

**CONFIDENTIAL TRADE SECRET INFORMATION
HAS BEEN REDACTED FROM THIS AGREEMENT**

ADMINISTRATIVE SERVICES AGREEMENT

This Administrative Services Agreement (“**Agreement**”) is made and entered into as of _____, 2021 (“**Effective Date**”) by and between MS Community JV, LLC, a Delaware limited liability company (“**Newco**”), on behalf of itself and the Newco Companies (as defined below), and Medica Services Company, LLC, a Delaware limited liability company (“**MSC**”). For purposes of the Agreement, Newco and MSC are individually each a “**Party**” and, together, they are the “**Parties**.”

RECITALS

WHEREAS, in connection with the closing under that certain Contribution and Purchase Agreement, dated August 16, 2021, by and between SSM Health Care Corporation, a Missouri nonprofit corporation (“**SSM**”) and Medica Holding Company, a Minnesota nonprofit corporation (“**Medica**”), SSM caused all of the ownership interests in SSM Health Insurance Company, a Missouri life, health and accident insurance corporation (“**SSMHIC**”), SSM Health Plan, a Missouri health maintenance organization (“**SSMHP**”) Dean Health Insurance, Inc., a Wisconsin stock corporation (“**DHI**”), Dean Health Plan, Inc., a Wisconsin stock corporation and health maintenance organization (“**DHP**”), and Dean Health Services Company, LLC, a Wisconsin limited liability company (“**DHSC**” and together with SSMHIC, DHI, and DHP, the “**Newco Companies**”) to be contributed to Newco and/or its commonly controlled sister company, MS Community NFP JV, LLC (“**NFP Newco**”), and Medica acquired 55% of the membership interest in Newco and NFP Newco from Affiliates of SSM; and

WHEREAS, Newco desires to retain MSC to provide certain administrative services to the Newco Companies and MSC desires to provide such administrative services to the Newco Companies as mutually agreed upon by Newco and MSC, on the terms and conditions described herein.

NOW, THEREFORE, in consideration of the foregoing recitals and mutual promises and covenants set forth herein and other valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. DEFINITIONS.

1.1. “**Affiliate**” means, any person, partnership, corporation, or other form of enterprise including subsidiaries that directly or indirectly control, are controlled by, or are under common control with a party.

1.2. “**Agreement**” has the meaning set forth in the preamble.

1.3. “**BC/DR Plan**” has the meaning set forth in Section 5.1.9.

1.4. “**Business Intelligence**” means any Newco-specific results or outcome data, know-how or knowledge that Newco and/or the Newco Companies derive as a result of the Services.

1.5. “**Claim**” has the meaning set forth in Section 12.1.

1.6. “**Confidential Information**” means any non-public information in any form or medium, including, but not limited to, the following:

1.6.1. Information related to Disclosing Party’s or any of Disclosing Party’s Affiliates’ (including, in each case, their vendors’, customers’, and providers’), businesses and operations, as well as plans, strategies, know-how, trade secrets, software, financial information, fee schedules, rates and proposed rates for hospital or clinic or other health care services, information systems, data, pricing, claims information, information related to outside legal counsel, analyses, enrollee lists, management reports, compilations, studies, interpretations, and documents that contain or are based upon the types of information identified in this Section 1.6;

1.6.2. Newco Member Information;

1.6.3. Business Intelligence; and

1.6.4. Information that is identified as confidential as well as information that is generally understood to be confidential or which, under the circumstances surrounding disclosure, ought to be treated by Recipient as confidential.

“Confidential Information” does not include information that: (i) is or becomes generally available to the public other than as a result of a breach of this Agreement by Recipient; (ii) is independently developed by or for Recipient without reliance in any way on the Confidential Information of Disclosing Party; (iii) is disclosed to Recipient by a third party not bound by any duty of confidentiality to Disclosing Party or its Affiliate(s); or was rightfully in Recipient’s possession before receipt from Disclosing Party.

1.7. “**Demand**” has the meaning set forth in Section 6.3.

1.8. “**DHI**” has the meaning set forth in the preamble.

1.9. “**DHP**” has the meaning set forth in the preamble.

1.10. “**DHSC**” has the meaning set forth in the preamble.

1.11. “**Disaster Recovery Site**” has the meaning set forth in Section 5.1.10.

1.12. “**Disclosing Party**” means the Party (including its Affiliates, where applicable) who discloses or otherwise makes available Confidential Information to Recipient.

1.13. “**Effective Date**” has the meaning set forth in the preamble.

1.14. “**Force Majeure Event**” means any unforeseeable cause not reasonably within the control of the Party claiming suspension, which may include an act of God; industrial disturbance; any mass viral, bacterial, or other microbial or biologic outbreak, including an epidemic or pandemic; war; riot; invasion; acts of a foreign enemy; terrorist action; weather-related disaster; earthquake; and action of a Governmental Authority.

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1.15. “**Governmental Authority**” means any United States federal, state or local or any foreign government, or political subdivision thereof, or any multinational organization or authority, or any other governmental authority, agency or commission entitled to exercise any administrative, executive, judicial, legislative, police, regulatory, oversight or taxing authority or power (or any department, bureau or division thereof), or any court or tribunal, or any arbitrator or arbitral body.

1.16. “**HIPAA**” has the meaning set forth in Section 6.5.

1.17. “**Indemnified Parties**” has the meaning set forth in Section 12.1.

1.18. “**Initial Term**” has the meaning set forth in Section 7.1.

1.19. “**Malicious Code**” has the meaning given in Section 11.5.

1.20. “**Medica**” has the meaning set forth in the preamble.

1.21. “**Newco**” has the meaning set forth in the preamble.

1.22. “**Newco Companies**” has the meaning set forth in the preamble.

1.23. “**Newco Member**” means an individual enrolled for coverage of health benefits under any health plan product offered or administered by the Newco Companies.

1.24. “**Newco Member Information**” means any Newco Members’ names, addresses, telephone numbers, social security numbers, medical, physical, and mental conditions, health care needs, sicknesses, diseases, claims information, and any other information, including, without limitation, any other information that constitutes protected health information (as such term is defined in 45 C.F.R. § 160.103), disclosed or otherwise made available by or on behalf of Newco or the Newco Companies regarding Newco Members that is capable of identifying any Newco Member.

1.25. “**NFP Newco**” has the meaning set forth in the preamble.

1.26. “**Off-Shore Services**” has the meaning set forth in Section 10.3.

1.27. “**Party**” has the meaning set forth in the preamble.

1.28. “**Person**” means any natural person and any corporation, partnership, limited liability company, other legal entity or Governmental Authority.

1.29. “**Recipient**” means the Party (including its Affiliates, where applicable) who receives or otherwise obtains Disclosing Party’s Confidential Information.

1.30. “**Regulatory Amendment**” has the meaning set forth in Section 14.11.

1.31. “**Renewal Term**” has the meaning set forth in Section 7.1.

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1.32. “**Services**” means the tasks and related activities that MSC agrees to perform for Newco and/or the Newco Companies as further described in each Statement of Work.

1.33. “**SSMHIC**” and “**SSMHP**” each have the meaning set forth in the preamble.

1.34. “**SSM**” has the meaning set forth in the preamble.

1.35. “**Statement of Work**” or “**SOW**” means a document, mutually agreed upon and signed by both Parties or, in respect of a Party, an Affiliate of the Party designated by such Party to perform thereunder, describing the Services to be provided under this Agreement.

1.36. “**Term**” has the meaning set forth in Section 7.1.

2. GENERAL PERFORMANCE OBLIGATIONS.

2.1. **Services.** MSC shall perform all Services in accordance with the terms of this Agreement and the applicable Statement of Work. Newco requests Services on a non-exclusive basis only unless the Parties specifically agree to contrary terms of exclusivity in a SOW. MSC shall furnish, at MSC’s sole expense, the equipment, supplies, and other materials required or used by MSC to perform Services. Newco will provide MSC access to Newco’s and/or the Newco Companies’ premises or systems to the extent necessary for the performance of Services, subject to, and conditioned upon, MSC’s and its subcontractors’ compliance with Newco’s premises, systems, and security policies, which policies shall be provided or otherwise made available to MSC.

2.2. **Statement of Work.** The Parties shall complete a Statement of Work every time the Parties agree to MSC providing Newco and/or the Newco Companies with Services. Each Statement of Work must describe the Services and all related charges and, as applicable, the starting and ending dates of the SOW. In instances where the Parties agree, each Party may designate an Affiliate to provide or receive the Services specified in the SOW, and may designate such Affiliate to enter into the SOW.

2.3. **General Performance Standards.** Except where additional performance guarantees are required under a service level agreement or other performance guarantees in a SOW related to certain Services, MSC shall perform the Services under this Agreement consistent with industry standards and acceptable professional practices and standards and in a manner consistent with the same types of Services provided to similarly situated affiliates of MSC.

2.3. **Performance Guarantees.** If the Parties have included a service level agreement or some other form of performance guarantees related to MSC’s performance under a SOW, MSC must comply with all stated performance guarantees.

2.4. **Compliance with Newco Policies and Procedures.** MSC shall comply with applicable policies and procedures of Newco and the Newco Companies in performing Services hereunder, which shall be provided or otherwise made available to MSC.

2.5. **Government Programs Obligations.** Where Services are related to Newco or the Newco Companies’ participation in Medicare, Medicaid, or other state government program

insurance products, the Parties shall comply with the Regulatory Addendum attached to this Agreement as **Appendix A**.

2.6. **Qualified Health Plan Services.** To the extent MSC is a Delegated Entity (as defined in **Appendix B**), MSC shall comply with the terms and conditions of the Qualified Health Plan Services Addendum, attached to this Agreement as **Appendix B**.

3. COMPENSATION AND PAYMENT.

3.1. **Fees.** Except as otherwise provided for in a SOW and in compliance with applicable law, fees for services or other items provided by MSC under this Agreement including any SOW will be provided on an at-cost basis.

3.2. **Expenses.** Newco will only reimburse MSC for expenses incurred by MSC under a SOW if such expenses are incurred in compliance with applicable Newco policies and procedures (which shall be provided or otherwise made available to MSC) and documented in a SOW or in a supplemental writing signed by Newco that references the applicable SOW. MSC shall pass through any applicable third party expenses directly to Newco without markup.

3.3. **Invoice Requirements.** MSC shall submit a monthly itemized invoice to Newco for expenses incurred in compliance with applicable Newco policies and procedures (which shall be provided or otherwise made available to MSC) for Services provided under this Agreement, including any SOWs. Except as may be set forth in a specific SOW, invoices must include: (i) MSC's mailing address (and the MSC's address to which payment shall be sent if such address is not MSC's mailing address); (ii) MSC's phone number; (iii) MSC's email address that Newco may use to contact MSC for invoice-related questions and issues; (iv) MSC's unique invoice number; (v) invoice date; (vi) a description of specific tasks and hours worked by identified personnel; and (vii) a description of the Services to which the invoice applies. MSC shall invoice Newco for Services and expenses incurred in compliance with applicable Newco policies and procedures no later than sixty (60) calendar days following MSC's performance (or with respect to expenses, the date MSC incurs such expense) or in accordance with such specific terms as may be set forth in a particular SOW.

3.4. **Payment.** Newco shall pay MSC undisputed invoiced amounts within forty-five (45) calendar days after Newco's receipt of a properly submitted invoice or in accordance with such specific terms as may be set forth in a particular SOW. No termination provision contained within this Agreement shall apply if Newco withholds payment because a good faith dispute exists regarding a material duty, obligation, or term contained in this Agreement.

4. INSURANCE.

4.1. **Types of Insurance Coverage.** MSC and Newco shall each maintain appropriate insurance, through insurance carriers or through self-insurance programs reasonably acceptable to the other Party, consistent with the insurance coverages described on **Appendix D**, attached hereto and incorporated herein.

4.2. **Additional Requirements.** MSC and Newco shall each provide a certificate of

insurance evidencing all required coverages prior to the Effective Date, and annually thereafter upon request by the other Party until termination of this Agreement. In the event any such coverage is issued on a “claims made” basis, the applicable Party shall maintain continuing coverage or obtain an extended reporting endorsement or “tail” coverage to for acts and omissions occurring during the term of this Agreement and continuing after termination of this Agreement and including a retroactive reporting date preceding or coinciding with the Effective Date of this Agreement.

4.3. **Notice.** MSC and Newco shall notify the other Party as soon as possible but in no event later than ten (10) calendar days following any notice of cancellation, non-renewal or material change in the applicable Party’s insurance coverage.

4.4. **Cooperation.** Each Party will cooperate fully with the other Party and any insurer providing insurance coverage during any investigation, prosecution or defense of all accidents, claims, and suits arising out of or in connection with the Services, including the signing and delivery of any proof of loss or other actions required to effect recovery.

4.5. **Additional Named Insured.** To the extent set forth in Appendix A, policies for such coverage shall name Newco and/or MSC as an additional insured and/or loss payee and the applicable Party will provide the other Party with copies of endorsements confirming such additional insured and/or loss payee status. All such policies of insurance will be written on a primary basis and shall be non-contributory with respect to any other insurance coverages and/or self-insurance maintained by the other Party.

4.6. **Subrogation.** To the extent set forth in Appendix A and where available by law, the Parties shall cause applicable insurance policies to include waiver of subrogation against the other Party and their directors, officers and employees.

4.7. **Survival.** The provisions of this Section 4 shall survive the expiration or termination of the Agreement.

5. MSC’S REPRESENTATIONS AND WARRANTIES AND OWNERSHIP.

5.1. **MSC’s Representations and Warranties.** MSC represents and warrants that:

5.1.1. MSC has all rights necessary to perform the Services under this Agreement;

5.1.2. MSC’s performance under this Agreement will comply with all applicable laws, rules, and regulations;

5.1.3. MSC and MSC’s personnel (including subcontractors) are, and will remain, qualified to perform under this Agreement and will perform all Services in accordance with this Agreement and the applicable SOW;

5.1.4. MSC will ensure MSC’s personnel (including subcontractors) maintain all applicable professional licenses and certifications required for the performance of Services;

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5.1.5. MSC has not been, and will not be, (i) convicted of a criminal offense related to MSC's involvement in any federally funded government program; (ii) debarred, suspended or otherwise excluded from participation in any federally funded government program; or (iii) sanctioned by the HHS Office of Inspector General ("OIG").

5.1.6. MSC will not, during the term of the Agreement, employ or contract with any individual and entity to provide Services that: (i) has been convicted of a criminal offense related to the individual's or entity's involvement in any federally funded government program; (ii) is listed as debarred, suspended or otherwise excluded from participation in any federally funded government program; or (iii) has been sanctioned by the OIG.

5.1.7. MSC shall provide written notice to Newco within five (5) calendar days of the date MSC knows, or has reason to know, that Vendor or any individual or entity employed or contracted by MSC has been: (i) convicted of a criminal offense related to the individual's or entity's involvement in any federally funded government program; (ii) listed as debarred, suspended or otherwise excluded from participation in any federally funded government program; or (iii) sanctioned by the OIG.

5.1.8. No MSC employee or subcontractor that has any connection with this Agreement has been convicted of a crime that relates to Services provided under this Agreement;

5.1.9. Where MSC hosts or otherwise retains Newco's Confidential Information, MSC has developed and implemented, and will maintain, a Business Continuity and Disaster Recovery Plan ("BC/DR Plan") that is consistent with industry best practices and conforms to the terms of this Agreement, Appendix A (to the extent applicable) and each applicable Statement of Work. MSC shall give Newco a copy of its BC/DR Plan no later than ten (10) calendar days after Newco's request, which may occur at least annually. In addition, MSC shall: (i) maintain, review, and annually test the BC/DR Plan throughout the Term; and (ii) test the BC/DR Plan as part of MSC's implementation of any material change to the Services. Within thirty (30) calendar days after completion of any BC/DR Plan test, MSC shall provide Newco with the BC/DR Plan test results including, but not limited to, identification of all BC/DR Plan recovery failures, MSC's proposal(s) for remediation of any such recovery failures, and MSC's plans for BC/DR Plan retesting activities;

5.1.10. MSC shall implement and maintain a back-up methodology for all Newco data (including Newco's Confidential Information) that is consistent with industry best practices, the terms of this Agreement, and MSC's BC/DR Plan. Such back-up methodology shall include back-up storage of Newco's data (including Newco's Confidential Information) in a secure, recoverable location (the "Disaster Recovery Site");

5.1.11. All Newco Member Information shall always remain, in any form, within the territory of the United States of America; and

5.1.12. MSC shall encrypt all Newco Confidential Information while in transit and at rest using secure industry standard encryption technology.

5.2. **Ownership of Intellectual Property.** To the extent any MSC intellectual property

is integrated into the Services provided hereunder, MSC will grant Newco a non-exclusive, non-transferable, paid-up license to use such intellectual property in connection with the Services but Newco shall not gain any other rights with respect to such intellectual property. To the extent any third-party owned intellectual property is integrated into the Services provided hereunder, MSC will maintain all rights and licenses to any such intellectual property and obtain any third-party consents necessary to enable MSC to provide the Services hereunder. Newco shall obtain no rights in any such third-party intellectual property other than limited rights related to use thereof as may specifically be granted in an SOW to this Agreement. For the avoidance of doubt, the Parties agree the use of SSM's trademarks and service marks shall be governed by a mutually agreed upon licensing agreement.

6. CONFIDENTIAL INFORMATION.

6.1. **Use and Disclosure Restrictions.** Recipient shall maintain the confidentiality of Disclosing Party's Confidential Information and use the same degree of care (but in no event less than a reasonable degree of care) to protect such Confidential Information as Recipient uses to protect its own similar Confidential Information. Recipient shall not discuss, use, disclose, reproduce, disassemble, decompile, or reverse engineer Disclosing Party's Confidential Information except as permitted under this Agreement or as otherwise required by law. Subject to the foregoing: (i) MSC may disclose Newco Confidential Information only to those advisors, employees and subcontractors of MSC who have a need to know Newco Confidential Information for the purposes of providing the Services described in the applicable Statement of Work or to otherwise perform MSC's obligations under this Agreement; and (ii) Newco may disclose MSC Confidential Information only to those advisors, employees and subcontractors of Newco who have a need to know MSC Confidential Information for the purposes of receiving the Services described in the applicable Statement of Work or for evaluating MSC's performance under this Agreement, or to otherwise exercise Newco's rights under this Agreement; provided that, each Party, as applicable, will ensure that any subcontractor to which it discloses Confidential Information of the other Party will maintain the confidentiality of such Confidential Information to at least the same extent as this Agreement requires of the Disclosing Party. Recipient shall take all reasonable measures to restrain Recipient's advisors, employees and subcontractors from unauthorized use or disclosure of Disclosing Party's Confidential Information. Notwithstanding any terms to the contrary and in addition to any disclosure rights granted to Newco under this Agreement and any SOW, either Party may disclose MSC or Newco Confidential Information to state and federal regulators and their designees, as required by law, and to Newco's auditors in connection with audits of Newco.

6.2. **No Grant of Rights.** This Agreement does not grant Recipient any property rights or intellectual property rights with respect to Disclosing Party's Confidential Information.

6.3. **Protective Orders.** If Recipient receives a subpoena or other legally-issued administrative or judicial process demanding disclosure of Disclosing Party's Confidential Information ("**Demand**"), Recipient shall promptly notify Disclosing Party to give Disclosing Party an opportunity to seek a protective order or other appropriate remedy or to waive Recipient's compliance with the terms of this Agreement. Unless the Demand has been timely extended or dismissed, Recipient will thereafter be entitled to comply with the minimum requirements of such Demand to the extent permitted by law. If requested by Disclosing Party, Recipient will cooperate

(at the expense of Disclosing Party) in the defense of the Demand. Any portion of Confidential Information that is disclosed pursuant to this Section 6.3 remains subject to Section 6 of this Agreement.

6.4. **Notice of Breach and Remedies.** Recipient shall notify Disclosing Party immediately upon becoming aware of any breach or threatened breach of Section 6 by Recipient or any subcontractor to whom Recipient has disclosed or otherwise made available Disclosing Party's Confidential Information. Recipient shall give all reasonable assistance to Disclosing Party in connection with any steps that Disclosing Party may wish to take to prevent or stop that breach or threatened breach and, with respect to any breach by any subcontractor to whom Recipient disclosed or otherwise made available Disclosing Party's Confidential Information, also to obtain compensation for that breach or threatened breach. Recipient agrees that breach of Section 6 may cause Disclosing Party irreparable harm, for which monetary damages are not adequate compensation. Therefore, Recipient agrees that Disclosing Party is entitled to injunctive or other equitable relief to prevent or stop any breach or threatened breach of this Section 6 and Recipient will take no action to diminish the rights of Disclosing Party. Nothing in this Agreement may be construed as limiting Disclosing Party's right to any other remedies at law or equity.

6.5. **HIPAA.** If MSC is or becomes a business associate (as such term is defined in the Health Insurance Portability and Accountability Act of 1996, as amended from time to time ("HIPAA")), MSC shall comply with HIPAA (and all applicable regulations) and the terms and conditions of the Business Associate Addendum, attached to this Agreement as **Appendix C**.

7. **TERM.**

7.1. **Term of Agreement.** This Agreement will commence as of the Effective Date and continue for an initial term through _____ (the "**Initial Term**"), unless earlier terminated in accordance with the provisions hereof. Thereafter, the Agreement shall automatically renew for additional renewal terms of _____ (each, a "**Renewal Term**" and together with the Initial Term, the "**Term**"), unless either Party provides at least _____ written notice prior to the renewal date indicating its intent not to renew this Agreement, or if this Agreement is otherwise earlier terminated in accordance with the provisions hereof. For clarity, MSC will have no obligation to provide specific Services unless and until a valid SOW covering such Services is executed by the Parties.

8. **TERMINATION.**

8.1. **Newco's Termination Rights.** Newco may terminate this Agreement or any SOW(s) pursuant to the following terms:

8.1.1. For cause if, after giving MSC thirty (30) calendar days prior written notice of MSC's breach, MSC's breach remains uncured; provided, however, and notwithstanding any terms to the contrary, in the event of an uncured breach of a SOW by MSC, Newco will have the right to terminate only such SOW;

8.1.2. Immediately upon written notice, if MSC: (i) becomes insolvent or admits its inability to pay its debts generally as they become due; (ii) becomes subject, voluntarily or

involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (iii) is dissolved or liquidated or takes any corporate action for that purpose; (iv) makes a general assignment for the benefit of creditors; or (v) has a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business;

8.1.3. Due to MSC's extended Force Majeure Event where MSC fails to perform for a period of thirty (30) business days or more.

8.2. **MSC's Termination Rights.** MSC may terminate this Agreement or any SOW(s) pursuant to the following terms:

8.2.1. For cause if, after giving Newco at least thirty (30) calendar days prior written notice of Newco's breach, Newco's breach remains uncured; provided, however, and notwithstanding any terms to the contrary, in the event of an uncured breach of a SOW by Newco, MSC will have the right to terminate only such SOW; or

8.2.2. Immediately upon written notice, if Newco: (i) becomes insolvent or admits its inability to pay its debts generally as they become due; (ii) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (iii) is dissolved or liquidated or takes any corporate action for that purpose; (iv) makes a general assignment for the benefit of creditors; or (v) has a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business; or

8.2.3 Due to Newco's extended Force Majeure Event where Newco fails to perform for a period of thirty (30) business days or more.

8.3. **Termination by Law.** If either Party determines in its reasonable judgment and in good faith based on the advice of legal counsel that the terms of the Agreement or any Statement of Work more likely than not may be interpreted to violate any law, regulation, or other requirement applicable to it, then the Parties shall attempt in good faith to renegotiate the problematic provision(s) of the Agreement or Statement of Work to the mutual satisfaction of the Parties. In the event the Parties are not able to mutually agree on modifications of the problematic provision(s) within sixty (60) days, then either Party may terminate the Agreement or the applicable Statement of Work upon written notice to the other Party.

8.4. **Termination or Expiration.** Termination or expiration of this Agreement shall automatically terminate each outstanding SOW. Termination or expiration of a SOW shall not terminate this Agreement; provided that, in the event of termination or expiration of all SOWs such that no SOWs remain outstanding, either Party terminate this Agreement upon at least thirty (30) calendar days prior written notice to the other Party.

8.5. **Ongoing Obligations.** On the effective date of termination or expiration of this Agreement, neither Party has any further obligation under this Agreement except for obligations accruing prior to the effective date of termination or expiration of this Agreement and obligations

that are expressly stated in this Agreement, or by operation of law made, to extend beyond the Term.

8.6. **Return of Confidential Information and Property.** Within ten (10) calendar days after the effective date of termination or expiration of this Agreement or any SOW(s), each Party shall either return or, at Disclosing Party's request, destroy and certify destruction of the other Party's Confidential Information provided under the terminated or expired Agreement or SOW(s), except where a Party must retain copies of Confidential Information in order to comply with record retention requirements and/or other legal requirements. To the extent applicable, within ten (10) calendar days after the effective date of termination or expiration of this Agreement or any SOW(s), MSC shall also destroy and certify destruction of all Newco data, including Newco Confidential Information, provided under the terminated or expired Agreement or SOW(s) and which is retained on MSC equipment and media including, but not limited to, printers, photocopiers, storage devices, and servers. Confidential Information retained after termination or expiration of this Agreement or any SOW is subject to the requirements of Section 6. Each Party must promptly return any property that belongs to the other Party which was provided under this Agreement or a SOW at the expiration or termination of this Agreement or the SOW.

8.7. **Identification and Transfer of Data and other Confidential Information.** Where MSC hosts Newco's Confidential Information, including Newco Member Information, MSC must provide secure and prompt transfer of the foregoing to Newco within ten (10) calendar days of Newco's request and at no additional cost to Newco.

8.8. **Transition Assistance.** Upon termination or expiration of a SOW, MSC will provide Newco with assistance as may be reasonably necessary to facilitate the transfer of terminated Services back to Newco or Newco's third party replacement vendor for a period not to exceed _____, provided that Newco will use good faith efforts to effect the transfer of the terminated Services in an efficient and expeditious manner. The Parties must clearly set out supplemental fees for transition assistance of this nature in the applicable SOW, or other writing signed by the Parties, if MSC requires payment for this transition assistance.

8.9. **Termination Date.** Subject to the terms of this Agreement, any termination is effective in the manner and on the date specified in the notice of termination and without prejudice to any claims that Newco may have against MSC.

9. RECORD RETENTION REQUIREMENTS AND AUDIT RIGHTS.

9.1. **Record Retention.** Each Party shall retain all information and records, and copies of such, arising out of or related to this Agreement during the Term and for six (6) years following the effective date of termination or expiration of this Agreement, or such longer period as may be required by applicable law. Notwithstanding the above, the foregoing applies to the Term and for ten (10) years from the effective date of termination or expiration of this Agreement or final audit, whichever is later, or longer in certain circumstances as required by law, for information, records, and copies of such related to Services provided under Medicare, Medicaid, and other government programs as well as Qualified Health Plans, as defined in 42 U.S.C. §18021.

9.2. **Access to Records by Newco.** Upon request and once annually, MSC shall provide

Newco and its authorized agents, during regular business hours and upon reasonable notice, with access to all information and records, or copies of such, arising out of or related to this Agreement, to the extent permitted by applicable law. In addition, MSC shall provide all such information and records, or copies of such, requested by Newco within thirty (30) calendar days from the date such request is made or sooner if necessary to comply with applicable law. This Section 9.2 shall not be construed to provide Newco with access to information related solely to the overall financial operations of MSC.

9.3. **Access to Records by State and Federal Government.** Without limiting Newco's rights under Section 9.2, the state and federal government and any of their authorized representatives shall have access, in accordance with state and federal statutes and regulations, to all information and records, or copies of such, within the possession of Newco or MSC, which are pertinent to and involve transactions related to this Agreement. Furthermore, Newco is, and shall be, authorized to release all such information and records, or copies of such, as is necessary to comply with federal and state statutes and regulations applicable to Newco and in connection with any governmental audit, investigation, complaint, action, or other inquiry. MSC shall cooperate, in good faith and in all respects, with Newco in connection with any request by a Governmental Authority for information or records or in connection with any governmental audit, investigation, complaint, action, or other inquiry.

9.4. **Independent Third Party Audits.** Newco may retain an independent third party to audit MSC's compliance with this Agreement during normal business hours at Newco's expense and upon no less than thirty (30) calendar days advance written notice to MSC except where state or federal law requires a shorter notice period; provided that any such audits shall not occur more often than once annually unless required by a governmental authority or pursuant to the terms of a contract with a third-party self-funded health plan. If Newco finds MSC to be out of compliance as a result of that audit, MSC is obligated to reimburse Newco's audit expenses in full within ten (10) calendar days of notice of that non-compliance.

10. SUBCONTRACTING, REPLACEMENT, OFF-SHORE SERVICES, AND ASSIGNMENT.

10.1. **Subcontracting.** In the event MSC desires to use one (1) or more subcontractors to perform Services, MSC must provide, in writing to Newco, the name of such vendor and the particular Services to be performed by such vendor. Between Newco and MSC, MSC shall be solely responsible for all of MSC's duties and obligations under this Agreement whether MSC has performed them or used a subcontractor. In addition, MSC acknowledges and agrees that MSC shall be fully responsible and liable for the acts and omissions of all MSC subcontractors and that such acts and omissions, for the purposes of this Agreement, shall be deemed a MSC act or omission. MSC shall be responsible for payment to all subcontractors. MSC shall ensure that no subcontractor bills or attempts to collect from Newco for any of subcontractor's services. Newco may direct MSC, at any time and in its sole discretion, to remove any subcontractor from the provision of Services and MSC shall, within a reasonable time, remove such subcontractor from the provision of Services. Each subcontract between MSC and a subcontractor must:

10.1.1. Be in writing;

10.1.2. Comply with all applicable laws, rules, regulations (including HIPAA),

sub-regulatory guidance, and any industry standards regarding subcontract arrangements;

10.1.3. Acknowledge the subcontractor's responsibility to comply with MSC's duties and obligations under this Agreement and under applicable statutes and regulations;

10.1.4. Acknowledge the right of Newco and state and federal government and any of their authorized representatives, during regular business hours and upon reasonable notice, to obtain access to all information and records, or copies of such, of the subcontractor relative to the provision of Services for the purposes of auditing the subcontractor's compliance with the terms of this Agreement; and

10.1.5. Be enforced by MSC as necessary to ensure compliance with the subcontract and this Agreement.

10.2. **Replacement.** Notwithstanding any other provision to the contrary, if at any time during the Term any MSC employee or subcontractor assigned to perform Services is deemed, in Newco's reasonable judgment, to be unacceptable to Newco, such concerns and the basis thereof will be communicated promptly in writing to MSC so that MSC can correct the problem to the satisfaction of the Parties. If MSC fails to resolve a concern or problem identified to MSC within thirty (30) days to the reasonable satisfaction of Newco, then Newco may require the removal of such employee or subcontractor. Notwithstanding the foregoing, Newco has the right to require MSC to immediately remove such an employee or subcontractor for good cause, including the failure to comply with applicable qualifications and standards or an immediate threat to the health and safety of employees, as determined by Newco in its reasonable discretion.

10.3. **Off-Shore Services.** In addition to the requirements in Section 10.1 above, if MSC intends to perform (whether MSC or its subcontractor performs) any portion of the Services outside the territory of the United States ("**Off-Shore Services**"), MSC must obtain Newco's prior written consent, which may be conditioned upon the consent of Newco's regulators and Newco's review of applicable law or otherwise in Newco's sole discretion. If Newco gives consent to MSC to provide Off-Shore Services, Newco reserves the right to later revoke that consent if Newco is compelled to do so due to any regulatory or other legal requirement as determined by Newco. In the event Off-Shore Services are provided, SSM shall comply with all CMS and DHS requirements and instructions applicable to offshore subcontracting including, but not limited to, completing an "Offshore Subcontractor Information and Attestation Form."

10.4. **Assignment.** Neither Party may assign its interests in the Agreement without obtaining the prior written consent of the other Party. All of the terms, provisions, covenants, conditions and obligations of the Agreement shall be binding on and inure to the benefit of the successors and permitted assigns of the Parties hereto.

11. SECURITY.

11.1. **Information Security Program.** MSC shall implement and maintain an information security program to protect Newco's Confidential Information. Such information security program shall include appropriate administrative, technical, and physical safeguards sufficient to:

11.1.1. Protect the confidentiality, integrity, and proper availability of Newco's Confidential Information consistent with industry accepted best practices;

11.1.2. Protect against any anticipated threats or hazards to Newco's Confidential Information, consistent with industry accepted best practices to prevent hacking, theft, and other malicious activities by third parties;

11.1.3. Protect against unauthorized access to or use of Newco's Confidential Information consistent with industry accepted best practices; and

11.1.4. Comply with Newco's reasonable security policies provided in writing by Newco to MSC, as such security policies may be modified from time to time by Newco.

11.2. **Description of Information Security Program.** Upon Newco's request to review details of MSC's information security program described in Section 11.1, MSC shall provide Newco with a written description of such program. In addition, upon Newco's request, MSC shall provide Newco with written documentation regarding implementation of MSC's information security program, including, but not limited to, MSC's written responses to Newco's MSC Privacy and Security Risk Assessment Questionnaire.

11.3. **Security Testing.** MSC shall not tamper with, compromise, or attempt to circumvent any physical or electronic security or audit measures used by Newco in the course of Newco's business operations. Absent Newco's express and prior written consent, MSC shall not access or remove any Confidential Information, computer systems, or other property of Newco from Newco's premises.

11.4. **Electronic Means to Perform Services.** Where MSC performs Services via electronic means or has access to Newco's or its Affiliates' electronic mail, website(s), computer systems or networks, or other Internet-accessed systems, MSC shall implement, at a minimum, reasonable industry standard security practices, policies, and procedures sufficient to protect Newco's and its Affiliates' computer systems, network devices, and the data processed on them against the risk of penetration by or exposure to a third party via any system or feature utilized by Newco or its authorized subcontractors or Affiliates in connection with the Services.

11.5. **Malicious Code.** MSC shall not knowingly or intentionally introduce any virus or other code (including, but not limited to, commands, instructions, devices, techniques, bugs, or intentional design flaws) (collectively, "**Malicious Code**") into Newco's computer systems, databases, environments, infrastructures, or software that may be used to access, alter, delete, threaten, infect, assault, vandalize, defraud, disrupt, damage, disable, inhibit, or shut down or impair Services or Newco's computer systems, databases, environments, infrastructures, or software in any manner other than as authorized by this Agreement. This provision does not cover Malicious Code that is determined to exist within Newco or to come from unknown sources that have no relation to MSC's performance of Services.

12. INDEMNIFICATION.

12.1. **Obligation.** Each Party shall indemnify and defend the other Party, and its officers,

directors, agents and employees (collectively, “**Indemnified Parties**”), from and against all third party claims, demands, lawsuits, actions, losses, liabilities, damages, expenses (including reasonable legal fees and defense costs), judgments, fines, penalties, and awards (each, a “**Claim**”) asserted against, imposed upon, or incurred by the Indemnified Parties arising from or related to the indemnifying Party’s (i) negligence or willful misconduct; (ii) breach of its obligations under this Agreement or any SOW; or (iii) violation of any applicable laws or regulatory requirements in connection with the services provided under this Agreement; provided that any such loss has not been caused by the gross negligence or willful misconduct of the other Party. Notwithstanding the foregoing, the Indemnifying Party’s indemnification obligation with respect to any claim, damage, loss or expense under this Section shall be reduced by the amount of any third-party insurance actually collected by the other Party with respect to such claim, damage, loss or expense and nothing in this Section shall be construed to relieve any insurance carrier of its obligations under any insurance coverage maintained by either Party or its Affiliates, which in all cases shall be primary to the indemnification obligations hereunder. Subject to the foregoing, each Party shall be solely responsible for the acts, omissions and negligence of itself, its employees and other agents and MSC shall not, by virtue of its performance under this Agreement, assume or become liable for any obligations, debts or liabilities of Newco or the Newco Companies.

12.2. **Survival.** The provisions of this Section 12 shall survive the termination of expiration of the Agreement.

13. DISPUTE RESOLUTION; GOVERNING LAW; JURISDICTION.

13.1. **Dispute Resolution.** The Parties firmly desire to resolve all disputes arising hereunder without resort to litigation. Any and all disputes arising under this Agreement will be first addressed by a meeting between appointed representatives from each of the Parties (which shall include a senior level executive from each Party) at a time and place agreed to by the Parties, to review, discuss and attempt in good faith to resolve such dispute. If such Party representatives are unable to reach an agreement on resolution on such dispute within thirty (30) days after submission thereof to such Party representatives, the Parties shall, in good faith, attempt to resolve the dispute through non-binding mediation under the Commercial Mediation Rules of the American Arbitration Association by a mutually acceptable mediator to be chosen by the Parties. The Parties agree to commence the first mediation session at a mutually acceptable location within thirty (30) days of written notification requesting mediation of the dispute. The costs of such mediation, including fees and expenses, shall be borne equally by the Parties. In the event mediation does not resolve the dispute, then any Party shall be entitled to initiate legal action in a court of competent jurisdiction.

13.2. **Governing Law.** This Agreement and all matters and Disputes arising out of or relating to this Agreement shall be governed by and construed in accordance with the internal laws of the State of Wisconsin without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than the laws of the United States of America where certain federal law is referenced under this Agreement and therefore clearly intended to apply.

14. MISCELLANEOUS.

**Exhibit E to Contribution Agreement
Medica Administrative Services Agreement**

14.1. **Relationship of the Parties.** MSC, its employees and subcontractors are independent contractors and will not act as Newco's agent, nor be deemed employees of Newco for the purpose of any employee benefit programs, income tax withholding, FICA taxes, unemployment benefits, workers' compensation benefits, liability insurance, or otherwise. Nothing in this Agreement shall be deemed to create an employer/employee, principal/agent, or joint venture relationship between the Parties. Neither Party shall have the authority to enter into any contracts on behalf of the other Party. Subject to the terms of this Agreement, the means to accomplish MSC's work is subject to MSC's sole control and discretion.

14.2. **Conflicts.** If a term of this Agreement conflicts with a similar term in a SOW, the terms of such SOW shall control, in which case this Agreement shall be so amended, but only with respect to such SOW.

14.3. **Equal Opportunity.** Both Parties agree to comply with all applicable local, state and federal affirmative action and equal opportunity orders, ordinances, regulations and statutes. Without limiting the foregoing, the Parties shall abide by the requirements of 41 C.F.R. § 60-741.5(a) and 41 C.F.R. § 60-300.5(a).

14.4. **Survival.** The sections of this Agreement that in order to give full effect to their provisions must survive, shall survive any termination or expiration of this Agreement.

14.5. **Notices.** Any notice or consent required or permitted under this Agreement must be in writing and is deemed given: (a) when personally delivered; (b) when delivered by reputable courier service; or (c) three (3) calendar days after being sent by prepaid certified or registered United States mail, in each case, to the receiving Party's applicable address below or to the address the receiving Party last provided to the other Party by written notice in accordance with this Section 14.5.

Notices to Newco:

Attn: _____

Notices to MSC:

401 Carlson Parkway
Minnetonka, MN 55305
Attention: General Counsel
Fax/Email: General.Counsel@medica.com

14.6. **Force Majeure.** The obligations of a Party under this Agreement will be suspended for the duration of any Force Majeure Event applicable to that Party, provided that a Party claiming suspension under this Section 14.6 shall use its best efforts to resume performance as soon as feasible in accordance with its business continuity/disaster recovery plan. In the case of MSC's extended Force Majeure Event of thirty (30) business days or more, during which MSC fails to perform, Newco may terminate this Agreement as set out in Section 8.1.4.

14.7. **No Third-Party Beneficiaries.** Nothing in this Agreement shall be construed to create any rights or obligations except among the Parties hereto. No other Person shall be regarded as a third party beneficiary of this Agreement.

14.8. **Waiver.** A Party's failure to enforce any provision of this Agreement, for any reason, is not a waiver or limitation of that Party's right at a later date to enforce and compel strict compliance with any provision of this Agreement. All waivers must be in writing and signed by the Party who intends to waive its rights.

14.9. **Severability.** If any provision of this Agreement is found to be invalid, illegal, or unenforceable in a jurisdiction, that invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable the provision found to be invalid, illegal, or unenforceable in any other jurisdiction, but rather that invalid, illegal, or unenforceable provision will be amended to the extent reasonably necessary to make the provision, as so changed, valid, legal, enforceable, and written to achieve as nearly as possible the same intent as the original provision.

14.10. **Headings.** Section headings in this Agreement are for reference only and shall not be used in construing this Agreement.

14.11. **Amendments.** This Agreement and each SOW may only be modified by a writing signed by both Parties. In the event an amendment to this Agreement or any SOW(s) is required by any state or federal law, rule, regulation or sub-regulatory guidance ("**Regulatory Amendment**"), the Parties shall use good faith efforts and reach agreement on the Regulatory Amendment as soon as is reasonably feasible, and in all applicable instances, in accordance with compliance deadlines established by such state or federal law, rule, regulation or sub-regulatory guidance.

14.12. **Counterparts.** This Agreement and any SOW may be signed in counterparts, each of which is deemed an original but all of which together are deemed to be one and the same instrument. A signed copy of this Agreement or a SOW delivered by facsimile or a scanned attachment to an e-mail is also deemed to have the same legal effect as delivery of an original signed hard copy of this Agreement or a SOW. For the avoidance of doubt, both Parties must sign this Agreement in order to be bound by this Agreement, and both Parties or designated Affiliates of the Parties (as contemplated herein) must sign a SOW in order to be bound by the SOW.

14.13. **Entire Agreement.** This Agreement, including all appendices and other attachments to this Agreement, including each SOW, constitutes and expresses the entire agreement and mutual understanding of the Parties with respect to the subject matter hereof and supersedes all previous communications and agreements relating to this Agreement's subject matter, whether written or oral. All appendices and other attachments to this Agreement including each SOW are incorporated into this Agreement by this reference and deemed a part of this Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Administrative Services Agreement to be executed by their duly authorized representatives as of the Effective Date.

MS COMMUNITY JV, LLC

By: _____

Name: _____

Title: _____

MEDICA SERVICES COMPANY, LLC

By: _____

Name: _____

Title: _____

APPENDIX A

REGULATORY ADDENDUM

This Regulatory Addendum (this “**Addendum**”) supplements and is made part of the Administrative Services Agreement (the “**Agreement**”) between MS Community JV, LLC, (“**Newco**”) and Medica Services Company, LLC (“**Vendor**”), effective _____, 2021 (“**Agreement**”). This Addendum is effective as of the Effective Date of the Agreement and applies to the Medicare, Medicaid, and state government program products offered by the Newco Companies. In the event of a conflict between this Addendum and the Agreement, this Addendum shall govern with respect to the services related to the Newco Companies’ participation in Medicare, Medicaid, and state government programs.

SECTION I Definitions

Capitalized terms used in this Addendum that are not otherwise defined herein shall have the meanings set forth in the Agreement.

- 1.1 Affiliate. Any person, partnership, corporation, or other form of enterprise including subsidiaries that directly or indirectly control, are controlled by, or are under common control with a party.
- 1.2 CMS Contract. A contract between the Centers for Medicare and Medicaid Services (“CMS”) and the Newco Companies for the provision of Medicare benefits pursuant to the Medicare program.
- 1.3 DHS Contract. A contract between the Wisconsin Department of Human Services (“DHS”) and the Newco Companies for the provision of government program benefits under state and/or federal law.
- 1.4 Downstream Entity. Any party that enters into an acceptable written agreement below the level of the arrangement between Newco and Vendor. These written arrangements continue down to the level of the ultimate provider of health and/or administrative services.
- 1.5 Managing Employee. An individual (including a general manager, business manager, administrator, or director) who exercises operational or managerial control over Vendor, or part thereof, or who directly or indirectly conducts the day-to-day operations of Vendor, or part thereof.
- 1.6 Newco member. An individual enrolled for coverage of health benefits under any health plan product offered or administered by the Newco Companies.
- 1.7 Person with an Ownership or Control Interest. A person or corporation that: (a) has an ownership interest, directly or indirectly, totaling 5% or more in Vendor; (b) has a combination of direct and indirect ownership interests equal to 5% or more in Vendor; (c)

owns an interest of 5% or more in any mortgage, deed of trust, note or other obligation secured by Vendor, if that interest equals at least 5% of the value of the property or assets of Vendor; or (d) is an officer or director of Vendor (if organized as a corporation) or is a partner in Vendor (if organized as a partnership).

- 1.8 Significant Business Transaction. Any business transaction or series of transactions that, during any one fiscal year, exceed
- 1.9 Subcontractor. For purposes of Sections 2.25 and 2.26 of this Addendum, an individual, agency or organization with which Vendor has contracted (or a person with an employment, consulting or other arrangement with Vendor) for the provision of items and services that are significant and material to Vendor's contract with Newco and Newco's obligations under the DHS Contract or the CMS Contract.

SECTION II Requirements

- 2.1 Provision of Vendor Services. Vendor will provide Services in a manner consistent with professionally recognized standards of care and in accordance with the standard of practice in the community in which Vendor renders Services as required pursuant to each CMS Contract and the DHS Contract and all applicable Medicare, Medicaid and other government funded program laws, regulations and sub-regulatory guidance and in a manner so as to assure quality of Services.
- 2.2 Access to Vendor Services. Vendor will provide Services in a culturally competent manner to all Newco members, including Newco members with limited English proficiency or reading skills and diverse cultural and ethnic backgrounds. Vendor will not discriminate against any person based on his or her race, color, creed, religion, national origin, sex, gender, health status including mental and physical medical conditions, marital status, familial status, status with regard to public assistance, disability, sexual orientation, age, political beliefs, membership or activity in a local commission, or any other classification protected by law.
- 2.3 Data Collection. Vendor will submit to Newco, within the timeframe specified by Newco, all data necessary to characterize the context and purpose of each encounter with a Newco member in the manner and to the extent required by CMS and DHS. Vendor will certify, in writing, the completeness and accuracy of all such data.
- 2.4 Intentionally Deleted.
- 2.5 Newco Member Grievances. Vendor will cooperate with Medicare, Medicaid, and state government program products grievance, appeals, and expedited appeals procedures.
- 2.6 Intentionally Deleted.

2.7 Laws, Rules and Sub-Regulatory Guidance. In addition to informing all related entities, contractors and/or subcontractors that payments they receive are, in whole or in part, from federal funds, Vendor will, and will cause Downstream Entities to, comply with:

- (a) all applicable state and federal laws, regulations and sub-regulatory guidance;
- (b) all applicable Medicare laws, regulations, and CMS sub-regulatory guidance and all applicable Medicaid laws, regulations, and DHS sub-regulatory guidance;
- (c) all state and federal laws and regulations designed to prevent or ameliorate fraud, waste or abuse including, but not limited to, applicable provisions of federal criminal law, the False Claims Act (31 U.S.C. 3729 et. seq.) and the anti-kickback statute (§ 1128B(b) of the Social Security Act); and
- (d) all applicable state and federal laws and regulations designed to protect Newco member privacy including, but not limited to the Health Insurance Portability and Accountability Act of 1996 and administrative simplification rules promulgated thereunder at 45 CFR Parts 160, 162, and 164, as amended (“HIPAA”).

2.8 CMS Contract and DHS Contract; Compliance with Contractual Obligations. Vendor agrees to participate in the Medicare, Medicaid and other government funded programs pursuant to the CMS Contract and the DHS Contract under the terms and conditions agreed to by the parties. Vendor understands that this Agreement involves receipt by the Vendor of payments that are, in whole or in part, from federal funds. Vendor, and all related entities, contractors and/or subcontractors are therefore subject to laws applicable to individuals and entities receiving federal funds. Any Services rendered to Newco members under the Agreement shall be consistent and comply with Newco’s contractual obligations with CMS and DHS. Vendor acknowledges and agrees that Newco oversees and maintains ultimate responsibility for adhering to and otherwise fully complying with the terms and conditions of each CMS Contract and DHS Contract and for ensuring that Vendor satisfies its obligations in compliance with such contracts. In accordance with each CMS Contract and/or DHS Contract, payments to Vendor may be suspended by Newco for a determination of a credible allegation of fraud against Vendor.

2.9 Delegation of Activities.

- (a) Newco has delegated certain obligations under the applicable CMS Contract and DHS Contract to Vendor. Vendor acknowledges and agrees that Newco may revoke such delegation of Services or sanction Vendor in instances where CMS, DHS or Newco determines that Vendor has not performed satisfactorily with respect to Services provided to Newco members. Vendor acknowledges and agrees that to the extent CMS or DHS directs revocation, Newco shall provide immediate written notice of such to Vendor, and such revocation shall become effective as directed by CMS or DHS. Vendor shall cooperate with Newco regarding the transition of any delegated activities or reporting requirements that have been revoked by Newco. No additional financial obligations shall accrue to Newco with respect to such revoked activities from and after the date of such revocation in accordance with this section.

- (b) If Newco delegates any of its obligations under the applicable CMS Contract to Vendor, other than the activities described herein and in the Agreement, Newco and Vendor agree to update the Agreement and this Addendum, as applicable, to reflect the newly delegated activities and to specify the reporting obligations of Vendor to Newco or its contractors.
 - (c) If Newco has delegated to Vendor any activities related to the credentialing of health care providers, Vendor must comply with all applicable CMS and DHS requirements for credentialing including, but not limited to, the requirement that the credentials of medical professionals must either be reviewed by Newco or its designee, or the credentialing process must be reviewed, pre-approved and audited on an ongoing basis by Newco or its designee.
 - (d) If Newco has delegated to Vendor the selection of health care providers, to be participating providers in Newco's Medicare provider network, or the selection of any other contractor, subcontractor, or other Downstream Entity, Newco retains the right to approve, suspend or terminate the participation status of such health care providers or arrangement with such contractors, subcontractors, or other Downstream Entities.
- 2.10 Subcontracting. If Vendor has any arrangements, in accordance with the terms of the Agreement, with any subcontractors to perform any of the Services Vendor is obligated to perform under the Agreement that are the subject of this Addendum, Vendor shall ensure that all such arrangements satisfy the requirements in the Agreement pertaining to subcontracting and are current, in writing, and acknowledge the subcontractor's responsibility to comply with all applicable terms contained in this Addendum. Vendor further agrees to promptly amend its agreements with such entities, in the manner requested by Newco, to meet any additional CMS and DHS requirements that may apply to the Services. Information and records relating to such subcontractor arrangements shall be made available for review by Newco, DHS and/or CMS in accordance with the Agreement.
- 2.11 Monitoring and Oversight. Newco or its designee shall monitor Vendor's performance on an ongoing basis and Newco is ultimately responsible to CMS and DHS for performance of all Services that are provided to Newco members. Vendor agrees to cooperate with the monitoring and oversight activities of Newco.
- 2.12 Privacy and Accuracy of Records. Vendor agrees to comply with all applicable state and federal privacy and security requirements. Vendor will do the following in connection with any medical records or other health and enrollment information Vendor maintains with respect to Newco members:
- (a) Safeguard Newco member privacy and confidentiality including, but not limited to, the privacy and confidentiality of any information that identifies a particular Newco member. Vendor shall abide by all applicable federal and state laws regarding confidentiality and disclosure of medical records or other health and enrollment information of Newco members. With respect to information that identifies a particular Newco member, Vendor shall have procedures that specify: (i) for what

purpose the information is used within Vendor's organization; and (ii) to whom and for what purposes Vendor discloses the information outside Vendor's organization;

- (b) Ensure that medical information is released only in accordance with applicable federal and state laws, regulations, sub-regulatory guidance or under court orders or subpoenas;
 - (c) Maintain the records and information in an accurate and timely manner; and
 - (d) Ensure timely access by Newco members to the records and information that pertain to them in accordance with applicable laws, regulations, and sub-regulatory guidance.
- 2.13 Record Retention. Vendor shall maintain records arising out of or related to the Agreement and each CMS Contract and DHS Contract for at least ten (10) years from the date of termination or expiration of the Agreement or final audit, whichever is later, or such longer period required by law or regulation.
- 2.14 Government Access to Records. Vendor acknowledges and agrees that CMS, the Secretary of the U.S. Department of Health and Human Services ("HHS") Inspector General, the Comptroller General, and DHS, or their designees, shall have the right to audit and inspect in accordance with state and federal statutes and regulations, all information and records, or copies of such, within the possession of Newco or Vendor related to the applicable CMS Contract or DHS Contract. If CMS, HHS Inspector General, the Comptroller General, or DHS, or their designees, determine that there is a reasonable probability of fraud or similar risk, CMS, HHS Inspector General, the Comptroller General, or DHS, or their designees, may audit the Vendor at any time. This right shall exist through ten (10) years from the later of the final date of the applicable CMS Contract or DHS Contract period in effect at the time the records were created or the date of completion of any audit, or longer in certain instances described in applicable laws or regulations.
- 2.15 Newco Access to Records. Vendor shall grant Newco or its designees such audit, evaluation, and inspection rights identified in Section 2.14 herein, as are necessary for Newco to comply with its obligations under the applicable CMS Contract and DHS Contract.
- 2.16 State Audits. Without limiting Sections 2.13 and 2.14, Vendor acknowledges and agrees that the books and records of Vendor relevant to the DHS Contract shall be made available and subject to examination by the state, including DHS and its authorized representatives, for a minimum of six (6) years from the end of the final date of the applicable DHS Contract period in effect at the time the records were created.
- 2.17 Intentionally Deleted
- 2.18 Accessibility for Disabled Members. Vendor will comply with applicable provisions of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101. et. seq., and regulations promulgated pursuant to it. Vendor will also comply with 28 CFR §35.130(d), which requires that services, programs, and activities be provided in the most integrated setting

appropriate to the needs of Newco members with disabilities. Vendor also will take reasonable steps to ensure meaningful access by Limited English Proficient (“LEP”) persons. The following four factors should be considered: (a) the number or proportion of LEP persons eligible to be served; (b) the frequency with which LEP individuals come in contact with Vendor; (c) the nature and importance of the program, activity, or service provided by the program to people’s lives; and (d) the resources available to Vendor, and costs.

2.19 Newco Member Protection. Vendor agrees that in no event, shall Vendor, or any subcontractor of Vendor, bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against a Newco member or any other person(s) acting on a Newco member’s behalf, for Services provided under the Agreement, or for any other fees that are the legal obligation of Newco under the applicable CMS Contract. This provision applies, but is not limited to, the following events: (a) nonpayment by Newco; (b) insolvency of Newco; or (c) breach of the Agreement by Newco.

2.20 Newco Member Rights. Vendor will comply with any applicable state and federal laws that pertain to Newco member rights and, when providing Services to a Newco member, ensure the Newco member’s right to:

- (a) Receive information pursuant to 42 CFR §438.10;
- (b) Be treated with respect and with due consideration for the Newco member’s dignity and privacy;
- (c) Receive information on available Services and alternatives, presented in a manner appropriate to the Newco member’s condition and ability to understand;
- (d) Participate in decisions regarding his or her health care, including the right to refuse treatment;
- (e) Be free from any form of restraint or seclusion used as a means of coercion, discipline, convenience or retaliation, as specified in other Federal regulations on the use of restraints and seclusion;
- (f) Request and receive a copy of his or her medical records pursuant to state law and 45 CFR Parts 160 and 164, subparts A and E, and request to amend or correct the record as specified in 45 CFR §§164.524 and 164.526;
- (g) Be furnished services in accordance with 42 CFR §438.206 through §438.210; and
- (h) Be free to exercise his or her rights and that the exercise of those rights will not adversely affect the way the Newco member is treated.

2.21 Intentionally Deleted.

2.22 Lobbying Disclosure. Vendor shall, and shall require that its subcontractors, if any, certify that, to the best of their knowledge, understanding, and belief:

No federal appropriated funds have been paid or will be paid for salary, expenses or otherwise by or on behalf of Vendor, to any person influencing or attempting to influence an officer or employee of an agency, a member of Congress or state legislature, an officer or employee of Congress or state legislature, or an employee of a member of Congress or state legislature in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, the modification of any federal contract, grant, loan, or cooperative agreement, or in any activity designed to influence legislation or appropriations pending before Congress or state legislature.

If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with federal government health care program products, Vendor shall, and as applicable shall require that its subcontractors, complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2.23 Compliance Training.

- (a) Vendor certifies that it will annually provide compliance training that meets the guidelines set by CMS from time to time ("Compliance Training"), to its personnel and employees (as required by CMS) responsible for the administration or delivery of Services to Newco members. To the extent required by CMS, such Compliance Training will include such other applicable compliance and/or fraud, waste, and abuse training directed by CMS. Vendor further certifies that for Downstream Entities responsible for the administration or delivery of Services to Newco members, Vendor will within ninety (90) calendar days of contracting with its Downstream Entities and annually thereafter: (i) communicate general compliance information to its Downstream Entities; and (ii) provide fraud, waste and abuse training directly to its Downstream Entities or provide appropriate fraud, waste and abuse training materials to its Downstream Entities. Vendor will provide, at Newco's request, an attestation that Vendor has fulfilled the required Compliance Training hereunder for its personnel, employees, and Downstream Entities (to the extent required or instructed by CMS) in compliance with this section.
- (b) Upon reasonable written notice from Newco to Vendor, Vendor shall permit Newco personnel to review Vendor's policies and procedures including, without limitation, Compliance Training program materials and methods of distribution to Downstream Entities related to Vendor's Compliance Training provided under this section.

2.24 Excluded Individuals and Entities.

- (a) Vendor warrants that Vendor has not been: (i) convicted of a criminal offense related to Vendor's involvement in any federally funded government program; (ii) debarred, suspended or otherwise excluded from participation in any federally funded government program; or (iii) sanctioned by the HHS Office of Inspector General ("OIG").
- (b) Vendor further warrants that Vendor will not, during the term of the Agreement, employ or contract with any individual and entity to provide Services under the Agreement that: (i) has been convicted of a criminal offense related to the individual's or entity's involvement in any federally funded government program; (ii) is listed as debarred, suspended or otherwise excluded from participation in any federally funded government program; or (iii) has been sanctioned by the OIG.
- (c) Vendor shall provide written notice to Newco within five (5) calendar days of the date Vendor knows, or has reason to know, that Vendor or any individual or entity employed or contracted by Vendor has been: (i) convicted of a criminal offense related to the individual's or entity's involvement in any federally funded government program; (ii) listed as debarred, suspended or otherwise excluded from participation in any federally funded government program; or (iii) sanctioned by the OIG.

2.25 Disclosure of Ownership Information. On an annual basis and within thirty-five (35) calendar days of any request by Newco, Vendor shall provide written disclosure to Newco regarding the corporate ownership of Vendor as required by this section. In addition, Vendor shall notify Newco within ten (10) business days of the date Vendor knows, or has reason to know, of any update or change in such ownership. Vendor's disclosure to Newco shall include, but not be limited to, the following information:

- (a) the name, address, date of birth and social security number of each Managing Employee, and Person with an Ownership or Control Interest in Vendor, or any Subcontractor in which Vendor has direct or indirect ownership of five percent (5%) or more;
- (b) whether any Person with an Ownership or Control Interest identified in Section 2.25(a) is related to any other Person with an Ownership or Control Interest as spouse, parent, child or sibling; and
- (c) the name of any other organization in which a Person with an Ownership or Control Interest in Vendor also has an ownership or control interest in that other organization.

2.26 Disclosure of Business Transactions. Within fifteen (15) calendar days of a request by CMS or DHS, Vendor shall disclose to Newco information related to business transactions in accordance with 42 CFR §455.105(b). Vendor's disclosure to Newco shall include the following information:

- (a) the ownership of any Subcontractor with whom Vendor has had business transactions totaling more than _____ during the 12-month period ending on the date of the request; and
- (b) any Significant Business Transactions between Vendor and any wholly owned supplier, or between Vendor and any Subcontractor, during the 5-year period ending on the date of the request.

2.27 Offshore Services. Vendor represents that no subcontractor hereunder performs any Medicare-related work in any country that is not one of the fifty United States or one of the United States Territories. If Vendor intends to perform (whether itself or through a subcontractor) any portion of the services under the Agreement outside the territory of the United States (“Off-Shore Services”), Vendor must obtain Newco’s prior written consent, which may be conditioned upon the consent of Newco’s regulators and Newco’s review of applicable law. If Newco gives consent to Vendor to provide Offshore Services, Newco reserves the right to later revoke that consent if Newco is compelled to do so due to any regulatory instruction or legal requirement as determined by Newco and Vendor shall be required to comply with all CMS and DHS requirements and instructions applicable to offshore subcontracting including, but not limited to, completing an “Offshore Subcontractor Information and Attestation Form.”

2.28 BC/DR Plan. To the extent Vendor provides “priority services” (as defined by the DHS Contract), Vendor must ensure that it maintains a BC/DR Plan and that its BC/DR Plan: (a) includes the appointment and identification of an emergency preparedness response coordinator, and Vendor shall provide Newco with the name and contact information for such individual; (b) includes the procedures for activation of the BC/DR Plan upon the occurrence of an emergency performance interruption (“EPI”); (c) ensures that Vendor operations continue to provide Services under the Agreement for as long as is practicable; and (d) includes reversal procedures for re-entering normal operations after an EPI. In the event of an EPI, Vendor must implement its BC/DR Plan within two (2) calendar days and Vendor shall use best efforts to provide Newco with prompt notice of any EPI and the resulting effects of such on the delivery of Services under the Agreement. Vendor must maintain, review, and annually test the BC/DR Plan throughout the Agreement’s term. Newco may review Vendor’s BC/DR Plan upon request and Vendor will provide Newco a copy of its BC/DR Plan no later than ten (10) calendar days after Newco’s request.

2.29 Wisconsin Compliance. To the extent services or other items hereunder are provided to Dean Health Plan, Inc. and Dean Health Insurance, Inc. (each an “Insurer”), the following terms shall apply.

- (a) The Parties will settle not less frequently than on a quarterly basis, and comply with the requirements in the Accounting Practices and Procedures Manual.
- (b) Insurer shall be prohibited from advancing funds to Newco and MSC except to pay for services as defined in the Agreement.
- (c) Insurer shall maintain oversight for and monitor annually for quality assurance all functions provided.
- (d) All funds and invested assets of Insurer are the exclusive property of Insurer, held for the benefit of Insurer and subject to Insurer’s control.
- (e) In the event, an Insurer is placed in delinquency proceedings or seized by the commissioner under Wis. Stat. Ann. § 645, a) all of the rights of Insurer under the Agreement extend to the receiver or commissioner and b) all books and records will immediately be made available to the receiver or the commissioner, and shall be turned over to the receiver or commissioner immediately upon the receiver or the commissioner’s request. Books and records of Insurer shall include all books and records developed or maintained under or related to the Agreement and shall remain the property of the Insurer and subject to the control of the Insurer.
- (f) Notwithstanding any terms to the contrary, Newco and MSC may not automatically terminate this Agreement if Insurer is placed in receivership as described in Section 2.30(e). Newco and MSC shall continue to maintain any systems, programs, or other infrastructure notwithstanding a delinquency proceeding or seizure by the commissioner and will make them available to the receiver, for so long as the Newco and MSC continue to receive timely payments for services.

2.30 Missouri Compliance. To the extent services or other items hereunder are provided to SSM Health Plan and SSM Health Insurance Company (each an “Insurer”), the following terms shall apply.

- (a) The Parties will settle not less frequently than on a quarterly basis, and comply with the requirements in the Accounting Practices and Procedures Manual.
- (b) Insurer shall be prohibited from advancing funds to Newco or MSC except to pay for services as defined in the Agreement.
- (c) Insurer shall maintain oversight for and monitor annually for quality assurance all functions provided by Newco or MSC.
- (d) All funds and invested assets of Insurer are the exclusive property of Insurer, held for the benefit of Insurer and subject to Insurer’s control.
- (e) In the event, an Insurer is placed in delinquency proceedings or seized by the commissioner under Mis. Ann. Stat. §§ 375.1150-1246, a) all of the rights of Insurer under the Agreement extend to the receiver or commissioner and b) all books and records will immediately be made available to the receiver or the commissioner, and shall be turned over to the receiver or commissioner immediately upon the receiver or the commissioner’s request. Books and records of Insurer shall include all books

and records developed or maintained under or related to the Agreement and shall remain the property of the Insurer and subject to the control of the Insurer.

- (f) Notwithstanding any terms to the contrary, Newco or MSC may not automatically terminate this Agreement if Insurer is placed in receivership as described in Section 2.31(e). Newco and MSC shall continue to maintain any systems, programs, or other infrastructure notwithstanding a delinquency proceeding or seizure by the commissioner and will make them available to the receiver, for so long as Newco or MSC continues to receive timely payments for services.

APPENDIX B

QUALIFIED HEALTH PLAN SERVICES ADDENDUM

This Qualified Health Plan Services Addendum (this “**Addendum**”) supplements and is made part of the Administrative Services Agreement between MS Community JV, LLC on behalf of itself and its wholly-owned subsidiaries (collectively, “**Newco**”) and Medica Services Company, LLC (“**Vendor**”) effective _____, 2021 (“**Agreement**”). This Addendum is effective as of the Effective Date of the Agreement and applies to Qualified Health Plan (“**QHP**”) products of the Newco Companies. This Addendum shall apply to the extent that Vendor is a Delegated Entity, as defined below. In the event of a conflict between this Addendum and the Agreement, this Addendum shall govern with respect to the services related to Newco’s participation in state and federal Exchanges.

SECTION I Definitions

Capitalized terms used in this Addendum that are not otherwise defined herein shall have the meanings set forth in the Agreement.

- 1.1 Delegated Entity. Any party that enters into an agreement with Newco to provide administrative or health care services to Newco Members or employers if such members or employers are qualified individuals or qualified employers under Newco’s QHP products.
- 1.2 Downstream Entity. Any party that enters into an agreement below the level of the arrangement between Newco and Delegated Entity for the provision of administrative or health care services related to Newco’s agreement with a Delegated Entity. These written arrangements continue down to the level of the ultimate provider of health and/or administrative services.
- 1.3 Exchange or Health Insurance Marketplace. A governmental agency or non-profit entity that meets the applicable standards of 45 C.F.R. §155 subpart D and makes QHPs available to individuals and employers. This term includes both state and Federally-facilitated Exchanges.
- 1.4 Qualified Health Plan or QHP. A health plan that has been certified that it meets the standards described in 45 C.F.R. § 156 subpart C or that has been approved by the state Exchange through which such plan is offered.
- 1.5 QHP Issuer Agreement. An agreement between the Centers for Medicare & Medicaid Services (“CMS”) and Newco for Newco to offer QHPs through Federally-facilitated Health Insurance Marketplaces.
- 1.6 QHP Services. Administrative or health care services provided to Newco Members or employers if such Members or employers are qualified individuals or qualified employees under Newco’s QHP products.

SECTION II

Requirements

- 2.1 Provision of Services. Vendor will provide Services, as defined in the Agreement, and which may include QHP Services, in a manner consistent with professionally recognized standards of care and in accordance with the standard of practice in the community in which Vendor renders Services as may be required pursuant to the QHP Issuer Agreement and all applicable laws, regulations and instructions and in a manner so as to assure quality of Services.
- 2.2 Laws, Rules and Instructions. Vendor will and will cause Downstream Entities to, comply with:
- (a) all applicable state and federal laws;
 - (b) all applicable state and federal regulations and CMS instructions including but not limited to:
 - (i) 45 C.F.R. §156, subpart C as amended, if applicable;
 - (ii) 45 C.F.R. §155, subparts H and K as amended, if applicable;
 - (iii) 45 C.F.R. §155.705 as amended, if applicable;
 - (iv) 45 C.F.R. §155.220 as amended, if applicable;
 - (v) 45 C.F.R. §156.705 as amended, if applicable;
 - (vi) 45 C.F.R. §156.715 as amended, if applicable; and
 - (vii) 45 C.F.R. §156.340 as amended, if applicable;
 - (c) all applicable federal laws and regulations designed to prevent or ameliorate fraud, waste or abuse including, but not limited to, applicable provisions of federal criminal law, the False Claims Act (31 U.S.C. 3729 et. seq.) and the anti-kickback statute (section 1128B(b) of the Social Security Act);
 - (d) All applicable provisions of the HIPAA administrative simplification rules at 45 CFR Parts 160, 162, and 164; and
 - (e) the Standard Rules of Conduct as listed in the Section II of QHP Issuer Agreement as may be amended, if applicable.
- 2.3 Provision of QHP Services.
- (a) Newco may contract with Vendor for certain QHP Services that allow Newco to perform under the QHP Issuer Agreement. Vendor acknowledges and agrees that Newco may revoke Vendor's provision of QHP Services to Newco pursuant to this Appendix B in instances where CMS or Newco determines that Vendor has not performed the QHP Services satisfactorily. Vendor acknowledges and agrees that to the extent CMS directs such revocation, Newco shall provide immediate written notice of such to Vendor, and such revocation shall become effective as directed by CMS. Vendor shall cooperate with Newco regarding the transition of any QHP Services that have been revoked by Newco.
 - (b) If Newco and Vendor mutually agree that Vendor shall provide additional QHP Services other than the activities described herein and in the Agreement, Newco and Vendor agree that this Addendum shall apply to the provision of the additional QHP Services.

- (c) If Newco has delegated to Vendor the selection of any subcontractor, or other Downstream Entity, Newco retains the right to approve, suspend or terminate the arrangement with such subcontractors or other Downstream Entities.
- 2.4 Downstream Entities. If Vendor has any arrangements, in accordance with the terms of the Agreement, with affiliates, subsidiaries, or Downstream Entities, directly or through another person or entity, to perform any QHP Services, Vendor shall ensure that all such arrangements are in writing, duly executed, and include all the terms contained in this Addendum as may be interpreted, supplemented or amended in accordance with the terms and conditions of this Addendum. Vendor shall provide proof of such to Newco upon reasonable request.
- 2.5 Monitoring and Oversight. Vendor agrees to cooperate with the monitoring and oversight activities reasonably requested by Newco.
- 2.6 Privacy. Vendor agrees to comply with all applicable state and federal privacy and security requirements. To the extent that Vendor is a Business Associate of Newco, the terms of any Business Associate Agreement or Addendum between the parties shall apply.
- 2.7 Record Retention. Vendor shall maintain records arising out of or related to the Agreement and the provision of QHP Services for at least ten (10) years from the date of termination or expiration of the Agreement or the date of completion of any audit, whichever is later, or such longer period required by law.
- 2.8 Government Access to Records. Vendor acknowledges and agrees that the Secretary of the U.S. Department of Health and Human Services (“HHS”) and the Comptroller General, or their designees, shall have the right to audit, evaluate and inspect any pertinent books, contracts, computer or other electronic systems, including medical records and documentation related to Vendor’s QHP Services. This right shall exist through ten (10) years from the date of termination or expiration of the Agreement or the date of completion of any audit, whichever is later, or such longer period required by law.
- 2.9 Newco Access to Records. Vendor shall grant Newco or its designees such audit, evaluation, and inspection rights identified in Section 2.8 herein, as are necessary for Newco to comply with its obligations to perform under the QHP Issuer Agreement and applicable law. Whenever possible, Newco will give Vendor reasonable notice of the need for such audit, evaluation or inspection, and will conduct such audit, evaluation or inspection at a reasonable time and place.

APPENDIX C

BUSINESS ASSOCIATE ADDENDUM

THIS BUSINESS ASSOCIATE ADDENDUM (“**Addendum**”) supplements and is made part of the Administrative Services Agreement effective _____, 2021 (“**Underlying Agreement**”) between MS Community JV, LLC and Medica Services Company, LLC (“**Business Associate**”). This Addendum is between MS Community JV, LLC on behalf of itself and its Affiliates that are covered entities as defined 45 C.F.R. § 160.103 (collectively referred to as “**Newco**”) and Business Associate and is effective as of the Underlying Agreement’s effective date (“**Effective Date**”).

RECITALS

- A. Business Associate will receive certain information from Newco, or from others on behalf of Newco, or will create, maintain, or transmit certain information on behalf of Newco, some of which may constitute Protected Health Information (“**PHI**”) as defined in 45 C.F.R. § 160.103.
- B. Newco and Business Associate intend to protect the privacy and provide for the security of PHI. This Addendum addresses the Business Associate requirements of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (45 C.F.R. Parts 160 and 164), as may be modified or amended from time to time, including by the Health Information Technology for Economic and Clinical Health Act (“**HITECH**”) (collectively, “**HIPAA**”).
- C. HIPAA requires Newco and Business Associate to enter into a written contract containing specific requirements of Business Associate prior to the disclosure of PHI as set forth in, but not limited to, 45 C.F.R. §§ 164.502(e) and 164.504(e) and contained in this Addendum.

NOW THEREFORE, the parties agree as follows:

1. Definitions.

Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in HIPAA, as may be modified or amended from time to time.

2. Obligations and Activities of Business Associate.

- (a) Business Associate agrees to restrict its use and disclosure of PHI solely for the purpose of performing Business Associate’s obligations under the Underlying Agreement or as otherwise permitted or required by this Addendum or as Required by Law.

- (b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as permitted by the Underlying Agreement and this Addendum.
- (c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Addendum.
- (d) Business Associate agrees to report to Newco any use or disclosure of PHI not provided for by this Addendum of which it becomes aware, including breaches of unsecured PHI as required by 45 C.F.R. § 164.410, within five (5) business days of the discovery of the use or disclosure.
- (e) Business Associate agrees, prior to disclosure of PHI to any Subcontractor, to require the Subcontractor to agree in writing to the same or substantially similar terms and restrictions that apply to Business Associate under this Addendum with respect to such PHI.
- (f) To the extent Business Associate maintains the Newco Designated Record Set, Business Associate agrees to provide access, at the request of Newco, and in the time and manner determined by Newco, to PHI in a Designated Record Set, to Newco, or as directed by Newco, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524. In the event an Individual requests a copy of PHI maintained electronically in one or more Designated Record Sets, Business Associate agrees to provide access, at the request of Newco, and a time and manner, to such PHI, to Newco.
- (g) To the extent Business Associate maintains the Newco Designated Record Set, Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set pursuant to 45 C.F.R. § 164.526 at the request of Newco, within ten (10) business days after request by Newco.
- (h) Business Associate agrees to make its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI created, received, maintained, or transmitted by Business Associate on behalf of Newco, available to the Secretary, as designated by the Secretary, for purposes of the Secretary determining compliance with HIPAA.
- (i) Business Associate agrees to document disclosures of PHI and information related to such disclosures as would be required for Newco to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- (j) Business Associate shall promptly notify Newco upon receipt of a request by an Individual for an accounting of disclosures of PHI. Business Associate shall, within ten (10) business days and as directed by Newco, either provide an accounting of disclosures to an Individual requesting an accounting, or provide Newco with

information documented in accordance with Section 2(i) of this Addendum to permit Newco to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.

- (k) Business Associate will, to the extent Business Associate is to carry out a Newco obligation under the privacy regulations, comply with any and all privacy regulations that apply to Newco in the performance of such obligation.
- (l) Business Associate will, following the discovery of a Breach of Unsecured Protected Health Information, notify Newco of the existence of the Breach within five (5) business days. Business Associate shall without unreasonable delay, but in no event more than thirty (30) calendar days after discovery of the Breach, provide Newco with the following documentation:
 - (i) A brief description of the Breach, including the date of the Breach and date of discovery of the Breach;
 - (ii) A description of the types of Unsecured Protected Health Information that were involved;
 - (iii) A description of what Business Associate is doing to investigate the Breach, to mitigate losses and to protect against further Breaches; and
 - (iv) To the extent possible, the identification of each individual whose unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach.
- (n) Business Associate shall limit its requests for, and its uses and disclosures of, PHI to the “minimum necessary” amount of PHI. Newco shall not request that Business Associate use or disclose more than the minimum necessary amount of PHI.

3. Prohibited Remuneration.

- (a) Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI except as provided in 42 U.S.C. § 17935(d).
- (b) Business Associate shall not directly or indirectly receive remuneration in exchange for a marketing communication, as defined in 45 C.F.R. § 164.501 except as permitted under 42 U.S.C. § 17936(a).

4. Permitted Uses and Disclosures by Business Associate- General Use and Disclosure Provision.

Except as otherwise limited in this Addendum, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Newco as specified in the Underlying Agreement, provided that such use or disclosure would not violate HIPAA if done by Newco and is in compliance with each applicable requirement of 45 C.F.R. § 164.504(e) and the privacy requirements referenced in HIPAA.

5. Specific Use and Disclosure Provisions.

- (a) Except as otherwise limited in this Addendum, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
- (b) Except as otherwise limited in this Addendum, Business Associate may disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that such disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that such PHI will remain confidential and be used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.
- (c) Except as otherwise limited in this Addendum, Business Associate may use PHI to provide Data Aggregation services to Newco as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).
- (d) Business Associate may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(1).

6. Security Regulations.

- 6.1 Applicability. This Section 6 applies only if, and to the extent that, PHI is created, received, maintained, or transmitted by Business Associate in electronic format (“**e-PHI**”). This Section 6 will govern the terms and conditions under which e-PHI is created, received, maintained, and transmitted.
- 6.2 Security Requirements- Security Implementation by Business Associate. Business Associate agrees to comply with the HIPAA Security Rule obligations applicable to Business Associate and to:
 - (a) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the e-PHI that Business Associate creates, receives, maintains, or transmits on behalf of Newco;
 - (b) Implement reasonable and appropriate policies and procedures as required by 45 C.F.R. § 164.316;
 - (c) Prior to disclosing e-PHI to any Subcontractor, ensure that any Subcontractor to whom Business Associate provides e-PHI agrees in writing to implement reasonable and appropriate safeguards to protect it; and

- (d) Report to Newco, within five (5) business days after discovery, any Security Incident of which Business Associate becomes aware. Notwithstanding the foregoing Business Associate does not need to notify Newco of Unsuccessful Security Incidents. "Unsuccessful Security Incidents" means, without limitation, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denial of service attacks, and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI.

7. Obligations of Newco - Provisions for Newco to Inform Business Associate of Privacy Practices and Restrictions.

- (a) Newco shall make available to Business Associate its notice of privacy practices that Newco produces in accordance with 45 C.F.R. § 164.520, as well as any material changes to the notice, and notify Business Associate of any limitations or restrictions on PHI that may affect permitted or required uses or disclosures of PHI under this Addendum or the Underlying Agreement.
- (b) Newco shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's permitted or required uses and disclosures.
- (c) Newco shall notify Business Associate of any restriction to the use or disclosure of PHI that Newco has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- (d) Sensitive Data. Newco represents and warrants that Newco has the right to share all PHI provided to Business Associate with Business Associate, and any individually identifiable health information subject to more stringent state and/or federal laws ("Sensitive Data"). Newco acknowledges and agrees that Newco is responsible for obtaining any and all applicable authorizations or consents required for the uses and disclosure of Sensitive Information permitted by the Underlying Agreement and this Addendum. Newco will use commercially reasonable efforts to implement processes which identify Sensitive Data shared by Newco with Business Associate, provided such identification is required by law or regulation.
- (e) Qualified Service Organization. Business Associate acknowledges that it may be a Qualified Service Organization ("QSO"), as defined in 42 CFR § 2.11, with regard to the services provided to Covered Entity. To the extent Business Associate qualifies as a QSO with regard to the services provided to Covered Entity, Business Associate acknowledges that certain PHI may not be disclosed or re-disclosed under the Confidentiality Regulations (found at 42 C.F.R. Part 2) without the patient's written consent, even though such disclosure or re-disclosure might be permitted by HIPAA or other laws. Further, Business Associate agrees to be fully bound by the Confidentiality Regulations in receiving, storing, processing, transmitting, transporting or otherwise dealing with any PHI that is subject to the

Confidentiality Regulations. Business Associate will also resist in judicial proceedings any efforts to obtain applicable PHI except as permitted by the Confidentiality Regulations.

8. Permissible Requests by Newco.

Newco shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA if done by Newco. An exception shall be if Business Associate will use or disclose PHI for Data Aggregation or management and administrative activities of Business Associate.

9. Term and Termination.

(a) The term of this Addendum shall be effective as of its Effective Date and shall terminate upon the earlier of termination of the Underlying Agreement or as provided in this Section 9, subject to Section 11(c).

(b) Upon Newco's knowledge of a material breach of this Addendum by Business Associate, Newco will provide Business Associate an opportunity to cure the breach within a reasonable time, specified by Newco. Such reasonable time shall not exceed thirty (30) days. This provision shall be in addition to and shall not limit any rights of termination set forth in the Underlying Agreement.

(c) Effect of Termination.

(1) Except as provided in Section 9(c)(2) of this Addendum, upon termination of this Addendum, for any reason, Business Associate shall return or destroy, at Newco's direction, all PHI received from Newco, or created, received, maintained, or transmitted by Business Associate on behalf of Newco. This section shall apply to PHI that is in the possession of Subcontractors of Business Associate. Neither Business Associate, nor its Subcontractors, shall retain any copies of the PHI.

(2) In the event that Business Associate determines that returning or destroying PHI is infeasible, Business Associate shall provide to Newco notification of the conditions that make return or destruction infeasible upon Newco's written request. Upon the reasonable judgment of the parties that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Addendum to such PHI and, except for other permitted uses and disclosures set forth in this Addendum, Business Associate will limit further uses and disclosures of such PHI solely for those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

10. Indemnification.

Business Associate shall be responsible for any and all of the following reasonable costs associated with responding to and mitigating any Security Incident, Breach of Unsecured PHI or unauthorized use or disclosure of PHI as a result of the action or omission of Business Associate or its Subcontractors, including mailing costs of notification letters where notification is required under HIPAA or other relevant privacy laws to affected individuals and the Office for Civil Rights, reasonable attorneys' fees, and credit monitoring costs for affected individuals where required by law and other related expenses and costs (collectively, "Costs"), provided, however, that Business Associate's total liability for such Costs shall not exceed the amount of

11. Miscellaneous.

- (a) A reference in this Addendum to a section in HIPAA means the section as in effect or as amended.
- (b) The parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for each party to comply with the requirements of HIPAA and other applicable laws relating to the security or confidentiality of PHI. Either party may terminate this Addendum and the Underlying Agreement upon thirty (30) calendar days written notice in the event that the other party does not promptly enter into good faith negotiations to amend this Addendum when requested by a party pursuant to this Section 11(b) . This provision shall be in addition to and shall not limit any rights of termination set forth in the Underlying Agreement.
- (c) The respective rights and obligations of Newco and Business Associate under Section 9(c) and Section 10 of this Addendum shall survive the termination of this Addendum.
- (d) Any ambiguity in this Addendum shall be resolved to permit Newco to comply with HIPAA and other laws applicable to the privacy and security of PHI.
- (e) Nothing express or implied in this Addendum is intended to confer upon any person, other than the parties hereto, any rights, remedies, obligations, or liabilities whatsoever.
- (f) In the event of any conflict or inconsistency between the provisions of this Addendum and the provisions of any other agreement between the parties, the provisions of this Addendum shall control.

APPENDIX D

INSURANCE

[To be inserted]