

A RESOLUTION ACCEPTING THE PROPOSAL OF UNIVERSITY HOSPITALS HEALTH SYSTEMS, INC. FOR THE PROVISION OF PHYSICAL HEALTH WELLNESS PROGRAMS TO THE VILLAGE'S SAFETY FORCES AND DECLARING AN EMERGENCY

WHEREAS, the Village advertised and solicited bids for the provision of physical health wellness programs to the Village's safety forces; and

WHEREAS, bids were received for the provision of said services; and

WHEREAS, the Fire Chief is recommending acceptance of the proposal of University Hospitals Health Systems, Inc., in accordance with the pricing schedule included in the attached agreement as being the lowest, best, and most responsive proposal.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Village of Richfield, Summit County, State of Ohio that:

- SECTION 1. Council accepts the proposal of University Hospitals Health Systems, Inc. for the provision of physical health wellness program services for a two-year term under terms, conditions, and pricing schedule set forth in the agreement attached hereto as Exhibit A and incorporated herein.
- SECTION 2. Council authorizes the Mayor and Finance Director to execute contracts with University Hospitals Health Systems, Inc. in accordance with its proposal.
- SECTION 3. Council finds and determines that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.
- SECTION 4. This Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public health, safety and welfare and for the further reason that it is immediately necessary in order to authorize the provision of physical health wellness services to the Village's safety forces; wherefore, provided this Resolution receives the affirmative vote of two-thirds of the members of Council elected or appointed, it shall take effect immediately upon its passage and execution by the Mayor; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

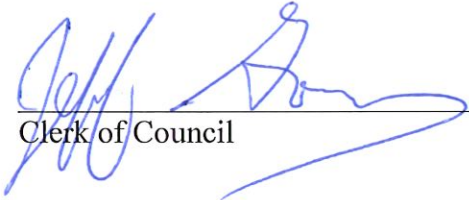
PASSED: _____

7-18-23



President of Council

ATTEST:


Clerk of Council


Mayor

Dated: 7/12/2023

EXHIBIT A

PURCHASED SERVICES AGREEMENT

THIS PURCHASED SERVICES AGREEMENT ("*Agreement*") is made and entered into as of the 1st day of July, 2023 (the "*Effective Date*"), by and between the Village of Richfield, ("*Village*"), and University Hospitals Health System, Inc., an Ohio non-profit and 501(c)(c) tax-exempt corporation ("*Service Provider*").

WITNESSETH

WHEREAS, Village seeks to provide Wellness Program Services ("*WPS*") for its safety forces/first responders, including its police officers, firefighters, paramedics, and dispatchers ("*First Responders*");

WHEREAS, Village is establishing a term contract with Service Provider to develop and implement, in partnership with Village First Responders, a wellness education curriculum and a menu of clinical wellness services;

WHEREAS, Service Provider is a comprehensive health care delivery system principally located in Northeast Ohio and comprised, in part, of acute care hospitals, outpatient health care facilities, and physician practices;

WHEREAS, Service Provider possesses all facilities, equipment, and professional staff necessary to provide the WPS required by Village for its First Responders; and

WHEREAS, Village desires to engage Service Provider for the provision of certain WPS, and Service Provider desires to provide such WPS to Village First Responders, upon the terms and conditions set forth in this Agreement;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants set forth in this Agreement, Village and Service Provider agree as follows:

1. Engagement of Service Provider.

1.1. Village hereby engages Service Provider on a non-exclusive basis subject to the terms of this Agreement, and Service Provider hereby accepts such engagement to render the services described in Exhibit A attached hereto and incorporated herein by reference ("*Purchased Services*") to Village and to First Responders of Village, in accordance with the terms of this Agreement. The parties agree that the Purchased Services may be provided by Service Provider or one or more of its wholly-owned subsidiaries, including without limitation University Hospitals Geauga Medical Center and University Primary Care Practices, Inc. d/b/a University Hospitals Medical Practices. Purchased Services shall be rendered consistent with: (i) currently approved methods and practices of all applicable licensing or governing agencies, whether applicable to Service Provider or Village; (ii) all applicable ethical and professional standards prevailing at the time such services are rendered; and (iii) all policies, rules, regulations and procedures of Village, which shall be provided or made available to Service Provider.

2. Service Provider's Obligations.

2.1. Service Provider shall provide Purchased Services to Village as requested and scheduled by Village, during Service Provider's normally scheduled business hours, or as otherwise agreed to by Village and Service Provider. Service Provider shall provide Purchased Services: (i) through its employees or those of its wholly-owned subsidiaries; (ii) by contracting with individuals licensed, certified, or otherwise possessing the necessary credentials, as applicable to perform the Purchased Services; or (iii) as Service Provider may determine and with the consent of Village.

2.2. Service Provider shall provide adequate, appropriately qualified professionals and technical personnel and other assistants to perform the duties necessary to provide the Purchased Services to Village (collectively, "Personnel"). Service Provider covenants that Personnel providing Purchased Services shall remain currently licensed and/or certified and/or credentialed as required by federal or state law. Upon reasonable request, Service Provider will provide Village with copies of all licenses, certifications and competencies, as applicable, for all Personnel providing Purchased Services to Village hereunder.

2.3. Service Provider agrees to provide Village with routine periodic reports of each Purchased Service rendered and other reports compiled by Service Provider regarding the Purchased Services as reasonably requested by Village from time to time and as ordinarily prepared by Service Provider. Service Provider shall cause to be promptly prepared and filed with appropriate attending physicians and Village's medical records department, reports of all examinations, procedures and other Purchased Services provided by Service Provider pursuant to this Agreement.

2.4. If Village, after consultation with Service Provider, determines that any member of the Personnel designated and provided by Service Provider to perform Purchased Services pursuant to this Agreement is not performing in Village with this Agreement or in a manner acceptable to Village, then Service Provider, upon the request of Village, shall cease to use such person for Purchased Services rendered pursuant to this Agreement and shall use another member of the Personnel to provide such services hereunder.

2.5. Service Provider agrees to reasonably participate in any quality improvement programs of Village as related to Purchased Services provided by Service Provider.

2.6. Service Provider will not discriminate on the basis of race, color, sex, age, religion, national origin, or disability in providing services under this Agreement.

3. Compensation.

3.1. Service Provider shall invoice Village on a quarterly basis beginning October 1, 2023 for all Purchased Services provided in the immediately preceding quarterly periods ending on the last day of September, December, March, and June. Charges for Purchased Services shall be in accordance with Exhibit A, which amounts may be reviewed by the parties from time to time to ensure consistency with fair market value. Prices for any other Purchased Services that may be provided pursuant to this Agreement not set forth on Exhibit A attached hereto shall be in such amount as mutually agreed upon from time to time by Service Provider and Village.

3.2. Village shall pay Service Provider for rendering Purchased Services in accordance with the terms of this Agreement within sixty (60) days after Village receives the invoice for such Purchased Services. Any invoice not so paid shall bear interest at the lesser of 1% per month or the highest rate allowed by applicable laws.

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3.3. In determining the charges for Purchased Services, the parties agree that the amounts to be paid by Village represent the fair market value of the services to be provided, without, in any way, taking into account or being predicated upon the volume or value of any referrals or business otherwise generated between the parties.

4. Insurance and Indemnification.

4.1. By Service Provider. Service Provider will at all times throughout the term of this Agreement maintain professional and general liability insurance either from a commercial source or through a system of self-insurance reasonably acceptable to Village in an amount no less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the aggregate ("*Professional Liability Insurance*"). Service Provider shall provide to Village, if requested, a certificate of insurance evidencing such coverage. When possible, Service Provider shall secure such insurance through Western Reserve Assurance Co., Ltd. SPC. ("*WRA*"), a captive insurance company wholly-owned by University Hospitals Health System, Inc.

4.2. By Village. Village shall provide, at its expense, and keep and maintain through the Term, professional and general liability insurance coverage on itself and all its employees in the minimum amount of no less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000.00) in the aggregate with a company licensed to do business in the State of Ohio. Village shall provide to Service Provider, if requested, a certificate of insurance evidencing such coverage.

5. Term and Termination.

5.1. The term of this Agreement shall commence on the Effective Date and shall continue for a term of two (2) years.

5.2. Either party hereto may terminate this Agreement or a specific Purchased Service provided hereunder at any time and for any reason by providing the other party with not less than thirty (30) days' prior written notice.

5.3. Either party hereto may terminate this Agreement immediately, in its entirety or solely with respect to a particular Purchased Service, if the other party breaches this Agreement and such breach is not cured or a plan to address the issue giving rise to the claim for breach is not mutually agreed to by the parties within ten (10) business days after receipt by the breaching party of written notice of such breach.

6. General Provisions.

6.1. Nothing contained in this Agreement requires the referral of any patient between the parties and no compensation or consideration of any kind shall be paid or given for any such referrals. Each party retains the right, in its sole discretion, to refer patients to any person or entity deemed appropriate for their care and treatment.

6.2. The parties acknowledge that each maintains a comprehensive compliance program. Each party and its employees and agents will be subject to the policies and procedures of its own compliance program. To the extent Service Provider or the Personnel provide any Purchased Services on the premises of Village, Service Provider and any such Personnel shall comply with Village's compliance plan, policies and procedures, a copies of which shall be provided or made available to Service Provider by Village. Village shall provide Personnel with applicable training on such compliance plan consistent with and to the extent also provided to Village's staff.

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6.3. Each party (the “*Receiving Party*”) shall keep confidential and not disclose the Confidential Information (as hereinafter defined) of the other party (the “*Disclosing Party*”) to any third person, excepting the Receiving Party’s own employees, agents, attorneys and accountants with a need to know such Confidential Information. For purposes of the foregoing, “*Confidential Information*” means information in any form pertaining to the businesses, assets, facilities, finances, contractual relationships, activities or services, regulatory compliance, strategic plans, processes, or other matters maintained with an expectation of privacy. Confidential Information shall not include information of a Disclosing Party that: (i) was previously obtained by the Receiving Party from any person or entity not acting in an improper or unauthorized manner; (ii) prior to or after the time of disclosure, is or becomes part of the public knowledge, other than as a result of any action or inaction of the Receiving Party, and other than as a result of any improper or unauthorized action of any person or entity; (iii) constitutes a public record that is subject to disclosure under Ohio’s Public Records Act; or (iii) is explicitly approved by an officer the Disclosing Party, in writing, for release by the Receiving Party. Each party acknowledges and agrees that any violation or threatened violation of Section 11(a) of this Agreement will cause irreparable injury, both financial and strategic, to the other party, which it would have no adequate remedy at law. Each party agrees that the other party shall be entitled to injunctive relief against the actual or threatened breach of this Section of this Agreement, without the necessity of proving actual damages or posting bond. With respect to the Protected Health Information (as defined in the regulations promulgated under the Health Insurance Portability and Accountability Act of 1996) of the patients of Village, Service Provider may be considered a Business Associate (as defined in the HIPAA regulations) of Village. Service Provider, therefore, agrees to and accepts the terms of the HIPAA Business Associate Addendum attached hereto as Exhibit C.

6.4. Neither party shall use the other party’s names, logos, trademarks or other identifiers in any press release, advertisement or other marketing material, without the express prior written consent of the other party. Village acknowledges and agrees that the approval by Service Provider of the use of any names, logos, trademarks and other identifiers of Service Provider or its affiliates must be made by the Chief Marketing Officer of UH or his or her designee.

6.5. This Agreement shall be governed by and interpreted in accordance with the internal laws of the State of Ohio, without regard to conflicts of laws principles. Any dispute which may arise shall be filed in a court of competent jurisdiction within SummitCuyahoga County, Ohio.

6.6. The headings of sections of this Agreement are for reference only and shall not affect the meaning of this Agreement.

6.7. Service Provider and Village are independent entities and nothing in this Agreement shall be construed or be deemed to create an employment, joint venture, partnership or any relationship other than that of independent parties contracting with each other solely for the purposes of carrying out the terms and conditions of this Agreement.

6.8. The provisions of Sections 4 and 6, shall survive and be binding on both parties to this Agreement after termination of this Agreement.

6.9. If any part of this Agreement should be held to be void or unenforceable, such part will be treated as severable, leaving valid the remainder of this Agreement notwithstanding the part or parts found void or unenforceable.

6.10. All prior understandings and agreements between the parties are merged into this Agreement, which Agreement sets forth the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements, commitments, representations, understandings, or

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negotiations, oral or written, relating to the subject matter hereof. This Agreement may not be amended or modified in any manner except by a writing signed by both parties.

6.11. This Agreement may not be assigned by either party without the written consent of the other party hereto; provided, however, that Service Provider shall be permitted to utilize its affiliates and subcontractors to provide any Purchased Service. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. Except as expressly set forth herein, this Agreement is not intended to confer any rights or remedies upon any other person or entity.

6.12. No waiver by any party hereto of any condition or provision of this Agreement to be performed by another party shall be valid unless in writing, and no such valid waiver shall be deemed a waiver of any similar or dissimilar provisions or conditions at the same time or at any prior or subsequent time.

6.13. If either of the parties hereto is delayed or prevented from fulfilling any of its obligations under this Agreement by force majeure, said party shall not be liable under this Agreement for said delay or failure. "*Force majeure*" shall mean any cause beyond the reasonable control of a party, including but not limited to, act of God, act or omission of civil or military authorities of a state or nation, fire, strike, flood, riot, war, terrorism, delay of transportation or any other act or omission beyond the reasonable control of a party.

6.14. The parties acknowledge that future changes in federal, state or local law, or future judicial decisions or regulatory interpretations of law (collectively, a "*Change in Law*") may affect this Agreement and the relationships described herein. This Agreement is subject to adjustment at any time in the event, and to the extent, required by any state or Federal government agency or authority, to maintain the tax exempt status of any UH entity under the Internal Revenue code and/or the law of the State of Ohio and/or to comply with any other law or regulation. In the event of any proposed or actual Change in Law that, in the opinion of legal counsel for any party, would or does invalidate any provision of this Agreement or cause any party hereto to be in violation of law in performing its duties and obligations hereunder, either party may request renegotiation of the Agreement by giving written notice to the other party. The parties agree to negotiate in good faith revisions to the provision or provisions which are in violation. In the event the parties are unable to agree to new or modified terms as required to bring the entire Agreement into compliance within thirty (30) days, either party may terminate this Agreement on written notice to the other party.

6.15. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument. Signatures transmitted by facsimile or other electronic means have the same legal effect as the originals.

6.16. Service Provider and Village are independent entities and nothing in this Agreement shall be construed or be deemed to create any relationship other than that of independent parties contracting with each other solely for the purposes of carrying out the terms and conditions of this Agreement.

6.17. Any notice, consent, request, instructions, approval or other communications required or permitted under this Agreement or any other document or instrument delivered in connection herewith shall be deemed to have been validly given, made or served if in writing and delivered by hand, or mailed by certified United States mail, return receipt requested, postage prepaid and properly addressed, or sent by overnight express, to the respective party to whom such notice, consent, instructions, approval or other communication relates at the following addresses:

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To the Service Provider at: University Hospitals Health System, Inc.
3605 Warrensville Center Road
Shaker Heights, Ohio 44122
Attn: Chief Operations Officer

with a copy to: University Hospitals Health System, Inc.
3605 Warrensville Center Road
Shaker Heights, Ohio 44122
Attn: Chief Legal Officer

To Village at: Village of Richfield
4410 W. Streetsboro

Rd.

Richfield, OH 44286
Attn: Fire Chief

with a copy to: Roetzel & Andress
Attn: Ben Chojnacki
1375 E. 9th Street, 10th Floor
Cleveland, OH

44141

Attn: _____

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or such other address as shall be furnished in writing by any party to the other party. All such notices shall be deemed given on the date of receipt, as evidenced by return receipt of courier record.

6.18. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of both parties have participated in the preparation hereof.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the parties have hereunto executed this Agreement as of the Effective Date.

SERVICE PROVIDER: UNIVERSITY HOSPITALS HEALTH SYSTEM, INC.

By: _____
Name: _____
Title: _____

VILLAGE: VILLAGE OF RICHFIELD

By: _____
Name: _____
Title: _____

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EXHIBIT A
PURCHASED SERVICES

UH will provide onsite health and wellness services overseen by the physician medical director. The health and wellness services will be provided on site by utilizing our highly focused team of healthcare providers with expanded credentials to support a variety of health care, education and wellness needs to include physical assessments and wellness screenings.

The pricing for these services will be billed to the Village of Richfield per the itemized physical pricing provided.

Public Safety Annual Physical	
Medical and Occupational/Environmental Questionnaire	
Comprehensive, Hands-On Physical Exam	
Vital Signs: Height, Weight, Blood Pressure, Pulse	
Sleep Disorder Evaluation	
Back Health Evaluation	
Personal Consultation with Review of Testing Results	
Audiogram	
Titmus Eye Exam	
	Total per Patient: \$240

Lab Testing	Cost per Patient
Urinalysis	\$30
Comprehensive Metabolic Panel	\$10
Complete Blood Count	\$10
Hemoccult Stool Test – Colon Screening	\$15
Total Lipid Panel	\$10
Thyroid Test TSH	\$10
PSA – Prostate Screening	\$15
Testosterone	\$10
Hemoglobin A1C	\$15

Ultrasound Screenings	Cost per Patient Test
Echocardiogram	\$100
Carotid Arteries	\$100
Aorta and Aortic Valve	\$100
Liver, Gallbladder, Pancreas, Kidneys, Spleen	\$100
Bladder	\$100
Thyroid	\$100
Prostate	\$100
Testicular	\$100
Ovaries and Uterus	\$100

Other Testing Rates	
Cardiac Stress Test	\$400 per Patient
Spirometry	\$100 per Patient
Fitness Evaluations	\$100 per Hour

EXHIBIT C
BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum (“Addendum”), is effective as of the Effective Date of the Underlying Agreement (defined below) (the “Effective Date”) by and between the Village of Richfield (“Covered Entity”) and University Hospitals Health System, Inc. (“Business Associate”).

Covered Entity and Business Associate (each, a “Party” and, collectively, the “Parties”) have entered into one or more underlying agreements, including without limitation the Purchased Services Agreement effective as of July 1, 2023 (collectively, the “Underlying Agreement”), that call for Business Associate to provide certain services that require or involve Business Associate’s use or access to PHI (as defined below). The Parties are committed to complying with HIPAA Rules (as defined below). This Addendum sets forth the terms and conditions pursuant to which PHI will be used, maintained and disclosed by Business Associate and its Subcontractors during and following the term of the Underlying Agreement.

1. Definitions.

(a) “HIPAA Rules” means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164. A reference in this Addendum to a section in the HIPAA Rules means the section as in effect or as amended.

(b) “PHI” means Protected Health Information created or obtained by Business Associate or its Subcontractors or agents in the performance of the Services or on behalf of Covered Entity.

(c) “Services” shall mean those services, duties or other obligations to be undertaken by Business Associate and/or its Subcontractors on behalf of, or for the benefit of, Covered Entity pursuant to the Underlying Agreement.

(d) The following capitalized terms used in this Addendum shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

2. Permitted Uses and Disclosures.

(a) Services. Business Associate may use and disclose PHI as necessary to perform the Services. All other uses not specifically authorized by this Addendum are prohibited. Business Associate may disclose PHI for the purposes authorized by this Addendum only to its employees, Subcontractors and agents as permitted by or as required by the Privacy or Security Rule, but only for the purpose of performing services for Covered Entity.

(b) Business Activities of the Business Associate. Unless otherwise limited herein and if such Use or Disclosure of PHI would not violate the Privacy or Security Rules if done by the Covered Entity, the Business Associate is permitted to:

(i) use the PHI in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of the Business Associate to the Covered Entity provided that such uses are permitted under state and federal confidentiality laws;

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(ii) disclose the PHI in its possession to third parties for the purpose of its proper management and administration or to fulfill any present or future legal responsibilities of the Business Associate to the Covered Entity, provided that the Business Associate represents to Covered Entity, in writing, that (A) the Disclosures are Required by Law, as provided for in 45 C.F.R. §164.512 or (B) the Business Associate has received from the third party written assurances regarding its confidential handling of such PHI as required under 45 C.F.R. § 164.504(e)(4) and §164.314, and the third party notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached; and

(iii) provide Data Aggregation services for the Covered Entity relating to the Health Care Operations of the Covered Entity.

3. Responsibilities with Respect to PHI. With regard to its Use and/or Disclosure of PHI, the Business Associate shall:

(a) not use or disclose PHI other than as permitted or required by this Addendum or the Underlying Agreement or as Required by Law;

(b) use reasonable and appropriate safeguards to prevent the Use or Disclosure of PHI, other than as provided for in this Addendum, the Underlying Agreement or as Required by Law;

(c) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI pursuant to 45 CFR. § 164, Subpart C;

(d) comply with all applicable requirements of the Security Rule contained in 45 CFR § 164.308, § 164.310, § 164.312, § 164.314 and § 164.316 ;

(e) report, in writing, to Covered Entity within five (5) business days any Use or Disclosure of PHI not provided for by this Addendum or the Underlying Agreement of which it becomes aware, including Breaches of Unsecured Protected Health Information as required at 45 CFR 164.410, and any Security Incident of which it becomes aware, and cooperate with the Covered Entity in any mitigation or Breach reporting efforts, which notification shall include: (i) the Individual who has been, may be or is reasonably believed to have been affected by the Breach; (ii) the date of the Breach; (iii) the date of the discovery of the Breach; (iv) the scope and nature of the Breach; and (v) any steps Business Associate has taken to mitigate any harmful effects of the Breach and to protect against any further Breaches;

(f) in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree in writing to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information, including but not limited to the implementation of reasonable and appropriate safeguards to protect Covered Entity's PHI;

(g) ensure that neither Business Associate nor any agent or Subcontractor to whom the Business Associate provides PHI exports PHI beyond the borders of the United States of America;

(h) in accordance with § 45 CFR 164.502, not receive remuneration in exchange for any PHI, subject to the exceptions contained in the §45 CFR 164.502, without a valid authorization from the applicable Individual that includes a specification of whether the PHI can be further exchanged for remuneration;

(i) within five (5) business days of a request by Covered Entity, make available PHI in a Designated Record Set, if applicable, to Covered Entity, as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524;

(j) within five (5) business days of a request by Covered Entity, make any amendment(s) to PHI, if applicable, in a Designated Record Set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526;

(k) within five (5) business days of receipt of a written request from Covered Entity, make available to Covered Entity information necessary for Covered Entity to make an accounting of Disclosures of PHI about an Individual in accordance with 45 CFR 164.528;

(l) to the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s);

(m) make its internal practices, books, and records available to the Secretary and to the Covered Entity for purposes of determining compliance with the HIPAA Rules;

(n) comply with Minimum Necessary standard set forth at 45 CFR 164.502(b); and

(o) mitigate, to the extent practical, any harmful effect known to Business Associate of a Breach or Security Incident that occurs with respect to PHI used, disclosed or maintained by Business Associate or its Subcontractors and agents.

4. Termination.

(a) Termination without Cause. Either Party may terminate this Addendum by written notice to the other Party upon the later of: (i) the termination of the Underlying Agreement; or (ii) the last date that Business Associate or any of its Subcontractors and agents has possession or control of any PHI.

(b) Termination for Cause. Covered Entity may immediately terminate this Addendum in the event of a breach of a material term of this Addendum by Business Associate or any of its Subcontractors or agents.

(c) Effect of Termination. The Underlying Agreement shall terminate immediately upon the termination of this Addendum regardless of the reason for the termination of this Addendum. Upon termination for any reason, Business Associate will promptly return or destroy (as directed by Covered Entity), in accordance with standards approved by the Department of Health and Human Services, all PHI, in whatever format, maintained by Business Associate and/or its Subcontractors. Business Associate will provide written assurance to Covered Entity that all PHI maintained by Business Associate and/or its

Subcontractors has been destroyed in accordance with standards approved by the Department of Health and Human Services, or returned to Covered Entity.

(d) PHI Retained by Business Associate. Notwithstanding the requirements of Section 4(c) above, it shall not be a breach of this Addendum if it is not feasible for Business Associate to return and/or destroy PHI; provided that: (i) Business Associate will notify Covered Entity in writing within thirty (30) days from the date of termination; (ii) such notification includes a statement that Business Associate has determined that it is infeasible to return and/or destroy the PHI in its possession and explains specific reasons for such determination; and (iii) all protections, limitations, and restrictions contained in this Addendum shall continue in full force and effect with respect to all PHI retained by Business Associate after the termination of this Addendum, any further Uses and/or Disclosures of PHI shall be limited to the purposes that make the return and/or destruction of the PHI infeasible for so long as Business Associate maintains the PHI.

(e) PHI Retained by Subcontractors. Notwithstanding the requirements of Section 4(c) above, it shall not be a breach of this Addendum if it is not feasible for a Subcontractor or agent of Business Associate to return and/or destroy PHI; provided that: (i) Business Associate will notify Covered Entity in writing within thirty (30) days from the date of termination; (ii) such notification identifies the Subcontractor or agent and the retained PHI and includes a statement that Business Associate has determined that it is infeasible to return and/or destroy the PHI in possession of the Subcontractor or agent and explains specific reasons for such determination; and (iii) all protections, limitations, and restrictions contained in this Addendum shall continue in full force and effect with respect to all PHI retained by the Subcontractor or agent after the termination of this Addendum, any further Uses and/or Disclosures of PHI shall be limited to the purposes that make the return and/or destruction of the PHI infeasible for so long as the Subcontractor or agent maintains the PHI.

5. Injunctive Relief. Notwithstanding any rights or remedies provided for in this Addendum or the Underlying Agreement, the parties agree that a breach of this Addendum may cause significant damage that would be difficult to quantify and Covered Entity shall be entitled to injunctive or other equitable relief (without the posting of bond) to prevent or stop the unauthorized Use or Disclosure of PHI by Business Associate or its Subcontractors or agents of Business Associate or by any third party that received or otherwise obtained PHI from Business Associate.

6. Modification.

(a) Mutual Amendment. Except as set forth below, no amendment of this Addendum shall be effective unless set forth in writing and signed by both Parties.

(b) Waiver. No waiver or any term or obligation under this Addendum shall be effective unless set forth in writing and signed by the waiving party. No failure to exercise or partial exercise by Covered Entity of a right, remedy or privilege shall preclude any further exercise of the same.

7. Notices. Any notice to be given to Covered Entity or Business Associate under this Addendum shall be given in writing pursuant to the notice provisions of the Underlying Agreement and with a copy to the UH Privacy Officer, UH Management Services Center, 3605 Warrensville Center Road, Mail Stop #

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MSC 9105, Shaker Heights, Ohio 44122. Any Party desiring to change its listed address must give written notice in the foregoing manner to the other Party.

8. Further Assurances. The Parties agree to exercise good faith in the performance of this Addendum. Each Party shall in good faith execute, acknowledge or verify, and deliver any and all documents which may from time to time be reasonably requested by the other Party to carry out the purpose and intent of this Addendum.

9. Property Rights. As between Covered Entity and Business Associate, PHI shall be and remain the property of Covered Entity regardless of Business Associate's Use, creation, possession and/or control of such PHI. Business Associate agrees that it acquires no title or rights to PHI, or to Limited Data Sets or De-Identified Information constructed from PHI, as a result of this Addendum or the Underlying Agreement.

10. Interpretation. This Addendum is governed by the laws of the State of Ohio, without regard to conflict of law principles. The Parties agree that any ambiguity in this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA Rules, including any subsequent amendments or interpretations. Nothing express or implied in this Addendum shall confer upon any person, other than Business Associate and Covered Entity and their respective successors or permitted assigns, any rights, remedies, obligations or liabilities whatsoever. It is the intent and agreement of the Parties that in performing this Addendum, Business Associate is an independent contractor of Covered Entity, and not an agent of Covered Entity. The headings and captions used in this Addendum are convenience only and shall not modify or affect the interpretation of any terms.

