

**EMPLOYEE BENEFIT SYSTEMS
THIRD PARTY ADMINISTRATION SERVICE AGREEMENT**

THIS AGREEMENT, effective April 1, 2021 (the "Effective Date"), is made by and between CITY OF CRESCO, ("Client"), an Iowa entity, and Two Rivers Insurance Company, Inc., d/b/a Employee Benefit Systems, an Iowa corporation ("Administrator").

WHEREAS, Client desires to retain Administrator to provide certain administrative services on behalf of the Client on the terms and conditions contained in this Agreement; and

WHEREAS, Administrator agrees to provide certain administrative services on behalf of Client on the terms and conditions contained in this Agreement;

NOW THEREFORE, in consideration of these promises and the mutual promises set forth in this Agreement, the parties hereby agree as follows:

1. SERVICES AND FEES OF ADMINISTRATOR.

Client appoints Administrator as its agent to provide administrative services, subject to the terms and conditions of this Agreement. Administrator shall have only such authority as granted expressly by this Agreement. Administrator shall not have authority to make any agreement binding upon Client.

In consideration of the fees outlined in the Verification of Purchase (VOP), Addendum A, Administrator agrees to provide claims payment, administrative, and enrollment services for Client. These services shall include but not be limited to: the processing and payment, or denial of claims; monthly and yearly reporting of financial and quality indicators and claims data; filing 1099-Med forms to the IRS and providing copies to the provider; and other services as agreed to by the parties from time to time necessary or desirable to administer Client's benefit plan (collective, the "Services").

All Services will be performed with the care, skill, diligence, and impartiality normally expected of a third-party administrator in the insurance industry. Client shall indemnify and hold Administrator harmless for any liability relating to prior reimbursement requests and/or prior administrator.

2. COMPLIANCE WITH LAWS.

Both parties agree that they will comply with all applicable laws, statutes, rules, and regulations. In compliance with the Health Insurance Portability & Accountability Act of 1996 (HIPAA) privacy and security regulations, Administrator shall execute and comply with the Business Associate Agreement attached hereto and incorporated herein by this reference as Addendum B.

3. BOND.

Administrator shall maintain a fidelity bond to reimburse Client in the event of a loss caused by fraud or certain types of misconduct by any employee of Administrator. The bond shall be in an amount that will comply with the Employee Retirement Income Security Act of 1974 (ERISA) guidelines for the relevant plan size.

4. INSURANCE.

Administrator shall obtain and maintain such insurance as is necessary or appropriate to insure its ability to comply with all applicable laws and regulations, including but not limited to E&O insurance.



5. INDEPENDENT CONTRACTOR.

The relationship between Client and Administrator is intended to be that of an independent contractor. Nothing in this Agreement shall be construed to create any association, partnership, joint venture, agency or employment relationship of any kind between Client, or any employee or agent of Client, and Administrator.

6. STATUS OF ADMINISTRATOR.

Administrator hereby represents and warrants that neither Administrator nor, to the best of its knowledge, its employees or subcontractors have been charged with a criminal offense that would interfere with Administrator's ability to provide Services.

7. LICENSES.

Administrator represents and warrants that it (a) possesses the necessary licenses from regulatory authorities to perform its duties under this Agreement and (b) is a corporation duly organized and existing and in good standing under the laws of the State of Iowa.

8. RECORDS.

All records in Administrator's possession shall be kept by Administrator for a period of eight (8) years plus one (1) day in accordance with Administrator's policy and procedure.

9. CONFIDENTIALITY.

Each party acknowledges that it will have access to information that is confidential and proprietary. Each party shall keep all confidential information as strictly confidential and will not use such information except as required in the performance of the administrative services, or as required by law. This Section 9 is in addition to any privacy or confidentiality rules imposed by law, including but not limited to, HIPAA.

The duties of the parties under this Section 9 shall survive termination of this Agreement.

10. COMPENSATION.

Client shall pay Administrator an administrative fee, as described in Addendum A to this Agreement, as compensation for performance under this Agreement. Such fee shall be in full satisfaction of all services performed pursuant to this Agreement. Administrator will bill Client for the administration fee. Payment terms for administrative fees are due the first of the month. Participants of Client's plan who are on leave of absence, early retirement and/or COBRA extensions will be counted as employees for purposes of calculating the fee on Addendum A. Administrator may unilaterally change annually at time of renewal, the EBS administration fees outlined in Addendum A with 60 days prior notice to Client.

All explanation of benefit (EOB) forms, and computerized checks used by Administrator will be provided at Administrator's expense. Booklet printing charges are not contemplated under this agreement and will be separately contracted for as necessary. Enrollment information can be provided in an electronic pdf format upon request. Printed material will be quoted at an additional cost.

11. PAYMENT OF PREMIUM; INTEREST ON LATE PAYMENTS.

Amounts billed for all EBS Services or Consolidated Billing Services must be received in full as billed by the 1st of the month in which it is due. The client agrees to pay to EBS, in EBS's office the full billed invoice amount when due. Such payment may be made by wire transfer, check, automatic funds withdrawal, or electronic means. If Client elects automatic funds withdrawal, Client shall execute the necessary authorization.

If the Client fails to make payments in full when due, the invoice shall include an interest charge on the current invoice from the due date until payment is made in full at the then current prime rate as published periodically in the Midwest edition of The Wall Street Journal plus two percent (2%). Late fees are calculated on the entire premium amount due regardless of any partial payments. The acceptance by EBS of any late payments or partial payments shall not constitute a waiver of any rights under this Agreement. If Client fails to make payments when due for two or more consecutive months, EBS may impose additional late fees of up to eighteen percent (18%) per annum.

If Client elects to authorize automatic funds withdrawal from a deposit account, the automatic withdrawal shall change periodically to correspond with the applicable premium and fees. Client's authorization for automatic funds withdrawal shall include authorization for automatic withdrawal of any changed amount unless Client calls or provides its bank with written notice not less than three (3) business days before a scheduled withdrawal to stop the payment. If Client calls its bank to stop payment, Client may be required to provide a written request within fourteen (14) days after the call. Client will be responsible for any fee assessed by its bank for stop-payment orders made by Client.

If Client pays more than the full billed monthly invoice amount, EBS will give the appropriate credit to the following months invoice. EBS will not issue refund checks for invoice overpayment.

12. FINANCIAL REQUIREMENTS.

Client shall provide administrator access to a Client checking account to be used by Administrator for payment of Client's claims, premiums and monthly administration fees, and other expenses under this Agreement. Client will be responsible for any fees or service charges relating to this account. The funding of the checking account will be the responsibility of the Client. Administrator will not pre-fund any claim payments, premiums, or costs and neither Administrator nor its employees or officers shall be liable for any such amounts. Administrator will not be liable for any claims resulting from a group's termination due to lack of adequate funding by Client to Administrator.

13. CLIENT RESPONSIBILITIES.

Specific responsibilities of Client and Administrator are set forth on Addendum C. In addition, Client, as the plan sponsor, shall serve as the named fiduciary and Plan Administrator for purposes of ERISA, if applicable.

Client hereby authorizes Administrator to draw checks, drafts or other instruments for the payment and/or processing of benefits in accordance with the terms and conditions of this Agreement against any account maintained and designated by Client for this purpose. Client is solely responsible for funding the plans and for ensuring there is sufficient funds to pay claims and expenses.

In the event of delayed filing of subrogation or similar claims by any person or entity, including by any Government agency, Client will retain responsibility for all benefits payable under the health care plan in effect at the time the loss is incurred. Administrator shall handle any such matters in a timely



manner. If Client has retained another Administrator when such an event happens, Administrator shall provide any information it may have related to the subrogation matter as soon as possible.

14. CLAIMS APPEALS.

Administrator shall refer to Client or Client's designee, for final determination, any claim for benefits or coverage that is appealed after initial rejection by the Administrator. Administrator shall similarly refer to Client or Client's designee any class of claims the Client may specify, including: (a) any question of eligibility or entitlement of the claimant for coverage under the Plan; (b) any question with respect to the amount due; or (c) any other appeal.

15. TERM & TERMINATION.

- a. **Term for all services except COBRA administration.** The initial term of this Agreement shall be for one (1) year from the Effective Date. This Agreement shall renew automatically each year for additional periods of one year ("Renewal Term") unless a party gives written notice of termination to the other party with a minimum of thirty (30) days prior to the end of any term. Failure to provide 30 days and/or early termination prior to Renewal Term means early termination as defined in 15.d.
- b. **Term for COBRA administration services.** The initial term of this Agreement shall be for one (1) year from the Effective Date. This Agreement shall renew automatically each year for additional period of one year ("Renewal Term") unless a party gives written notice of termination to the other party with a minimum of sixty (60) days prior to the end of any term. Failure to provide 60 days and / or early termination prior to Renewal Term means early termination as defined in 15.d.
- c. **Termination.** This Agreement shall terminate:
 - i. By the procedure stated in subparagraph (a) above;
 - ii. By mutual agreement of the parties;
 - iii. By either party, if, after giving written notice of any material breach, the breaching party fails to correct such breach within 30 days of receipt of such written notice.
- d. **Early Termination.** If client terminates or cancels this Agreement at any time, outside of the initial one-year term or renewal term, the Administrator will suffer damages. The parties agree that the actual damages incurred by Administrator in the event of such termination are difficult to calculate. Therefore, if Client terminates or cancels this Agreement prior to the expiration of the then current term, Client agrees to compensate Administrator for each full and partial month of the remaining term as of the date of termination. The Client will be charged the Client's average monthly administration fees multiplied by the number of months left in the Renewal Term.
- e. **Post Termination Duties.** Except as otherwise stated in this Agreement, the parties shall have no duties upon termination of this Agreement except to settle their accounts, including payment of any indebtedness, and to carry out any residual obligations which arose while this agreement was in force. The duties of Section 9 shall survive the termination of this Agreement.
- f. **Termination Reporting.** If Client has retained another administrator, when such an event happens, Administrator shall provide standard year end run-out reports and accumulator data. The accumulator data will be provided one (1) time within 30 days of termination. If Administrator is to process Run-Out Claims, the accumulator data will be provided one (1) time after the Claims Run-Out agreement expires. Should the Client need additional reporting, reports may be generated at the special programming request priced in the fee schedule (Addendum A).

- g. **Post Termination Run-Out.** Administrator shall offer to process any run-out claims for a period of three (3) months, a fee will be quoted upon request. The agreed upon fee must be paid in full before any run-out claims will be processed. All services and claims will be placed on hold at the run-out beginning date until payment has been received.
- h. **Post Termination Web Portal Access.** EBS will allow Client and member access to the claims web portal for a period of 90 days after termination of your contract.


16. INDEMNIFICATION AND HOLD HARMLESS/LIMITATION OF LIABILITY.

- a. Client shall indemnify and hold Administrator harmless from and against any and all claims, demands, lawsuits, losses, liabilities, damages, expenses, attorney's fees, judgments, settlements, or other obligations resulting from, or arising out of, any act or omission of Client in connection with this Agreement, including the Services provided, or not provided, under this Agreement. In addition, Client shall indemnify and hold Administrator harmless from and against any liability, expense, demand, or other obligation resulting from or arising out of any premium charge, tax, or similar assessment (federal or state), for which Client is liable. Client shall also have the indemnification obligation described in Section 1.
- b. Administrator shall indemnify and hold Client harmless from and against any and all claims, demands, lawsuits, losses, liabilities, damages, expenses, attorney's fees, judgments, settlements, or other obligations resulting from, or arising out of, any act or omission of Administrator in connection with this Agreement, including the Services provided, or not provided, under this Agreement.
- c. Administrator's liability under this agreement will not exceed the fees paid by the Client under this agreement during the 12 months preceding the date upon which the related claim arose. Letter (c.) will not apply if Administrator is grossly negligent or engaged in willful misconduct.
- d. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, ADMINISTRATOR DOES NOT MAKE AND HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, REGARDING ANY OF THE SERVICES EMPLOYEE BENEFIT SYSTEMS PROVIDES OR ARRANGEMENTS TO PROVIDE UNDER THIS AGREEMENT. IN NO EVENT SHALL ANY PARTY BE LIABLE FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OF SPECIAL DAMAGES, LOSS OF DATA OR LOSS PROFITS, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY REPRESENTS THE ALLOCATION OF RISK BETWEEN THE PARTIES AS REFLECTED IN THE PRICING HEREUNDER AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES.

17. GENERAL PROVISIONS.

- a. **Entire Contract; Amendment.** This agreement and any addendums or exhibits contain the entire agreement between the parties with respect to the subject matter herein and may be amended only by a writing signed by both parties. This Agreement supersedes any and all previous contracts, stipulations and agreements, written or oral, between the parties with respect to the subject matter herein.

- b. **Applicable Law.** This Agreement shall be deemed to be an Iowa contract, and shall be construed and governed by the laws of such state.
- c. **No Assignment.** Neither party may assign its rights or obligations hereunder without the prior written consent of the other, provided however that Administrator may assign the Agreement to a related entity or to any successor in a corporate reorganization or restructuring, without consent. Client acknowledges that Administrator may assign, subcontract, or otherwise delegate any of its duties or obligations, provided that such assignment, subcontractor or delegation shall not relieve Administrator of its obligations under this Agreement.
- d. **Waiver.** Failure to enforce any provision of this Agreement does not alter or waive the provision or affect the future enforceability of the provision.
- e. **Severability.** If any term or provision of this Agreement is found invalid, illegal or unenforceable by a court of competent jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement. Upon such determination the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible.
- f. **No Third Party Beneficiaries.** This Agreement shall not confer any rights, remedies, claims or obligations on any third party.

 Employer Signature	City Clerk Title	3-16-2021 Date
EBS Signature	Title	Date



**ADDENDUM (A)
FEE SCHEDULE EFFECTIVE MARCH 1, 2021
VERIFICATION OF PURCHASE
CITY OF CRESCO**

-SEE ADDENDUM (A) ATTACHED TO GROUP RENEWAL PAPERWORK



ADDENDUM (B)
BUSINESS ASSOCIATE AGREEMENT

This Agreement ("Agreement") is effective upon execution by and between Two Rivers Insurance Company, Inc. d/b/a Employee Benefit Systems ("Business Associate") and CITY OF CRESCO, an Iowa ("Covered Entity").

Covered Entity and Business Associate mutually agree to comply with the requirements of the implementing regulations at 45 Code of Federal Regulations ("C.F.R.") Parts 160-64 for the Administrative Simplification provisions of Title II, Subtitle F of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). This Agreement shall supersede any prior business associate agreement.

1. PRIVACY AND SECURITY OF PROTECTED HEALTH INFORMATION.

(a) **Permitted Uses and Disclosures.** Business Associate is permitted to use and disclose Protected Health Information that it creates or received on Covered Entity's behalf or receives from Covered Entity (or another business associate of Covered Entity) and to request Protected Health Information on Covered Entity's behalf (collectively, "Covered Entity's Protected Health Information") as follows:

(i) ***Functions and Activities on Covered Entity's Behalf.*** Except as otherwise limited in this Agreement, to perform functions, activities, or services for, or on behalf of Covered Entity as such services may be specified in any underlying agreement(s), provided that such use or disclosure would not violate 45 C.F.R. Part 164, Subpart E "Privacy of Individually Identifiable Health Information" (the "Privacy Rule") or 45 C.F.R. Part 164, Subpart C "Security Standards for the Protection of Electronic Protected Health Information" (the "Security Rule") if done by Covered Entity.

(ii) ***Business Associate's Operations.*** For Business Associate's proper management and administration or to carry out Business Associate's legal responsibilities, provided that, with respect to disclosure of Covered Entity's Protected Health Information, either:

(a) The disclosure is Required by Law; or

(b) Business Associate obtains reasonable assurance in writing from any person or entity to which Business Associate will disclose Covered Entity's Protected Health Information that the person or entity will:

(1) Hold Covered Entity's Protected Health Information in confidence and use or further disclose Covered Entity's Protected Health Information only for the purpose of which Business Associate disclosed Covered Entity's Protected Health Information to the person or entity or as Required by Law; and

(2) Promptly notify Business Associate (who will in turn notify Covered Entity in accordance with Section 4(a)) of any instance of which the person or entity becomes aware in which the confidentiality of Covered Entity's Protected Health Information was Breached.

(iii) ***Minimum Necessary.*** Business Associate will, in its performance of the functions, activities, services, and operations specified in Section 1(a), make reasonable efforts to use, to disclose, and to request only the minimum amount of Covered Entity's Protected Health Information reasonably necessary to accomplish the intended purpose of the use, disclosure or request, except that Business Associate will not be obligated to comply with this minimum necessary limitation if neither Business Associate nor Covered Entity is required to limit the use, disclosure or request to the minimum necessary. Business Associate and Covered Entity acknowledge that the phrase "minimum necessary" shall be interpreted in accordance with the American Recovery and Reinvestment Act and government guidance on the definition.

(b) **Prohibition on Unauthorized Use or Disclosure.** Business Associate will neither use nor disclose Covered Entity's Protected Health Information, except as permitted or required by the Privacy

Rule, this Agreement, in writing by Covered Entity, or as required by law. This Agreement does not authorize Business Associate to use or disclose Covered Entity's Protected Health Information in a manner that will violate the Privacy Rule or the Security Rule if done by Covered Entity, except as set forth in Section 1(a)(ii).

(c) Information Safeguards.

- (i) *Privacy of Covered Entity's Protected Health Information.* Business Associate will develop, implement, maintain, and use appropriate administrative, technical, and physical safeguards to protect the privacy of Covered Entity's Protected Health Information. The safeguards must reasonably protect Covered Entity's Protected Health Information from any intentional or unintentional use or disclosure in violation of the Privacy Rule and limit incidental uses or disclosures made pursuant to a use or disclosure otherwise permitted by this Agreement.
- (ii) *Security of Covered Entity's Electronic Protected Health Information.* Business Associate will develop, implement, maintain, and use administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information that Business Associate creates, receives, maintains, or transmits on Covered Entity's behalf as required by the Security Rule, 45 C.F.R. Part 164, Subpart C. Business Associate shall comply with all applicable provisions of the Security Rule, 45 C.F.R. Part 164, Subpart C.

(d) Subcontractors and Agents. Business Associate will require any of its subcontractors and agents, to which Business Associate is permitted by this Agreement or in writing by Covered Entity to disclose Covered Entity's Protected Health Information and/or Electronic Protected Health Information, to agree in writing to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information, including but not limited to compliance with the applicable requirements of 45 C.F.R. Parts 160, 162 and 164. Such agreement between Business Associate and the subcontractor or agent must be made in writing and must comply with the terms of this Agreement and the requirements outlined at 45 C.F.R. §§ 164.504(e) and 164.314.

(e) Prohibition on Certain Activities. Business Associate shall not: (i) sell Protected Health Information (within the meaning of 45 C.F.R. § 164.508); (ii) use or disclose Protected Health Information for fundraising purposes (within the meaning of 45 C.F.R. § 164.514); (iii) use or disclose Protected Health Information for research (within the meaning of 45 C.F.R. § 164.512); (iv) use genetic information for underwriting purposes (within the meaning of 45 C.F.R. § 164.514); or (v) use or disclose Protected Health Information for marketing purposes (within the meaning of 45 C.F.R. §164.508). Business Associate shall not de-identify Covered Entity's Protected Health Information except if required to perform activities on behalf of Covered Entity, as specified in Section 1(a)(i) of this Agreement.

2. COMPLIANCE WITH TRANSACTION STANDARDS.

If Business Associate conducts in whole or part electronic Transactions on behalf of Covered Entity for which DHHS has established Standards, Business Associate will comply, and will require any subcontractor or agent it involves with the conduct of such Transactions to comply, with each applicable requirement of the Transaction Rule, 45 C.F.R. Part 162 and any related operating rules. Business Associate shall comply with the National Provider Identified requirements, if and to the extent applicable. Business Associate shall provide to Covered Entity any documentation or compliance with the Transaction Rule with Covered Entity may reasonably need, if any, pursuant to section 1104(b) of the Patient Protection and Affordable Care Act, as amended. Business Associate will not enter into, or permit its subcontractors or agents to enter into, any Trading Partner Agreement in connection with the conduct of Standard Transactions on behalf of Covered Entity that:

- (a) Changes the definition, data condition, or use of a data element or segment in a Standard Transaction;
- (b) Adds any data element or segment to the maximum defined data set;
- (c) Uses any code or data element that is marked “not used” in the Standard Transaction’s implementation specification or is not in the Standard Transaction’s implementation specification; or
- (d) Changes the meaning or intent of the Standard Transaction’s implementation specification.

3. **INDIVIDUAL RIGHTS.**

- (a) **Access.** Business Associate will, within 30 calendar days following Covered Entity’s request, make available to Covered Entity or, at Covered Entity’s direction, to an individual (or the individual’s personal representative) for inspection and obtaining copies Covered Entity’s Protected Health Information about the individual that is in Business Associate’s custody or control, so that Covered Entity may meet its access obligations under 45 C.F.R. §164.524. Effective as of September 23, 2013 and thereafter, if the Protected Health Information is held electronically in a designated record set, then the individual shall have a right to obtain from Business Associate a copy of such information in the electronic form and format requested by the individual, if it is readily producible in such form and format. If it is not so readily producible, Business Associate will provide it in a readable electronic form and format as reasonably requested by Covered Entity or, if Business Associate is dealing directly with the individual, the individual. Business Associate shall provide such a copy to Covered Entity or, alternatively, to the individual directly, if such alternative choice is clearly, conspicuously and specifically made by the individual or Covered Entity. In addition, if the individual’s request for access directs that the Protected Health Information be transmitted directly to another person designated by the individual, Business Associate must provide the copy to the person designated by the individual, provided the individual’s request: (i) is in writing; (ii) is signed by the individual; and (iii) clearly identifies the designated person and where to send the copy of Protected Health Information. If Business Associate provides such a copy to that designated person, Business Associate will promptly notify Covered Entity of this fact.
- (b) **Amendment.** Business Associate will, within 60 calendar days following notice from Covered Entity, amend or permit Covered Entity access to amend any portion of Covered Entity’s Protected Health Information, so that Covered Entity may meet its amendment obligations under 45 C.F.R. §164.526.
- (c) **Disclosure Accounting.** So that Covered Entity may meet its disclosure accounting obligations under 45 C.F.R. §164.528:
 - (i) ***Disclosures Subject to Accounting.*** Business Associate will record the information specified in Section 3(c)(iii) below (“Disclosure Information”) for each disclosure of Covered Entity’s Protected Health Information, not excepted from disclosure accounting as specified in Section 3(c)(ii) below, that Business Associate makes to Covered Entity or to a third party.
 - (ii) ***Disclosures Not Subject to Accounting.*** Business Associate will not be obligated to record Disclosure Information or otherwise account for disclosures of Covered Entity’s Protected Health Information if Covered Entity need not account for such disclosures.
 - (iii) ***Disclosure Information.*** With respect to any disclosure by Business Associate of Covered Entity’s Protected Health Information that is not excepted from disclosure accounting by Section 3(c)(ii) above, Business Associate will record the following Disclosure Information as applicable to the type of accountable disclosure made:

- (a) **Disclosure Information Generally.** Except for repetitive disclosures of Covered Entity's Protected Health Information as specified in Section 3(c)(iii)(b) below, the Disclosure Information that Business Associate must record for each accountable disclosure is (i) the disclosure date, (ii) the name and (if known) address of the entity to which Business Associate made the disclosure, (iii) a brief description of the Covered Entity's Protected Health Information disclosed, and (iv) a brief statement of the purpose of disclosure.
- (b) **Disclosure Information for Multiple Disclosures.** For multiple disclosures of Covered Entity's Protected Health Information that Business Associate makes for a single purpose to the same person or entity (including Covered Entity), the Disclosure Information that Business Associate must record is either the Disclosure Information specified in Section 3(c)(iii)(a) above for each accountable disclosure, or (i) the Disclosure Information specified in Section 3(c)(iii)(a) above for the first of the repetitive accountable disclosures; (ii) the frequency, periodicity, or number of the repetitive accountable disclosures; and (iii) the date of the last of the repetitive accountable disclosures.
- (iv) **Availability of Disclosure Information.** Business Associate will maintain the Disclosure Information for at least 6 years following the date of the accountable disclosure to which the Disclosure Information relates.

Business Associate will make the Disclosure Information available to Covered Entity within 60 calendar days following Covered Entity's request for such Disclosure Information to comply with an individual's request for disclosure accounting.

- (d) **Restriction Agreements and Confidential Communications.** Business Associate will comply with any agreement that Covered Entity makes that either (i) restricts use or disclosure of Covered Entity's Protected Health Information pursuant to 45 C.F.R. §164.522(a), or (ii) requires confidential communications about Covered Entity's Protected Health Information pursuant to 45 C.F.R. §164.522(b), provided that Covered Entity notifies Business Associate in writing of the restriction or confidential communication obligations that Business Associate must follow. Covered Entity will promptly notify Business Associate in writing of the termination of any such restriction agreement or confidential communication requirement and, with respect to termination of any such restriction agreement, instruct Business Associate whether any of Covered Entity's Protected Health Information will remain subject to the terms of the restriction agreement.

4. BREACHES AND SECURITY INCIDENTS.

- (a) **Reporting.**
 - (i) ***Privacy or Security Breach.*** Business Associate will report to Covered Entity any use or disclosure of Covered Entity's Protected Health Information not permitted by this Agreement or in writing by Covered Entity, along with any Breach as defined by the Privacy Rule (or possible Breach) of Covered Entity's Unsecured Protected Health Information. In connection with this report to Covered Entity, Business Associate will prepare a written risk assessment for each Breach or possible Breach and shall provide a copy of such risk assessment to Covered Entity. Business Associate will make the report to Covered Entity's Privacy Official not more than 30 calendar days after Business Associate learns of such non-permitted use or disclosure. If a delay is requested by a law enforcement official in accordance with 45 C.F.R. §164-412, Business Associate may delay notifying Covered Entity as outlined in such regulation. Business Associate's report will at least:

- (a) Identify the nature of the Breach or other non-permitted use or disclosure, which will include a brief description of what happened, including the date of any Breach and the date of the discovery of any Breach;
 - (b) Identify Covered Entity's Protected Health Information that was subject to the non-permitted use or disclosure or Breach (such as whether full name, social security number, date of birth, home address, account number or other information were involved) on an individual-by-individual basis;
 - (c) Identify who made the non-permitted use or disclosure and who received the non-permitted disclosure;
 - (d) Identify what corrective or investigational action Business Associate took or will take to prevent further non-permitted uses or disclosures, to mitigate harmful effects and to protect against any further Breaches;
 - (e) Identify what steps the individuals who were subject to a Breach should take to protect themselves;
 - (f) Provide such other information, including a written report, as Covered Entity may reasonably request.
- (ii) *Security Incidents.* Upon the written request of Covered Entity, Business Associate will report to Covered Entity within 30 calendar days any attempted or successful (A) unauthorized access, use, disclosure, modification, or destruction of Covered Entity's Electronic Protected Health Information or (B) interference with Business Associate's system operations in Business Associate's information systems, of which Business Associate becomes aware.
- (b) Termination of Agreement.
- (i) *Termination Resulting from the End of Relationship, Functions or Services.* This Agreement shall terminate in the event that the underlying relationship, functions, or services that give rise to the necessity of a Business Associate Agreement terminate for any reason.
 - (ii) *Right to Terminate for Breach.* Covered Entity may terminate Agreement in the event Business Associate materially breaches this Agreement and upon written notice to Business Associate of the breach, Business Associate fails to cure the breach within 30 calendar days after receipt of the notice.
 - (iii) *Obligations on Termination.*
 - (a) Return or Destruction of Covered Entity's Protected Health Information as Feasible. Upon termination or other conclusion of Agreement, Business Associate will, if feasible, return to Covered Entity or destroy all of Covered Entity's Protected Health Information in whatever form or medium, including all copies thereof and all data, compilations, and other works derived there from that allow identification of any individual who is a subject of Covered Entity's Protected Health Information. Business Associate will require any subcontractor or agent, to which Business Associate has disclosed Covered Entity's Protected Health Information as permitted by Section 1(e) of this Agreement, to if feasible return to Business Associate (so that Business Associate may return it to Covered Entity) or destroy all of Covered Entity's Protected Health Information in whatever form or medium received from Business Associate, including all copies thereof and all data, compilations, and other works derived there from that allow identification of any individual who is a subject of Covered Entity's Protected Health Information, and certify on oath to Business Associate that all such

information has been returned or destroyed. Business Associate will complete these obligations as promptly as possible, but not later than 60 calendar days following the effective date of the termination or other conclusion of Agreement.

- (b) **Procedure When Return or Destruction Is Not Feasible.** Business Associate will identify any of Covered Entity's Protected Health Information, including any that Business Associate has disclosed to subcontractors or agents, as permitted by Section 1(e) of this Agreement, that cannot feasibly be returned to Covered Entity or destroyed and explain why return or destruction is infeasible. Business Associate will limit its further use or disclosure of such information to those purposes that make return or destruction of such information infeasible. Business Associate will require such subcontractor or agent to limit its further use or disclosure of Covered Entity's Protected Health Information that such subcontractor or agent cannot feasibly return or destroy to those purposes that make the return or destruction of such information infeasible. Business Associate will complete these obligations as promptly as possible, but not later than 60 calendar days following the effective date of the termination or other conclusion of Agreement.
- (c) **Continuing Privacy and Security Obligations.** Business Associate's obligation to protect the privacy and safeguard the security of Covered Entity's Protected Health Information as specified in this Agreement will be continuous and survive termination or other conclusion of this Agreement.

5. **GENERAL PROVISIONS.**

- (a) **Inspection of Internal Practices, Books, and Records.** Business Associate will make its internal practices, books, and records relating to its use and disclosure of Covered Entity's Protected Health Information available to Covered Entity and to DHHS to determine Covered Entity's compliance with the Privacy Rule, 45 C.F.R. Part 164, Subpart E.
- (b) **Definitions.** All terms that are used but not otherwise defined in this Agreement shall have the meaning specified under HIPAA, including its statute, regulations and other official government guidance. For purposes of this Agreement, Covered Entity's Protected Health Information encompasses Covered Entity's Electronic Protected Health Information.
- (c) **Amendment to Agreement.** Upon the compliance date of any final regulation or amendment to final regulation promulgated by DHHS that affects Business Associate's use or disclosure of Covered Entity's Protected Health Information or Standard Transactions this Agreement will automatically amend such that the obligations imposed on Business Associate remain in compliance with the final regulation or amendment to final regulation.
- (d) **No Third Party Beneficiaries.** Nothing in this Agreement shall be construed as creating any rights or benefits to any third parties.
- (e) **Delegation to Business Associate.** To the extent the parties agree that Business Associate will carry out directly one or more of Covered Entity's obligations under the Privacy Rule, Business Associate will comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligations.
- (f) **No Agency Relationship.** Both parties agree that Business Associate is not, and shall not be deemed to be, an agent of Covered Entity.

**ADDENDUM (C)
RESPONSIBILITY AGREEMENT**

Responsibility of CITY OF CRESCO. ("Client")

1. Group Setup and Renewal Information

- a. Client is responsible for completing, signing, and returning the setup or renewal forms and re-enrollment forms by the designated deadline.
- b. Client is responsible for timely adopting, signing, and returning the Plan Documents as necessary to ensure ongoing compliance with applicable law.

2. Adds, Changes or Terminations

- a. Notices of additions, changes or terminations of members should be sent to the EBS Billing and Enrollment Specialist or entered in Administrator's Online Enrollment system in a timely manner.
- b. Prior to notifying EBS of a change, Client is responsible for verifying eligibility and qualifying life event documentation i.e. divorce decree, marriage certificate, notarized affidavit of common law marriage, qualified medical child support order, letter from entity describing gain/loss of coverage, indicating name(s) and effective dates of status change, etc.
- c. The maximum adjustment for late notification of additions, changes, or terminations is 60 days from date of receipt by EBS. (Ex: Employee terminates coverage December 1st. EBS is notified April 10th, credit will be given for 60 days prior to April 10th.)
- d. EBS is not responsible for claims paid if EBS was not timely notified of a change or termination.
- e. If client has a specific concern regarding a termination, they shall call EBS immediately to deactivate access and follow up with an email.

3. Report Verification

- a. Client is responsible for reviewing the EBS Monthly Reports, if applicable, and the Monthly Billing Statement, against Client's payroll and other records for accuracy and shall timely notify EBS in writing of any errors or inaccuracies.

4. Payroll Reporting for Flex Spending Accounts (if applicable)

- a. Client shall provide the payroll contributions information to EBS in a timely manner.

5. Claim Funding & Premium Determinations (if applicable)

- a. The preferred method of funding the claims account is by Automated Clearing House (ACH).
- b. **If another method is used to fund processed claims, EBS will not hold claims longer than four business days.**
- c. **EBS is not responsible for any overdraft fees or bank charges due to non-funded accounts.**
- d. It is Client's sole responsibility to determine the level of funding for any self-insured plans, including the amount of any partial self funding.
- e. It is Client's sole responsibility to determine and communicate to EBS the applicable COBRA premium for any Client sponsored by Client for which EBS provides COBRA administration services.

6. IRS Reporting (if applicable)

- a. Client is responsible to file Annual Reports and other required filings. This includes but not limited to:
 - 5500



- 509A
- PCORI
- 1094-1095C
- GASB

7. Fees on Self Insured Health Plans (if applicable)

- a. If Client has a self insured health plan, Client is responsible for the payment of any fees assessed (i.e. Patient Centered Outcome Research Institute ("PCORI" fee) in accordance with any new or revised federal and/or state regulations.

8. Notifications

- a. Client is solely responsible for notifying EBS of COBRA qualifying events and mid-year election changes.
- b. Client is responsible for distributing to participants all required notices and documents, including summary plan descriptions, summary of benefits and coverage, summary annual reports, and privacy notices.

9. Appeals

- a. Client is solely responsible for responding to and deciding appeals made by participants or beneficiaries pursuant to self-funded benefit plans.

Responsibility of Employee Benefit Systems ("Administrator")

1. Adds, Changes or Terminations

- a. Administrator will process additions, changes, or terminations within one week after receipt of hard copy or email notification in writing from Client.
- b. Additions, changes, or terminations received from Administrator's Online Enrollment systems' or other electronic feeds, may take 48-72 business hours or longer during holidays to be executed.
- c. If client has a specific concern regarding a termination, they shall call EBS immediately to deactivate access and follow up with an email.

2. Claim Processing (if applicable)

- a. Claims will be paid in a timely manner consistent with normal business practices.
- b. Administrator will contact the Client if additional funds are needed to release processed claims. Administrator will not hold claims longer than four business days.

3. Reports

- a. Administrator will generate and send by email a monthly billing statement to Client. If Administrator bills Client for payroll contributions and additional funding has been collected throughout the year, an adjustment to the monthly billing will be made on the twelfth -12th- month bill of the plan year.
- b. Check registers will be sent by email to the Client if applicable.
- c. Monthly Reports and Financials will be sent by email to the Client if applicable.
- d. Annual non-discrimination testing upon receipt of required information provided by Client.

4. ID Cards (if applicable)

- a. Upon request, administrator will create and send out ID cards for the members of Client's plan. Please request quote if secondary cards are desired.

<i>Michelle Anslaw</i>	<i>City Clerk</i>	<i>3-16-2021</i>
Employer Signature	Title	Date
_____	_____	_____
EBS Signature	Title	Date

