calendar days after discovery, any unauthorized access, use, disclosure, modification, or destruction of PHI (including any successful Security Incident) that is not permitted by this Addendum, by applicable law, or permitted in writing by Covered Entity, whether such non-compliance is by (or at) Business Associate or by (or at) a Business Associate Subcontractor.

(b) *Notice of Breach.* Business Associate will notify Covered Entity following discovery and without unreasonable delay but in no event later than 30 calendar days following discovery, any Breach of Unsecured Protected Health Information, whether such Breach is by Business Associate or by Business Associate Subcontractor.

(i) As provided for in 45 C.F.R. § 164.402, Business Associate recognizes and agrees that any acquisition, access, use or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule (Subpart E of 45 C.F.R. Part 164) is presumed to be a Breach. As such, Business Associate shall (i) notify Covered Entity of any non-permitted acquisition, access, use or disclosure of PHI, and (ii) assist Covered Entity in performing (or at Covered Entity's direction, perform) a risk assessment to determine if there is a low probability that the PHI has been compromised.

(ii) Business Associate shall cooperate with Covered Entity in meeting the Covered Entity's obligations under the HIPAA Requirements and any other security breach notification laws. Business Associate shall follow its notification to the Covered Entity with a report that meets the requirements outlined immediately below.

(c) *Reporting Obligations.*

(i) For Successful Security Incidents and Breaches, Business Associate – without unreasonable delay and in no event later than 30 calendar days after Business Associate learns of such non-permitted use or disclosure (whether at Business Associate or at Business Associate Subcontractor) – shall provide Covered Entity a report that will:

(A) Identify (if known) each individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been accessed, acquired, or disclosed;

(B) Identify the nature of the non-permitted access, use, or disclosure including the date of the incident and the date of discovery;

(C) Identify the PHI accessed, used, or disclosed (*e.g.*, name; social security number; date of birth);

(D) Identify what corrective action Business Associate (or Business Associate Subcontractor) took or will take to prevent further non-permitted accesses, uses, or disclosures;

(E) Identify what Business Associate (or Business Associate Subcontractor) did or will do to mitigate any deleterious effect of the non-permitted access, use, or disclosure; and

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

(ii) For Unsuccessful Security Incidents, Business Associate shall provide Covered Entity, upon its written request, a report that: (i) identifies the categories of Unsuccessful Security Incidents as described in Section 3.03(c)(iv); (ii) indicates whether Business Associate believes its (or its

Business Associate Subcontractor's) current defensive security measures are adequate to address all Unsuccessful Security Incidents, given the scope and nature of such attempts; and (iii) if the security measures are not adequate, the measures Business Associate (or Business Associate Subcontractor) will implement to address the security inadequacies.

(d) *Termination.*

(i) Covered Entity and Business Associate each will have the right to terminate this Addendum if the other party has engaged in a pattern of activity or practice that constitutes a material breach or violation of Business Associate's or the Covered Entity's respective obligations regarding PHI under this Addendum and, on notice of such material breach or violation from the Covered Entity or Business Associate, fails to take reasonable steps to cure the material breach or end the violation.

(ii) If Business Associate or the Covered Entity fail to cure the material breach or end the violation after the other party's notice, the Covered Entity or Business Associate (as applicable) may terminate this Addendum by providing Business Associate or the Covered Entity written notice of termination, stating the uncured material breach or violation that provides the basis for the termination and specifying the effective date of the termination. Such termination shall be effective 60 days from this termination notice.

(e) *Continuing Privacy and Security Obligations.* Business Associate's and the Covered Entity's obligation to protect the privacy and security of the PHI it created, received, maintained, or transmitted in connection with services to be provided under the Agreement and this Addendum will be continuous and survive termination, cancellation, expiration, or other conclusion of this Addendum or the Agreement. Business Associate's other obligations and rights, and the Covered Entity's obligations and rights upon termination, cancellation, expiration, or other conclusion of this Addendum, are those set forth in this Addendum and/or the Agreement

COVERED ENTITY	**BUSINESS ASSOCIATE**
BY:_____	BY: _____
PRINTED NAME: _____	NAME: Julie D. Mueller
TITLE: _____	TITLE: President & CEO