

COVER SHEET TO

AGREEMENT FOR EMPLOYEE ASSISTANCE PROGRAM SERVICES

Employer's Name City of McKinney ("Employer")

Employer's Address 401 East Virginia Street, McKinney, TX 75069

Employer's Contact Person Sheryl Williams

Evernorth Care Solutions, Inc.'s Name Evernorth Care Solutions, Inc. for itself ("Evernorth") and its affiliates

Evernorth Care Solutions, Inc.'s Address One Express Way, Saint Louis, MO 63121

Evernorth Care Solutions, Inc.'s Contact Person Eva Borden, Vice President

Agreement Effective Date February 3, 2026

Effective Date of Amendment Effective by Cover Sheet N/A

Fee for Service \$3.65 per employee per month

Number of Employer Account Service Hours 10 per 1000 employees

Number of Visits Available per Assessed Problem for Clinical Services Ten (10)

Other SAP/DOT Services - \$950.00 per case

*The rest of this page intentionally left blank.*

IN WITNESS WHEREOF the parties hereto have caused this Cover Sheet to be executed as of the Effective Date shown on this Cover Sheet.

**CITY OF MCKINNEY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EVERNORTH CARE SOLUTIONS, INC.**

By: \_\_\_\_\_

Name: Eva Borden

Title: Vice President

Date: \_\_\_\_\_

**WITH RESPECT TO THE PRIVACY  
ADDENDUM (EXHIBIT 3) ONLY:  
\*GROUP HEALTH PLAN (EMPLOYER'S PLAN)**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\* **Group Health Plan** is a defined term under HIPAA (see 45 C.F.R. 160.103). It generally refers to an employee welfare benefit plan maintained by an employer for its employees. Typically, an Employer (Plan Sponsor) will designate an individual or a committee to carry out the Group Health Plan. An individual so authorized to act on behalf of the Group Health Plan should sign here.

## AGREEMENT FOR EMPLOYEE ASSISTANCE PROGRAM SERVICES

This Agreement for Employee Assistance Program Services ("Agreement") is made as of the date set forth as the Effective Date on the Cover Sheet to this Agreement between Evernorth and the Employer identified on the Cover Sheet to this Agreement as Employer.

### W I T N E S S E T H:

WHEREAS, Employer wishes to provide an Employee Assistance Program ("EAP") which includes Clinical Services as described herein to its employees, their dependents, and members of their households ("Participants") who do not reside in California and/or Nevada. The Clinical Services' components of the EAP provided to Participants who reside in California and/or Nevada are covered under the short-term counseling policies issued to Employer by Cigna Health and Life Insurance Company, an Evernorth affiliate ("CHLIC") and not by the terms of this Agreement. All other EAP services for such Participants are covered under the terms of this Agreement; and

WHEREAS, for Clinical Services provided to Employer's California and/or Nevada residents, Evernorth shall provide to Employer for delivery to each insured employee an individual certificate issued by CHLIC. The Employer will be responsible for distributing the certificate to its employees. The certificate will show the benefits provided under the policy. Nothing in the certificate will change or void the terms of the policy.

WHEREAS, Evernorth has established and administers an EAP and has agreed to provide its EAP services to Employer for Participants.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, Employer and Evernorth agree as follows:

#### I. Responsibilities of Evernorth

##### EAP-Services

1.1. Clinical Services: For mental health, alcoholism or substance use disorder services ("Clinical Services"), Evernorth shall provide assessment, referral and/or short-term problem resolution sessions, up to the maximum number of visits per assessed problem as set forth on the then effective Cover Sheet, per contract year.

1.2. Work/Life Support Services: For family care, legal/financial information, Healthy Rewards, and promotional communications which includes but is not limited to, Frequently Asked Questions, article library, initial registration, online eligibility check, self-assessment tool and provider directory and search vehicle, Evernorth shall provide assessment and referral services as requested by Participant or Employer. Legal assessment and referral services are not available to Participants if the issue is related to a potential cause of action against Employer. Any additional services ("Menu Options") purchased by Employer are attached hereto as Exhibit 2 of this Agreement.

1.3. Services shall be provided by Evernorth through its employees and/or providers of health care services who contract directly or indirectly with Evernorth to provide EAP Clinical Services to Participants ("Participating Providers"). Evernorth employees, Participating Providers and/or contractors shall look solely to Evernorth for payment for assessment, referral and/or short-term problem resolution services provided pursuant to this Agreement. Participants may access services from Evernorth through a toll-free telephone number maintained by Evernorth twenty-four (24) hours a day, seven (7) days a week.

1.4. Participant calls to the Evernorth toll-free number shall be handled by a personal advocate who shall refer the Participant to an appropriate resource.

- A. For Clinical Services, Evernorth shall offer an appointment promptly with a Participating Provider. In a Clinical Services' emergency, trained clinicians shall be available at Evernorth to telephonically address the situation and to make a referral to a Participating Provider or crisis intervention center for assessment, referral and/or short-term problem resolution.
- B. For Work/Life Support Services, Evernorth may refer Participant to contracted specialty firms or to local resources for assessment and referral. Participants shall be responsible for costs of services provided pursuant to a referral. Contracted specialty firms may offer Participant a discount rate. Work/Life Support legal services and/or financial services shall include, at no charge to Participants, an initial thirty (30) minute consultation.

1.5. For Clinical Services, Evernorth shall maintain a nationwide network of Participating Providers who shall assess the problem, provide short-term problem resolution and/or guide the Participant to appropriate local treatment resources.

1.6. Fees for Clinical Services other than assessment, referral and short-term problem resolution services within the maximum number of visits per assessed problem as shown on the Cover Sheet shall be the Participant's responsibility. Evernorth shall not represent to the Participant that Evernorth's identification of or referral to treatment resources constitutes coverage under the provisions of Participant's medical coverage plan.

1.7. Evernorth shall provide Account Services as set forth in Exhibit 1.

1.8. Participant-facing communication materials related to the availability of EAP services shall be available electronically.

1.9. Evernorth shall provide reports concerning utilization of EAP services by Participants on a quarterly basis to Employer. Individually identifiable Participant information shall be the property of Evernorth. Without the appropriate written consent of the Participant, Evernorth shall provide no information to Employer that includes any Participant specific identifiable information.

1.10. Evernorth and Employer agree not to use for any purposes other than the performance of this Agreement, and further agree not to disclose to others, any confidential or proprietary technical or business information of the other party obtained in connection with the performance of any services rendered, without the prior written consent of the other party. Each party shall treat and shall require its employees to treat as strictly confidential all such technical and business information it has learned in the course of this Agreement, and in discussions and proposals leading up to this Agreement. The provisions of this section shall survive the termination of this Agreement. Evernorth shall maintain as confidential all patient identifiable information received in the course of performing services under this Agreement, and shall not use or disclose such information except as may be permitted or required under applicable state and federal law.

1.11. Evernorth shall provide management consultations to supervisors who request assistance for work related problems of employees. Evernorth shall provide assistance with mandatory referrals for employees who are required, under continuation of employment, drug free workplace or other workplace policies, to receive an assessment under the EAP. However, Evernorth shall not nor shall any of its Participating Providers provide advice and/or make a determination regarding an employee's (a) ability to safely perform the functions of his/her job, (b) ability to return to work after a medical disability, involuntary suspension from duties or administrative leave of absence, and/or (c) potential for workplace violence. No individually identifiable employee information concerning the employee's treatment shall be provided without the employee's written consent on a form approved by Evernorth.

1.12. Evernorth shall provide to Employer access to participating providers that have successfully completed the qualification training and passed the exam required and continues to meet all on-going requirements for a provider to be identified as a Department of Transportation ("DOT") Substance Abuse Provider ("SAP"). For employees designated by Employer as holding a DOT regulated position, Evernorth will consult with Employer and/or Employer's designated employee representatives as to SAP process and actions required in response to violations, provide Employer with name(s) of SAP who is knowledgeable in the applicable modal rule, ensure the SAP is aware of Employer-specific communication and/or process requirements, monitor case progress and disposition, and assist with return to work planning pursuant to Employer's policies and procedures.

## II. Responsibilities of Employer

2.1. Employer shall distribute to employees the communication materials described in paragraph 1.8 above, at Employer's expense and shall cooperate with Evernorth in other reasonable efforts to otherwise communicate with Participants concerning the services available to them pursuant to this Agreement.

2.2. Employer shall inform Evernorth of Employer's management policies and procedures that guide supervisors in handling employees with performance concerns in order for Evernorth to provide the training set forth in Exhibit 1. Evernorth assumes no responsibility for the legal appropriateness of such policies and procedures.

2.3. Employer shall compensate Evernorth for services provided under this Agreement in the amount shown on the then effective Cover Sheet. Employer agrees to pay Evernorth on the first day of each covered month. For SAP services, the full \$950.00 per case amounts payable to Evernorth shall be billed to Employer's main billing contact for this Agreement and paid to Evernorth by the date as indicated on the invoice. Payments by Employer shall be sent to Evernorth at the address set forth on the then effective Cover Sheet to this Agreement. Retroactive adjustments to the amount of the per employee per month fees paid to Evernorth shall be limited to twelve (12) months prior to the date the Employer notifies Evernorth of such a retroactive adjustment.

2.4. The amount set forth on the then effective Cover Sheet shall not include any state premium, sales, use tax, or similar tax (including penalties or interest thereon) assessed on the basis of the services provided by Evernorth pursuant to this Agreement.

2.5. Evernorth shall have the right to revise Evernorth's fees and/or the number of hours available to Employer as Employer Account Services (i) twenty-three (23) months from the effective date of this Agreement, (ii) at any time thereafter, but no more frequently than once every twelve (12) months after the initial twenty-three (23) month term, by giving Employer not less than thirty (30) days' prior written notice, and (iii) when the number of employees varies by more than 10% from the number included on the first Evernorth billing for the initial twenty-three (23) month term and each subsequent twelve (12) month period of the Agreement.

2.6. Employer agrees that, annually, at least ninety (90) days prior to the anniversary date of the Effective Date of this Agreement, Employer shall furnish to Evernorth the number of employees who are Participants by state of residence.

## III. Miscellaneous Provisions

3.1. All notices or other communications hereunder, shall be in writing and shall be deemed to have been duly made when a) delivered in person, b) delivered to an agent, such as an overnight or similar delivery service, c) delivered electronically, or d) deposited in the United States mail, postage prepaid, and addressed to the address and contact person set forth on the then effective Cover Sheet to this Agreement. Notices shall be effective upon receipt by the party to which they are addressed.

3.2. Amendments to any of the provisions of this Agreement shall be binding on either party only if such amendment is in writing and signed by the duly authorized representatives of both parties. The

parties agree that amendments in the form of renewal notices or renewal letters will become effective on the renewal effective date unless Employer notifies Evernorth of its objection to the renewal terms at least thirty (30) days prior to the effective date of the renewal.

3.3. This Agreement shall not be assigned without the written consent of the other party, except that either party may assign the Agreement to an affiliate by providing notice to the other party.

3.4. No waiver by either party of a breach or default of any provision of this Agreement, failure by either party, on one or more occasions, to enforce any of the provisions of this Agreement, or failure by either party to exercise any right or privilege hereunder shall be construed as a waiver of any subsequent breach or default of a similar nature, or as a waiver of such rights or privileges hereunder, unless and solely to the extent waived by the party against whom the waiver is sought in writing and signed.

3.5. Employer hereby delegates to Evernorth the authority, responsibility, and discretion to determine all questions of eligibility and status under the EAP, to interpret and construe the provisions of the EAP as necessary to reach factually supported conclusions and to make a full and fair review of each claim for EAP benefits which have been denied by Evernorth pursuant to the requirements of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Evernorth assumes no responsibility for Employer's ERISA plan except as set forth in this section.

3.6. This Agreement contains the entire agreement between Employer and Evernorth with respect to the services provided hereunder, and supersedes any and all prior discussions or agreements, written or oral, with respect thereto.

3.7 Any dispute between the parties arising from or relating to the performance or interpretation of this Agreement ("Controversy") shall be resolved exclusively pursuant to the following procedures. Neither party may bring legal action against the other without first complying with the provisions of this Section 3.7.

- A. Any Controversy shall first be referred to an executive level employee of each party who shall meet and confer with his/her counterpart to attempt to resolve the dispute ("Executive Review") as follows: The disputing party shall give the other party written notice of the Controversy and request Executive Review. Within twenty (20) days of such written request, the receiving party shall respond to the other in writing. The notice and the response shall each include a summary of and support for the party's position within thirty (30) days of the request for Executive Review, an employee of each party, with full authority to resolve the dispute, shall meet and attempt to resolve the dispute.
- B. In the event that a Controversy has not been resolved under the Executive Review process in Section 3.7A above, then the parties may agree to mediate the Controversy or the Controversy may be settled by litigation.
- C. If the parties are unable to resolve the Controversy through mediation, the parties agree to submit any disputes or claims arising out of or related to this Agreement to a court of competent jurisdiction in Collin County, Texas.

3.8. This Agreement shall remain in effect from the Effective Date until terminated by Evernorth upon Employer's failure to pay Evernorth as provided in Section 2.3, or by either party with thirty (30) days' prior written notice to the other party.

3.9. This Agreement shall be governed by, and shall be construed in accordance with all applicable federal laws, including ERISA, and the laws of the state of Texas.

3.10. The terms of Exhibit 3, Privacy Addendum ("Business Associate Agreement"), shall be incorporated herein.

3.11. Employer and Evernorth's relationship with respect to each other is that of independent contractor and nothing in this Agreement is intended, and nothing shall be construed to, create an employer/employee, partnership, principal-agent, or joint venture relationship.

#### IV. Liability and Indemnity

4.1. To the extent permitted by law, each party ("the Indemnifying Party") agrees to indemnify and hold harmless the other party (the "Indemnified Party") from any claims, losses, damages, liabilities or expenses (including court costs and reasonable attorneys' fees) arising out of or resulting from the negligent, willful, fraudulent or criminal conduct or omission or breach of this Agreement by the Indemnifying Party or its officers, directors, employees, or agents, but only if the Indemnified Party has not, by act or failure to act, materially jeopardized the position of the Indemnifying Party with respect to the resolution or the defense of the claim. An Indemnifying Party may not, without the prior written consent of the Indemnified Party, settle or compromise any claim or consent to the entry of any judgment with respect to which the indemnification is being sought hereunder unless such settlement, compromise or consent includes an unconditional release of the Indemnified Party from all liability arising out of such claim, and does not contain any equitable order, judgment or term which in any manner affects, restrains or interferes with the business of the Indemnified Party or any of its respective affiliates. The foregoing does not include indemnification for the negligent acts or omissions of Evernorth's Participating Providers. By contract, Evernorth requires its Participating Providers to maintain adequate amounts of professional liability insurance, and the Participating Providers remain responsible for their own professional conduct.

4.2. In the event that the parties have been found jointly and severally liable to a third party, liability shall be apportioned consistent with the relative degree of fault of each party.

4.3. In the event litigation is instituted by a third party against the Employer and/or Evernorth concerning any matter under the EAP, each party to this Agreement shall have sole authority to select legal counsel of its choice.

4.4. The indemnification provided for by the foregoing paragraph shall survive the termination of this Agreement.

4.5. Notwithstanding anything to the contrary contained in this Agreement, neither Evernorth nor Employer shall be liable to the other party, in contract or in tort, under statute or otherwise, for lost profits, consequential, indirect, punitive, exemplary or special damages of any kind or nature.

**EXHIBIT 1**  
**EMPLOYER ACCOUNT SERVICES**

Employer is entitled to utilize, for the delivery of the Employer Account Services listed below, the number of hours set forth on the then effective Cover Sheet to this Agreement in each twelve (12) month period from the Effective Date of this Agreement. Pro-rata adjustments in this number of hours may be computed pursuant to Section 2.5 of this Agreement.

- \* Employee Orientation Sessions
- \* Management/Supervisory Training Sessions
- \* Educational/Wellness Seminars
- \* Critical Incident Response Services
- \* Other Employer Account Services - Employer Account Services requested by Employer for which Evernorth notifies Employer that those services shall be counted against Employer Account Services' hours, including but not limited to, executive briefings, reduction in workforce counseling, and Employer's on-site EAP promotional activities conducted by Evernorth EAP managers or Evernorth contracted EAP affiliates.

Delivery of these Employer Account Services shall be as agreed upon by the parties. In the event Employer does not utilize or only partially utilizes these Employer Account Services' hours during the twelve (12) month period to which they relate, Employer shall not be entitled to any refund or account credit, or to carry those hours forward. If Employer cancels its request for these services or reduces the number of hours initially requested after an independent provider has been secured by Evernorth, Evernorth shall deduct that number of hours the provider had been secured from Employer Account Services' hours.

Additional Employer Account Services' hours may be purchased by Employer from Evernorth at Evernorth's fee-for-service rates in effect at the time of the request for such Employer Account Services. Delivery of these additional Employer Account Services' hours shall be as agreed upon by the parties.

## EXHIBIT 2

### MENU OPTIONS\*\*\*\*

- Department of Transportation/Substance Abuse Professional (DOT/SAP) Services

\*\*\*\* *Only those additional Menu Options purchased by Employer will be listed on this page.*

## EXHIBIT 3

### PRIVACY ADDENDUM “Business Associate Agreement”

#### I. GENERAL PROVISIONS

**Section 1. Effect.** As of the Effective Date, the terms and provisions of this Addendum are incorporated in and shall supersede any conflicting or inconsistent terms and provisions of the Agreement for Employee Assistance Program Services to which this Addendum is attached, including all exhibits or other attachments to and all documents incorporated by reference (the “Agreement”), except for any provisions of the Agreement which are more stringent regarding the use or disclosure of Protected Health Information (“PHI”) by Evernorth than this Addendum. Any such more stringent provisions in the Agreement shall prevail over this Addendum. This Addendum sets out terms and provisions relating to the use and disclosure of PHI without written authorization from the Individual.

**Section 2. Amendment to Comply with Law.** Evernorth, Employer (also referred to as “Plan Sponsor”) and the group health plan that is the subject of the Agreement (also referred to as the “Plan”) agree to amend this Addendum to the extent necessary to allow either the Plan or Evernorth to comply with applicable laws and regulations including but not limited to the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (45 C.F.R. Parts 160 to 164) (“HIPAA Privacy and Security Rules”) as well as any and all federal state and local laws pertaining to patient record confidentiality including, but not limited to, state mental health and developmental disability and confidentiality laws, state and federal drug and alcohol confidentiality laws and state AIDS/HIV confidentiality laws.

**Section 3. Relationship of Parties.** The parties intend that Evernorth is an independent contractor and not an agent of the Plan or the Plan Sponsor.

#### II. PERMITTED USES AND DISCLOSURES BY EVERNORTH

**Section 1. Uses and Disclosures Generally.** Except as otherwise provided in this Addendum, Evernorth may use or disclose PHI to perform functions, activities or services for, or on behalf of, the Plan as specified in the Agreement, provided that such use or disclosure would not violate the HIPAA Privacy & Security Rules, 42 C.F.R. Part 2 (Confidentiality of Substance Use Disorder Patient Records), and other applicable federal and state privacy laws if done by the Plan. In the event there are inconsistencies between HIPAA and 42 C.F.R. Part 2 or state privacy laws, the more restrictive rule(s) will control.

**Section 2. To Carry Out Plan Obligations.** To the extent Evernorth is to carry out one or more of the Plan’s obligations, except as otherwise limited by the Agreement or 42 C.F.R. Part 2, under Subpart E of 45 C.F.R. Part 164, Evernorth agrees to comply with the requirements of Subpart E that apply to the Plan in the performance of such obligations.

#### **Section 3. Management and Administration.**

- (a) Evernorth may use PHI for the proper management and administration of Evernorth, or to carry out the legal responsibilities of Evernorth.
- (b) Evernorth may disclose PHI for the proper management and administration of Evernorth, provided that disclosures are: (i) required by law or (ii) Evernorth obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it is disclosed to the person, and the person notifies Evernorth of any instances of which it is aware in which the confidentiality of the information has been breached.
- (c) Evernorth may use or disclose PHI to provide Data Aggregation services relating to the Health Care Operations of the Plan, or to de-identify PHI, except as otherwise limited by 42 C.F.R. Part 2. Once information is de-identified, this Addendum shall not apply.

**Section 4. Required or Permitted by Law.** Evernorth may use or disclose PHI as required by law or permitted by 45 C.F.R. § 164.512, except as otherwise limited by 42 C.F.R. Part 2.

**Section 5. Disclosure of PHI to Plan Sponsor.** The Plan acknowledges and agrees that, except as otherwise limited by 42 C.F.R. Part 2, the HIPAA Privacy and Security Rules allow the Plan to permit Evernorth to disclose or provide access to PHI, other than Summary Health Information, to the Plan Sponsor only after the Plan Sponsor has amended its plan documents to provide for the permitted and required uses and disclosures of PHI and to require the Plan Sponsor to provide a certification to the Plan that certain required provisions have been incorporated into the Plan documents before the Plan may disclose, either directly or through a business associate, such as Evernorth, any PHI to the Plan Sponsor. The Plan hereby warrants and represents that no PHI will be provided to the Plan Sponsor nor to any of its employees, agents or other persons under its control. Therefore no such Plan document amendments have been made nor any such certification received from the Plan Sponsor.

### III. OTHER OBLIGATIONS AND ACTIVITIES OF EVERNORTH

**Section 1. Receiving Remuneration in Exchange for PHI Prohibited.** Evernorth shall not directly or indirectly receive remuneration in exchange for any PHI of an Individual, unless an authorization is obtained from the Individual, in accordance with 45 C.F.R. § 164.508, that specifies whether PHI can be exchanged for remuneration by the entity receiving PHI of that Individual, unless otherwise permitted under the HIPAA Privacy Rule.

**Section 2. Limited Data Set or Minimum Necessary Standard and Determination.** Evernorth shall, to the extent practicable, limit the use, disclosure, or request of Individuals' PHI, to the minimum necessary amount of Individuals' PHI to accomplish the intended purpose of such use, disclosure, or request and to perform its obligations under the underlying Agreement and this Addendum. Evernorth shall determine what constitutes the minimum necessary to accomplish the intended purpose of such disclosure. Evernorth shall comply with 42 C.F.R. Part 2 re-disclosure requirements, including § 2.32 notice requirements.

**Section 3. Security Standards.** Evernorth shall use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to Electronic PHI to prevent use or disclosure of PHI other than as provided for by the Agreement.

**Section 4. Protection of Electronic PHI.** With respect to Electronic PHI, Evernorth shall:

- (a) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI that Evernorth creates, receives, maintains, or transmits on behalf of the Plan as required by the Security Standards;
- (b) Ensure that any agent, including a subcontractor, to whom Evernorth provides Electronic PHI agrees to implement reasonable and appropriate safeguards to protect such information; and
- (c) In the event of a Security Incident, Evernorth shall report to the Plan in writing (i) any actual, successful Security Incident without unreasonable delay and in accordance with 45 C.F.R. §164.410, when Evernorth first becomes aware of such actual, successful Security Incident and (ii) to the extent commercially reasonable, the Plan may request Evernorth to report in writing attempted but unsuccessful Security Incidents involving PHI of which Evernorth becomes aware, provided however, that such reports are not required for trivial and routine incidents such as port scans, attempts to log-in with an invalid password or user name, denial of service attacks that do not result in a server being taken off-line, malware and pings or other similar types of events.

**Section 5. Reporting of Violations.** Evernorth shall report to the Plan any use or disclosure of the PHI not provided for by this Addendum of which it becomes aware.

**Section 6. Mitigation of Violations.** Evernorth agrees to mitigate, to the extent practicable, any harmful effect from a use or disclosure of PHI in violation of this Addendum of which it is aware.

**Section 7. Security Breach Notification.** Evernorth will notify the Plan of a Breach (including privacy related incidents that might, upon further investigation, be deemed to be a Breach) without unreasonable delay and, in any event, shall comply with 45 C.F.R. § 164.402 and shall, following the discovery of a Breach of Unsecured PHI, notify the Plan of such Breach, in accordance with 45 C.F.R. § 164.410. This notification will include, to the extent known

- (a) the names of the individuals whose PHI was involved in the Breach;
- (b) the circumstances surrounding the Breach;
- (c) the date of the Breach and the date of its discovery;
- (d) the information Breached;
- (e) any steps the impacted individuals should take to protect themselves;
- (f) the steps Evernorth is taking to investigate the Breach, mitigate losses, and protect against future Breaches; and,
- (g) a contact person who can provide additional information about the Breach.

For purposes of discovery and reporting of Breaches, Evernorth is not the agent of the Plan or the Employer (as “agent” is defined under common law). Evernorth will investigate Breaches, assess their impact under applicable state and federal law, including HITECH, and will make a recommendation to the Plan regarding whether notification is required pursuant to 45 C.F.R. §164.404-408 and/or applicable state breach notification laws. With the Plan’s prior approval, Evernorth will issue notices to such individuals, state and federal agencies – including the Department of Health and Human Services, and/or the media as the Plan is required to notify pursuant to, and in accordance with the requirements of, applicable law (including 45 C.F.R. §164.404-408). In the event of a Breach affecting multiple Evernorth clients where Evernorth believes notification to affected individuals is required in accordance with applicable law, Evernorth reserves the right to issue notifications to the affected individuals without Plan approval.

Evernorth will pay the costs of issuing notices required by law and other remediation and mitigation which, in Evernorth’s discretion, are appropriate and necessary to address the Breach. Evernorth will not be required to issue notifications that are not mandated by applicable law. Evernorth shall provide the Plan with information necessary for the Plan to fulfill its obligation to report Breaches affecting fewer than 500 Individuals to the Secretary as required by 45 C.F.R. §164.408(c).

**Section 8. Disclosures to and Agreements with Third Parties.** Evernorth agrees to ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Evernorth agree to substantially the same restrictions, conditions, and requirements that apply to Evernorth with respect to such information.

Any other provision of this Addendum notwithstanding, Evernorth may decline to disclose to any third party any information which the Agreement provides may not be disclosed to the Employer.

**Section 9. Access to PHI.** Evernorth shall provide an Individual with access to such Individual’s PHI contained in a Designated Record Set in response to such Individual’s request in the time and manner required in 45 C.F.R. § 164.524. Evernorth shall comply with 42 C.F.R. Part 2 re-disclosure requirements, including §2.32 notice requirements.

**Section 10. Availability of PHI for Amendment.** Evernorth shall respond to a request by an Individual for amendment to such Individual’s PHI contained in a Designated Record Set in the time and manner required in 45 C.F.R. §164.526.

**Section 11. Right to Confidential Communications and to Request Restriction of Disclosures of PHI.** Evernorth shall respond to a request by an Individual for confidential communications or to restrict the uses and disclosures of PHI contained in such Individual’s Designated Record Set in the time and manner required by 45 C.F.R. §164.522. Evernorth shall not be obligated to agree to, or implement any restriction, if such restriction would hinder Health Care Operations or the provisions of the functions, activities or services, unless such restriction would otherwise be required by 45 C.F.R. § 164.522(a).

**Section 12. Accounting of PHI Disclosures.** Evernorth shall provide the accounting of disclosures to an Individual who requests such accounting in the time required in 45 C.F.R. Section 164.528.

**Section 13. Availability of Books and Records.** Evernorth hereby agrees to make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Evernorth on behalf of the Plan, available to the Secretary for purposes of determining the Plan's compliance with the Privacy Rule.

#### **IV. TERMINATION OF AGREEMENT WITH EVERNORTH**

**Section 1. Termination Upon Breach of Provisions Applicable to PHI.** Any other provision of this Agreement notwithstanding, this Agreement may be terminated by the Plan upon prior written notice to Evernorth in the event that Evernorth materially breaches any obligation of this Addendum and fails to cure the breach within such reasonable time as the Plan may provide for in such notice.

If Evernorth knows of a pattern of activity or practice of the Plan that constitutes a material breach or violation of the Plan's duties and obligations under this Addendum, Evernorth shall provide a reasonable period of time, as agreed upon by the parties, for the Plan to cure the material breach or violation. Provided, however, that, if the Plan does not cure the material breach or violation within such agreed upon time period, Evernorth shall terminate the Agreement at the end of such period.

**Section 2. Use of PHI Upon Termination.** The parties hereto agree that it is not feasible for Evernorth to return or destroy PHI at termination of this Agreement, therefore, the protections of this Addendum for PHI shall survive termination of this Agreement and Evernorth shall limit any further uses and disclosures of such PHI to the purpose or purposes which make the return or destruction of such PHI infeasible.

#### **V. OBLIGATIONS OF THE PLAN AND PLAN SPONSOR**

**Section 1. Disclosures Generally.** Except as otherwise provided for in this Addendum, the Plan will not request that Evernorth use or disclose PHI in any manner that would not be permissible under HIPAA or HITECH if done by the Plan.

**Section 2. Disclosures to Third Parties.** To the extent the Plan requests that Evernorth disclose PHI to a third party business associate acting for the Plan, the Plan represents and warrants that:

- (a) It only will request PHI for the purposes of Treatment, Payment, or Health Care Operations, or another permitted purpose under the HIPAA Privacy Rule;
- (b) The information requested is the minimum necessary to achieve the purpose of the disclosure; and
- (c) The Plan has a business associate agreement in place with the third party.

#### **VI. DEFINITIONS FOR USE IN THIS ADDENDUM**

**Definitions.** Certain capitalized terms used in this Addendum shall have the meanings ascribed to them by HIPAA and HITECH including their respective implementing regulations and guidance. If the meaning of any term defined herein is changed by regulatory or legislative amendment, then this Agreement will be modified automatically to correspond to the amended definition. All capitalized terms used herein that are not otherwise defined have the meanings described in HIPAA and HITECH. A reference in this Addendum to a section in the HIPAA Privacy Rule, HIPAA Security Rule, or the HITECH Act means the section then in effect, as amended.

**“Breach”** shall mean the unauthorized acquisition, access, use, or disclosure of Unsecured Protected Health Information (“PHI”) which compromises the security or privacy of such information, except where an authorized person to whom such information is disclosed would not reasonably have been able to retain such information. A Breach does not include any unintentional acquisition, access, or use of PHI by an employee or individual acting under the authority of Evernorth if such acquisition, access, or use was made in good faith and within the course and scope of the employment or other professional relationship of such employee or individual with Evernorth; any inadvertent disclosure from an individual who is otherwise authorized to access PHI at a facility operated by Evernorth to another similarly situated individual at the same facility; and such information is not further acquired, accessed, used, or disclosed without authorization by any person.

**“Business Associate”** means Evernorth Care Solutions, Inc.

**“Covered Entity”** means Plan.

**“Data Aggregation”** shall mean the combining of PHI by Evernorth with the Individually Identifiable Health Information created or received by Evernorth in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the Plan and the other covered entity.

**“Designated Record Set”** shall have the same meaning as the term “designated record set” as set forth in the Privacy Rule, limited to the enrollment, payment, claims adjudication, and case or medical management record systems maintained by Evernorth for the Plan, or used, in whole or in part, by Evernorth or the Plan to make decisions about Individuals.

**“Effective Date”** shall mean the earliest date by which Evernorth and the Plan must enter into a business associate agreement under 45 C.F.R. Part 164.

**“Electronic Protected Health Information”** shall mean PHI that is transmitted by, or maintained in, electronic media as that term is defined in 45 C.F.R. Section 160.103.

**“Individually Identifiable Health Information”** shall mean information that is a subset of health information, including demographic information collected from an individual, and:

- (i) is created or received by a health care provider, health plan, health care clearinghouse (as those terms are defined in the Privacy Standards), or employer; and
- (ii) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (a) identifies the individual, or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

**“Limited Data Set”** shall have the same meaning as the term “limited data set” as set forth in as defined in 45 C.F.R. Section 164.514(e)(2).

**“Protected Health Information” or “PHI”** shall have the same meaning as set forth at 45 C.F.R. §160.103.

**“Secretary”** shall mean the Secretary of the United States Department of Health and Human Services.

**“Security Incident”** shall have the same meaning as the term “security incident” as set forth in 45 C.F.R. §164.304.

**“Summary Health Information”** shall mean information, that may be Individually Identifiable Information, and (i) that summarizes the claims history, claims expenses, or type of claims experienced by individuals covered by the Plan; and (ii) from which the information described at 45 C.F.R. §164.514(b)(2)(i) has been deleted, except that the geographic information described in 45 C.F.R. §164.514(b)(2)(i)(B) need only be aggregated to the level of a five-digit zip code.

**“Unsecured Protected Health Information”** shall mean PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in the guidance issued under Section 13402(h)(2) of ARRA.