

HUMANA WELLNESS SERVICES AGREEMENT

This Humana Wellness Services Agreement (hereinafter "**Agreement**") is made by and between Harris, Rothenberg International Inc. d/b/a Humana Wellness, a wholly-owned subsidiary of Humana Inc. (hereinafter "**Humana Wellness**"), and The City of Peoria (hereinafter "**Customer**") both individually and collectively referred to herein as the Party or Parties.

RECITALS

WHEREAS, Customer makes available various health and wellness programs for the benefit of its Covered Persons, as defined below; and

WHEREAS, Customer wishes to utilize the Wellness Services, as defined below, provided by Humana Wellness for Covered Persons, as defined below, subject to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS

In addition to the definitions provided throughout this Agreement, the following capitalized terms have the meanings provided below:

1.1 "**Affiliate**" means, when used with reference to a specified Person, any Person that directly or indirectly controls or is controlled by or is under common control with the specified Person. A Person shall be deemed to control an entity if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities, by contract or otherwise.

1.2 "**Covered Person**" means an individual natural person residing within the Territory whom Customer designates as eligible to receive Wellness Services under this Agreement.

1.3 "**Humana Wellness Property**" means, collectively: (i) any and all systems, hardware, software, networks, online platforms, online resources, online content, applications, source codes, specifications, templates, modules, devices, equipment, documents, articles, presentations, newsletters, reports, images, videos, audio files, artwork and any and all other materials whether in electronic or hardcopy format or other property owned, licensed, leased, produced, designed, created or used by Humana Wellness as of the Effective Date or thereafter, whether for purposes of providing the Wellness Services pursuant to this Agreement or for any other purpose; (ii) all Proprietary Information of Humana Wellness; and (iii) any and all Intellectual Property in any of the foregoing or related thereto.

1.4 "**Intellectual Property**" means all intellectual property rights (including all copyrights, patents, trademarks, trade secrets, industrial designs and know how) and all applications, continuations, extensions, notices, licenses, sublicenses, agreements and registrations thereof in any jurisdiction.

1.5 "**Person**" means a natural person or a corporation, partnership, limited liability company, trust, association or other entity, as the context requires or permits.

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1.6 **"Proprietary Information"** means all information related to the business and operations of a Party, its parent company and its subsidiaries and affiliated companies and its or their clients, members and/or enrollees. Such information may be obtained from any source, whether written or oral, as well as all information contained on a Party's mainframe, networks, LANs and workstations, including all software, middleware, firmware, groupware and licensed internal code, whether owned or licensed currently or in the future, which could be accessed by Customer's personnel by any direct or remote access method. Proprietary Information does not include information that: (a) has been previously published or is now or becomes public knowledge through no fault of the other Party; (b) can be established by documentary evidence to have been in the lawful possession of the other Party at the time of disclosure; (c) can be established by documentary evidence to have been made available to the other Party, without restriction on disclosure, by a third party not under obligation of confidentiality with respect to the disclosed information; (d) can be established by documentary evidence to have been independently developed by the other Party; (e) constitutes know-how which in the ordinary course becomes indistinguishable from the know-how of the other Party; or (f) is in response to a valid order by a court of competent jurisdiction or otherwise required by law (in which case the other Party shall provide prompt written notice to the disclosing Party affording the disclosing Party the opportunity to challenge such order or legal requirement). Humana Wellness's Proprietary Information also includes but is not limited to any information relating to the pricing, software or technical information, hardware, methods, processes, financial data, lists, apparatus, statistics, program, research, development or related information of Humana Wellness, its parent company, its subsidiaries or an Affiliate or its clients, patients, members and/or enrollees concerning past, present or future business activities of said entities.

2. SCOPE OF SERVICES

From time to time the Parties shall execute statements of work describing the services to be provided by Humana Wellness under this Agreement (each a **"Statement of Work"** or collectively, the **"Statements of Work"**). The services described in such Statements of Work shall be collectively referred to as the **"Wellness Services."** The Parties shall be bound by any additional terms and conditions within a Statement of Work. In the event of any conflict between the terms and conditions of this Agreement and the terms and conditions of any Statement of Work, the terms and conditions of the Statement of Work shall govern with respect to Wellness Services under such Statement of Work.

3. RESPONSIBILITIES OF CUSTOMER

3.1 **PROVISION OF ELIGIBILITY AND ENROLLMENT DATA AND INFORMATION TO HUMANA WELLNESS.** Customer shall provide Humana Wellness with eligibility data for Covered Persons (hereinafter referred to as an **"Eligibility File"**) in a form specified by Humana Wellness and at a frequency mutually agreed upon by the Parties. The Eligibility File shall contain the necessary information as reasonably required by Humana Wellness to verify the identity of Covered Persons and to administer the Wellness Services. Eligibility information shall be submitted by the Customer to Humana Wellness via secure file transfer protocol (SFTP), secure email or uploaded directly to Humana Wellness's online web portal. Required Eligibility File information includes, but is not limited to, the full name, address, date of birth, and unique identifier for each Covered Persons. Customer shall update its Eligibility File listing of all Covered Persons to serve as notice to Humana Wellness of any additions, changes, deletions or modifications to the list of Covered Persons. Without limiting the generality of the foregoing, Customer shall immediately notify Humana Wellness in writing in the event that (a) Customer desires to make Wellness Services available to any entity or individual located or residing outside of the Territory; or (b) any eligible recipient of Wellness Services as indicated in an Eligibility File ceases to reside within the Territory. Humana Wellness shall be entitled to rely on the accuracy and completeness of the Eligibility File in providing the Wellness Services. Humana Wellness shall promptly implement such updated information in providing the Wellness Services.

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3.2 **PROVISION OF OTHER DATA AND INFORMATION TO HUMANA WELLNESS.** Customer shall, at no cost to Humana Wellness, provide or arrange for Humana Wellness to have access to relevant claim information and other information pertaining to Covered Persons required by Humana Wellness to provide the Wellness Services under this Agreement, in a format and frequency prescribed by Humana Wellness.

3.3 **CUSTOMER COOPERATION.** Customer understands and agrees that Wellness Services may be provided, at Humana Wellness's discretion, by Humana Wellness Affiliates, contractors, and vendors. Customer shall cooperate fully with Humana Wellness and Humana Wellness's Affiliates, contractors, and vendors in implementing and fulfilling the obligations under this Agreement, including but not limited to, communicating with, and encouraging participation from, Covered Persons regarding the Wellness Services.

3.4 **COMPLIANCE WITH LAWS.** Customer is responsible for compliance with all applicable provisions of law addressing Customer's duties with respect to the Wellness Services and its own benefit plan or arrangement which may include Wellness Services. This includes, without limitation, compliance with all legal reporting and disclosure requirements, adoption and approval of all required documents respecting the program and compliance with state escheat and unclaimed or abandoned property laws. Humana Wellness shall not be responsible or ultimately liable for Customer or any other Person or Party's obligation to comply with applicable law. Further, Customer acknowledges that Humana Wellness is a service provider with respect to the Wellness Services provided under this Agreement and that Humana Wellness is not a plan sponsor or plan administrator as the term is defined in ERISA. For the avoidance of doubt, if Customer decides to offer incentives or rewards to Covered Persons above and beyond those rewards and incentives included in the Wellness Services by Humana Wellness, if any, Customer is solely responsible for ensuring any such incentives or rewards it offers to Covered Persons comply with applicable law. In such a case, Humana Wellness makes no representation that Wellness Services are suitable for use in connection with any particular incentives or rewards and assumes no liability for Customer's compliance with applicable law.

3.5 **COOPERATION WITH HUMANA WELLNESS.** Customer agrees to cooperate with Humana Wellness in complying with state and/or federal laws, rules and regulations and accreditation requirements to which Humana Wellness is or may be subject and not place Humana Wellness in jeopardy of non-compliance by action or inaction.

4. RESPONSIBILITIES AND RIGHTS OF HUMANA WELLNESS

4.1 **NON-DISCRIMINATION.** Humana Wellness agrees to provide Wellness Services to Covered Persons in accordance with the prevailing practices and standards of the industry.

4.2 **DIVERSITY ACCOMMODATION.** Humana Wellness understands that Customer employs a diverse workforce. Humana Wellness is also aware that certain Covered Persons may be more comfortable seeking Wellness Services from similarly diverse providers. Humana Wellness agrees to make reasonable efforts to accommodate diverse provider requests in order to ensure that Covered Persons can comfortably access and obtain Wellness Services.

4.3 **INSURANCE.** Humana Wellness shall carry professional liability insurance coverage in an amount equal to one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) in the aggregate, as well as comprehensive general liability insurance or self-insurance, errors and omissions insurance, and workers compensation insurance where required by law, throughout the Term of this Agreement. Humana Wellness agrees to provide evidence of said insurance coverage to Customer at any time during the Term of this Agreement upon reasonable request by Customer. Humana Wellness shall provide and/or shall require the carrier(s) to provide Customer with at least ten (10) days prior written notice of any non-renewals, cancellations or modifications resulting in a decrease and/or limitation in coverage.

5. PRICING; PAYMENT TERMS

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5.1 **PRICING.** Fees for the Wellness Services provided hereunder to Customer (“Fees”) shall be as set forth in the Statement(s) of Work.

5.2 **PAYMENT TERMS.** Customer shall pay the Fees on a monthly basis. Invoices will be delivered to Customer by the fifteenth (15th) of each calendar month and payments shall be due and payable within thirty (30) days of the invoice date. Fees for any custom development services (if applicable) will be invoiced upon completion of development work and/or as defined in the Statement(s) of Work. Any delinquent payment under this Agreement shall bear interest from the due date until paid at a rate of 0.5% per month or the maximum allowable rate under the law, whichever is less.

6. TERM AND TERMINATION

6.1 **TERM.** The initial term of this Agreement (the “Initial Term”) shall be three (3) years, commencing on the Effective Date. This Agreement will automatically renew for additional consecutive one (1) year periods (each a “Renewal Term”) on the same terms, conditions and provisions as contained herein, together with any authorized and approved amendments hereto, unless Humana Wellness or Customer provides written notice of non-renewal at least ninety (90) days’ prior to the expiration of the then current Initial Term or Renewal Term. This Agreement’s Initial Term and any subsequent Renewal Term(s) shall be referred to herein collectively as this Agreement’s “Term.” Each Statement of Work may have a term that differs from this Agreement, and each Statement of Work may be terminated separately from this Agreement consistent with the termination rights provided in this Agreement or such Statement of Work.

6.2 **TERMINATION.** This Agreement, including all exhibits and Statements of Work, may be terminated as follows; additional termination rights may be provided for in each Statement of Work:

6.2.1 Termination without Cause.

(a) Notwithstanding anything to the contrary herein, this Agreement may be terminated by Humana Wellness or Customer without cause by providing at least ninety (90) days prior written notice to the other. In the event that either Party terminates this Agreement without cause, Humana Wellness agrees: (i) if requested, to work with Customer in the orderly transition of Covered Persons receiving Wellness Services to alternative programs; and (ii) further, that Customer may begin to transition Covered Persons to alternative programs in the thirty (30) day period prior to the effective date of said without cause termination and payment to Humana Wellness for such Wellness Services will be adjusted accordingly.

(b) Humana Wellness and Customer may terminate this Agreement at any time upon the mutual written agreement of the Parties.

6.2.2 Termination for Cause.

(a) Humana Wellness or Customer may terminate this Agreement at any time upon delivery of a thirty (30) calendar day written notice to the other Party in the event of any fraud or material misrepresentation by the other Party.

(b) Humana Wellness or Customer may terminate this Agreement at any time upon delivery of a thirty (30) calendar day written notice to the other Party in the event of any failure by the other Party to comply in any material respect with any material provision of this Agreement that is not cured in all material respects within the thirty (30) day notice period.

(c) Humana Wellness may immediately terminate this Agreement if Customer is more than forty five (45) days past due on payments owed to Humana Wellness under this Agreement.

(d) This Agreement shall automatically terminate one (1) year after the termination of the last Statement of Work.

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6.2.3 Early Termination.

(a) If Customer terminates this Agreement without cause at any time during the initial twelve (12) months of this Agreement, Customer will pay Humana Wellness an early termination fee of three (3) times the Fees for one payment period and any additional shutdown costs associated with the termination, within thirty (30) days of the date of termination provided in Customer's notice to terminate this Agreement.

(b) Following the first twelve (12) months of this Agreement, either Party may terminate this Agreement at any time, without cause, upon at least ninety (90) days' prior written notice to the other Party.

6.3 IMMEDIATE TERMINATION. This Agreement may be terminated immediately and automatically, if either Humana Wellness or Customer applies for or consents to the appointment of a receiver, trustee or liquidator, files a voluntary petition-in-bankruptcy, admits in writing its inability to pay its debts as they become due, makes a general assignment for the benefit of creditors, files a petition or an answer in any judicial proceedings seeking reorganization or arrangement with creditors or taking advantage of any insolvency law, or if an order, judgment or decree shall be entered against that Party by a court of competent jurisdiction on the application of a creditor of such Party, adjudicating such Party bankrupt or insolvent or approving a petition seeking reorganization of such Party or appointing a receiver, trustee or liquidator of such Party and such order, judgment, decree or proceeding is not dismissed or vacated within a period of sixty (60) consecutive days.

6.4 SURVIVAL OF RIGHTS. Termination of this Agreement shall not alter or impair any rights of either Party accrued under this Agreement through the date of termination.

6.5 DATA TRANSFER. Upon reasonable request by Customer, upon termination of this Agreement (or prior to termination if required by law), Humana Wellness shall transfer all documentation of and/or data related to Wellness Services rendered to Covered Persons under this Agreement that was not otherwise previously provided to Customer as permitted by law and/or under NCOA accreditation requirements.

7. INDEMNIFICATION

7.1 INDEMNIFICATION BY HUMANA WELLNESS. Humana Wellness shall indemnify, defend, and hold harmless Customer, its Affiliates and permitted assigns (and all officers, directors, employees and agents thereof) (collectively, the "Customer Indemnitees") from and against any and all liabilities, penalties, fines, forfeitures, demands, claims, suits, causes of action, costs, expenses, and/or damages which the Customer Indemnitees may suffer, incur, be responsible for, or pay out (either individually or collectively) as a result of claims brought by third-parties, governmental entities, or Humana Wellness's employees or representatives -- including but not limited to such claims alleging injuries (including death) to any Person, damage or loss to any property or property rights, or any actual or alleged violation of applicable federal, state or local statutes, ordinances, orders, rules, or regulations of any governmental entity or agency -- caused directly by or directly arising from or out of: (a) Humana Wellness's breach of this Agreement; or (b) any willful, negligent, wrongful, or illegal acts or omissions of Humana Wellness, its employees and/or representatives. Humana Wellness's obligations to defend and indemnify the Customer Indemnitees under this Section shall be reduced by the proportionate extent, if any, that the indemnified claim arises from the negligent act or omission or intentional misconduct of the applicable Customer Indemnitee(s). Humana Wellness's indemnity liability under this Section, including indemnification of attorneys' fees and other defense costs, shall be limited to one million dollars (\$1,000,000) during the Term of this Agreement (the "Indemnity Cap").

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7.2 **INDEMNIFICATION BY CUSTOMER.** Customer shall indemnify, defend, and hold harmless Humana Wellness, its Affiliates and permitted assigns (and all officers, directors, employees and agents thereof) (collectively, the "Humana Wellness Indemnitees") from and against any and all liabilities, penalties, fines, forfeitures, demands, claims, suits, causes of action, costs, expenses, and/or damages which the Humana Wellness Indemnitees may suffer, incur, be responsible for, or pay out (either individually or collectively) as a result of claims brought by third-parties, governmental entities, or Customer's employees or representatives -- including but not limited to such claims alleging injuries (including death) to any Person, damage or loss to any property or property rights, or any actual or alleged violation of applicable federal, state or local statutes, ordinances, orders, rules, or regulations of any governmental entity or agency -- caused directly by or directly arising from or out of: (a) Customer's breach of this Agreement; or (b) any willful, negligent, wrongful, or illegal acts or omissions of Customer, its employees and/or representatives. Customer's obligations to defend and indemnify the Humana Wellness Indemnitees under this Section shall be reduced by the proportionate extent, if any, that the indemnified claim arises from the negligent act or omission or intentional misconduct of the applicable Humana Wellness Indemnitee(s).

7.3 **INDEMNIFICATION COSTS AND ATTORNEYS' FEES.** In addition to the foregoing, all indemnities set forth in this Agreement shall include reasonable court costs, attorneys' fees, and expert witness fees, as and when incurred. The indemnifying Party shall have the right to select counsel to defend against the indemnified claim (subject to reasonable and timely review and consent of the indemnified Party, which consent shall take into consideration the requirements of the indemnifying Party's insurance carrier) and, except as provided below, will be the sole judge of the acceptability of any compromise or settlement of the indemnified claim. Notwithstanding the foregoing, the indemnifying Party shall not: (a) settle any indemnified claim which will subject the indemnified Party to any form of temporary or permanent injunctive relief without the indemnified Party's prior written consent (such consent not to be unreasonably withheld, conditioned or delayed) or (b) settle any other indemnified claim without consultation with the indemnified Party.

7.4 **INDEMNIFICATION PROCEDURES.** If a claim covered by the foregoing indemnities is asserted against either Party, the indemnified Party shall promptly give the indemnifying Party written notice thereof. The indemnified Party shall extend its full cooperation in connection with the defense provided by the indemnifying Party, subject to reimbursement for all reasonable out-of-pocket expenses incurred by the indemnified Party in providing such cooperation. If the indemnifying Party fails to defend a claim within a reasonable time, which time shall not extend beyond the date the indemnified Party is required to file an answer or other responsive pleading to the pending claim, the indemnified Party shall be entitled to assume defense of the claim and the indemnifying Party shall be bound by the results obtained by the indemnified Party with respect to such claim.

8. LIMITATION OF LIABILITY

8.1 **IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES (INCLUDING LOSS OF PROFITS, DATA, BUSINESS OR GOODWILL), REGARDLESS OF WHETHER SUCH CLAIM OF LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY, BREACH OF WARRANTIES, FAILURE OF ESSENTIAL PURPOSE OR OTHERWISE, AND EVEN IF ADVISED OF THE LIKELIHOOD OF SUCH DAMAGES.**

8.2 To the maximum extent permitted by applicable law, Customer agrees that Humana Wellness's total maximum aggregate cumulative liability (including that of Humana Wellness's Affiliates and subcontractors) to Customer for all past, present and future claims, demands, actions, causes of action, requests, lawsuits, judgment damages, costs, expenses, prejudices or losses (collectively, "Direct Claims") in relation to or arising under this Agreement shall be limited to Customer's actual direct damages and shall not, under any circumstances, exceed, in the aggregate, for all Direct Claims past, present and future, the total amount of compensation paid by Customer to Humana Wellness under this Agreement during the twelve (12) month period immediately preceding the loss. This limitation of liability for Direct Claims shall not be construed so as to limit either Party's rights or obligations of indemnity for third party claims as set forth herein, which rights and obligations shall be governed exclusively by the provisions of Section 7 and the separate Indemnity Cap set forth therein.

HUMANA WELLNESS SERVICES AGREEMENT**9. DISPUTE RESOLUTION**

9.1 For all controversies, claims and matters of difference arising out of the business relationship between the Parties, the Parties hereby agree to promptly discuss such controversies, claims and matters of difference in an attempt to come to a mutually agreeable resolution.

9.2 In the event of a dispute between Humana Wellness and Customer which cannot be settled by mutual agreement pursuant to the process described in Section 9.1, including without limitation, a dispute involving the interpretation of any provision of this Agreement or otherwise arising out of the Parties' business relationship (excluding any disputes that are currently the subject of individual or class litigation), the obligations of Humana Wellness or Customer hereunder, or allegations or claims involving violations of state or federal laws or regulations, such dispute shall be resolved by binding arbitration, conducted in accordance with the American Health Lawyers Association Alternative Dispute Resolution Service Rules of Procedure for Arbitration. The arbitration shall be conducted in Louisville, Kentucky. Judgment upon the award rendered in any such arbitration may be entered in any court of competent jurisdiction sitting in Louisville, Kentucky, or application may be made to such court for judicial acceptance and enforcement of the award, as applicable law may require or allow. The cost of any arbitration proceeding(s) hereunder shall be borne equally by the Parties. Each Party shall be responsible for its own attorneys' fees and such other costs and expenses incurred related to the proceedings. Arbitration proceeding(s) hereunder shall be conducted solely between Humana Wellness and Customer, class-based arbitration shall not be permitted.

10. HEALTH CARE REGULATORY COMPLIANCE

10.1 HIPAA COMPLIANCE. If applicable, Humana Wellness shall at all times throughout the Term of this Agreement comply with and provide all Wellness Services hereunder consistent with the following standards as such standards are applicable to Humana Wellness: (a) all requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Privacy and Security Regulations promulgated thereunder, (b) the Health Information Technology for Economic and Clinical Health Act of 2009 and the regulations promulgated thereunder (collectively, "HITECH Act"), and (c) all state data security and any other laws applicable to the provision of the Wellness Services hereunder. Contemporaneously with the execution of this Agreement, the Parties agree to execute a Business Associate Agreement, if applicable in the form attached to this Agreement.

10.2 PRIVACY RULE COMPLIANCE. Both Parties will comply with all applicable provisions of HIPAA, including the privacy provisions, as such are implemented and revised from time to time. Both Parties further agree that they will: (a) not use or disclose any protected health information or de-identified protected health information (collectively "PHI") obtained or accessible by them as a result of their performance under this Agreement other than as permitted or required by this Agreement or by law; (b) use appropriate safeguards to prevent use or disclosure of such PHI except as permitted by this Agreement; (c) mitigate, to the extent practicable, any harmful effect of a use or disclosure of PHI in violation of the requirements of this Agreement; (d) report any use or disclosure of PHI not provided for in this Agreement of which they become aware; (e) ensure that Humana Wellness's subcontractors to whom they provide PHI, or who have access to PHI, agree to the same restrictions and conditions that apply with respect to such PHI; (f) make available PHI to any individual who has a right of access under local, state and/or federal law or regulation; (g) make available PHI for amendment and incorporate any amendments to PHI; (h) make available the information required to provide an accounting of disclosures; and (i) make its internal practices, books and records relating to the use and disclosure of PHI received or obtained, or created or received, available to the Secretary of the Department of Health and Human Services for determining provider's compliance with federal regulations.

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10.3 TRANSACTION AND SECURITY REGULATIONS COMPLIANCE. Both Parties shall comply with the Transaction Code Set Regulations. Upon the Effective Date, and for so long as any PHI is transmitted between the Parties using electronic media, both Parties shall protect the integrity, privacy and availability of such PHI by implementing appropriate and commercially reasonable administrative procedures, physical safeguards, technical security services and technical security mechanisms with respect to facilities and software and systems, all as required by, and as more specifically set forth in, the Federal Transaction Regulations and the Federal Security Regulations.

10.4 TERMINATION. In addition to other provisions of this Agreement relating to termination rights, the following shall apply:

10.4.1 In the event that either Party materially breaches any of the above provisions, or declines to implement any changes that are legally required to ensure compliance with HIPAA and related laws and regulations, the non-breaching Party may immediately terminate this Agreement with written notice to the breaching Party after providing at least a five (5) calendar day opportunity period to cure the breach.

10.4.2 At termination of this Agreement, for any reason, each Party will return or destroy any and all PHI received from the other Party in any form and retain no copies of such information or, if such return or destruction is not feasible, shall notify the other Party of the condition that makes the return or destruction of PHI not feasible and shall extend the protections of this Section 10 to the PHI and limit further uses and disclosures to those purposes that make the return or destruction of the PHI infeasible for so long as the other maintains such PHI. These provisions shall survive the expiration or termination of this Agreement for any purpose.

10.5 AMENDMENT. The Parties agree that if necessary, they shall amend this Section 10 of this Agreement to comply with or effectuate changes to, or the interpretation of, HIPAA, the HITECH Act and the regulations issued under them.

11. INTELLECTUAL PROPERTY USE AND OWNERSHIP

11.1 INTELLECTUAL PROPERTY USE. Humana Wellness grants to Customer, and Customer accepts, a non-exclusive, non-transferable, revocable right to access and to use Humana Wellness Property, as applicable to Wellness Services provided under this Agreement. Customer expressly acknowledges that the Humana Wellness Property is provided under license to Customer and that Humana Wellness Property is made available to Customer and Customer's Covered Persons only for the purposes stated in this Agreement and only during the Term of this Agreement. Customer shall take reasonable security measures to prevent unauthorized access to or use of the Humana Wellness Property and shall notify Humana Wellness in the event it identifies any unauthorized access or use.

11.2 RESTRICTIONS ON INTELLECTUAL PROPERTY USE. Customer agrees not to reproduce Humana Wellness Property except as may be required for the sole purpose of accessing or using Humana Wellness Property pursuant to this Agreement. Customer further agrees not to distribute or display Humana Wellness Property, to create derivative works based on Humana Wellness Property, or to access or use the Humana Wellness Property in any manner not expressly permitted under this Agreement. Customer agrees that it will not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to derive source code or trade secrets from any software or proprietary materials of Humana Wellness and/or its subcontractors, lessors or licensors.

11.3 INTELLECTUAL PROPERTY OWNERSHIP. Each Party shall remain the owner of all Intellectual Property it owns prior to the Effective Date and that which it creates in the performance of its obligations under this Agreement. Humana Wellness and/or its subcontractors, lessors, and licensors are, and shall remain the sole and exclusive owner of their respective Humana Wellness Property and any and all components thereof, whether owned on the Effective Date or acquired thereafter. Upon the expiration or termination of this Agreement or applicable Statement of Work, as the case may be, Customer shall promptly return to Humana Wellness (or at Humana Wellness's request, destroy), all such Humana Wellness Property in its possession or control.

HUMANA WELLNESS SERVICES AGREEMENT**12. NON-SOLICITATION**

12.1 Customer agrees that during the Term and for a period of one (1) year from the date of termination of this Agreement (collectively, the "Restricted Period"), neither Customer, nor Customer's employees, officers, directors, agents or other representatives, individually or on behalf of any other Person or entity, directly or indirectly, recruit, hire or engage any Person who was an employee, consultant, sales representative, agent or independent contractor of Humana Wellness or its Affiliates at any time during the Restricted Period or the one (1) year period immediately preceding the Effective Date, or entice or induce any of the foregoing, to work with, or otherwise provide services to, Customer, any of Customer's employees, officers, directors, agents or other representatives, or any Affiliate of Customer.

13. OTHER PROVISIONS

13.1 AMENDMENTS. This Agreement may be amended at any time by written agreement executed by authorized representatives of both Parties.

13.2 ASSIGNMENT. Neither Party shall assign or transfer this Agreement in whole or in part without the prior written consent of the other Party which shall not be unreasonably conditioned, withheld or delayed. Notwithstanding the forgoing, Humana Wellness may assign this Agreement to a parent, an Affiliate or pursuant to a sale of all or substantially all assets without written consent or notice.

13.3 CONTRACT INTEGRATION. All appendixes and exhibits to this Agreement are hereby incorporated into this Agreement. Additionally, all Statements of Work entered into pursuant to this Agreement are hereby incorporated into this Agreement. This Agreement, including its Statements of Work, appendixes, exhibits, and any amendments, addenda, documents or other data attached hereto or incorporated herein constitutes the entire understanding of the Parties with regard to the matters addressed by this Agreement and supersedes all prior and contemporaneous representations and understandings, whether oral or written, between Humana Wellness and Customer.

13.4 FORCE MAJEURE. No Party to this Agreement shall be deemed to breach its obligations under this Agreement if that Party's failure to perform under the terms of this Agreement is due to any act of God, acts of the United States of America, any state, territory or political subdivision thereof or any government in which the Wellness Services are performed, riot, war, terrorism, or natural disaster. The Parties agree to take all reasonable steps to preserve their respective performance obligations hereunder.

13.5 HEADINGS. The headings contained in this Agreement are for convenience of reference only and are not intended to have any substantive significance in interpreting this Agreement.

13.6 INDEPENDENT CONTRACTOR STATUS. Notwithstanding anything to the contrary herein, Humana Wellness and Customer are independent Parties contracting with the other solely for the purpose of effecting this Agreement. Nothing contained herein will in any way constitute any association, partnership, or joint venture between the Parties, or be construed to evidence the intention of the Parties to establish any such relationship. Neither Party will have the power to bind the other Party or incur obligations on the other Party's behalf without the other Party's prior written consent.

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13.7 **NOTICE.** All notices, requests, consents and other communications under this Agreement must be in writing and must be directed to the Parties at the addresses listed below, or to such other addresses the Parties may subsequently designate by written notice, and must be: (i) mailed by first class certified mail, return receipt requested; (ii) sent by Federal Express, United States Express Mail or similar overnight delivery or courier service, with signature required; or (iii) delivered (in person, or by a fax or email transmission) with printed confirmation of receipt (in the case of a fax transmission) or reply email confirmation (in the case of an email transmission).

If to Humana Wellness:

Humana Wellness
500 W Main Street
Louisville, KY 40202
Attention: Senior Leader

Copy to:

Humana Inc.
500 West Main Street
Louisville, KY 40202
Attention: Law Department

If to Customer:

City of Peoria
Mary Ann Stalcup, Human Resources Director
419 Fulton Street, Room 403
Peoria, IL 61602

13.8 **PROMOTIONAL MATERIALS/USE OF NAME.** With the exception of Humana Wellness identifying Customer as a client in its marketing materials during the Term of this Agreement, neither Customer nor Humana Wellness may use the other Party's name or any of their service marks in marketing material without the prior written consent of the other Party.

13.9 **PUBLIC STATEMENTS.** During the Term of this Agreement, neither Party will make any press release or other public announcement concerning this Agreement or the transactions contemplated by this Agreement, without the prior written approval of the other.

13.10 **SEVERABILITY.** The invalidity, illegality or unenforceability of any provisions of this Agreement, by statute, court or otherwise, shall not affect the validity, legality or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

13.11 **SURVIVAL OF TERMS.** The provisions of this Agreement concerning complaints, Covered Person and office records, access to information, indemnification, insurance, and where applicable, Proprietary Information shall survive the termination of this Agreement by either Party for any reason. In addition, any other rights that should by their nature survive termination or expiration of this Agreement shall survive such termination or expiration.

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13.12 **WAIVER.** Waiver, whether express or implied, of any breach of any provision of this Agreement shall not be deemed to be a waiver of any other provision or a waiver of any subsequent or continuing breach of the same provision. Neither failure nor delay on the part of any Party to exercise any right, remedy, power or privilege hereunder nor course of dealing between the Parties shall operate as a waiver thereof, or of the exercise of any other right, remedy, power or privilege.

Furthermore, waiver of one of the remedies available to either Party in the event of a default or breach of this Agreement by other Party shall not at any time be deemed a waiver of a Party's right to elect such remedy(s) at any subsequent time if a condition of default continues or recurs. No course of dealing shall operate as a waiver or modification of any provision of this Agreement or otherwise prejudice such Party's rights, powers and remedies.

13.13 **JURISDICTION.** This Agreement shall be governed by and interpreted in accordance with applicable federal law and, to the extent such law does not apply, with Kentucky law without regard to the conflicts of law principles thereof.

This Agreement has been executed by the Parties' duly authorized representatives whose signatures appear below to be effective as of 01/01/2020 (the "Effective Date").

**Harris, Rothenberg International Inc.
d/b/a Humana Wellness:**

The City of Peoria:

By: Jeffrey Reid

By: Mary Ann Stalcup

Name: Jeffrey Reid

Name: Mary Ann Stalcup

Title: Senior Vice President

Title: Human Resources Director

Date: 04/06/2020

Date: April 1, 2020

HIPAA BUSINESS ASSOCIATE AGREEMENT (BAA)

THIS BUSINESS ASSOCIATE AGREEMENT (hereinafter "**Agreement**") is entered into by and among City of Peoria ("**Customer**"), who maintains a health and wellness program ("**Program**") that is a signatory to this Agreement, and Harris, Rothenberg International Inc. d/b/a Humana Wellness, and its subsidiaries or affiliates ("**Humana Wellness**"), who is a provider of Wellness Services under the "**Wellness Services Agreement**". Any capitalized term used but not defined in this Agreement shall have the same meaning ascribed to such term in the Wellness Services Agreement.

This Agreement is effective as of 01/01/2020.

In consideration of the mutual promises below and the exchange of information described herein, the Parties agree as follows:

1. In connection with providing Wellness Services under the Wellness Services Agreement, Humana Wellness receives certain information relating to individuals of the Program ("**Information**"), some of which may constitute Protected Health Information (defined below). In this regard:
 - a. **Definitions.** The following terms shall have the meaning set forth below:
 - (1) **ARRA.** "**ARRA**" means the American Recovery and Reinvestment Act of 2009.
 - (2) **C. F. R.** "**C. F. R.**" means the Code of Federal Regulations.
 - (3) **Designated Record Set.** "**Designated Record Set**" has the meaning assigned to such term in 45 C. F. R. 160.501.
 - (4) **Discovery.** "**Discovery**" shall mean the first day on which a Security Breach is known to Humana Wellness (including any person, other than the individual committing the breach, that is an employee, officer, or other agent of Humana Wellness), or should reasonably have been known to Humana Wellness, to have occurred.
 - (5) **Electronic Health Record.** "**Electronic Health Record**" means an electronic record of health-related information on an individual that is created, gathered, managed and consulted by authorized health care clinicians and staff.
 - (6) **Electronic Protected Health Information.** "**Electronic Protected Health Information**" means information that comes within paragraphs 1 (i) or 1 (ii) of the definition of "Protected Health Information", as defined in 45 C. F. R. 160.103.
 - (7) **Protected Health Information.** "**Protected Health Information**" shall have the same meaning as the term "Protected Health Information", as defined by 45 C. F. R. 160.103, limited to the information created or received by Humana Wellness from or on behalf of the Customer.
 - (8) **Required by Law.** "**Required by Law**" shall have the same meaning as the term "required by law" in 45 C. F. R. 164.501.
 - (9) **Secretary.** "**Secretary**" shall mean the Secretary of the Department of Health and Human Services or his designee.

HIPAA BUSINESS ASSOCIATE AGREEMENT (BAA)

- (10) **Security Breach.** “Security Breach” means the unauthorized acquisition, access, use or disclosure of Protected Health Information which compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information. Security Breach does not include:
- (i) any unintentional acquisition, access, or use of Protected Health Information by an employee or individual acting under the authority of Humana Wellness if:
 - (a) such acquisition, access or use was made in good faith and within the course and scope of the employment or other professional relationship of such employee or individual, respectively, with Humana Wellness; and
 - (b) such information is not further acquired, accessed, used or disclosed by any person; or
 - (ii) any inadvertent disclosure from an individual who is otherwise authorized to access Protected Health Information at a facility operated by Humana Wellness to another similarly situated individual at the same facility; and
 - (iii) any such information received as a result of such disclosure is not further acquired, accessed, used or disclosed without authorization by any person.
- (11) **Security Breach Compliance Date.** “Security Breach Compliance Date” means the date that is thirty (30) days after the Secretary publishes interim final regulations to carry out the provisions of Section 13402 of Subtitle D (Privacy) of ARRA.
- (12) **Security Incident.** “Security Incident” shall have the same meaning as the term “security incident” in 45 C. F. R. 164.304.
- (13) **Unsecured Protected Health Information.** “Unsecured Protected Health Information” means Protected Health Information that is not secured through the use of a technology or methodology specified by guidance issued by the Secretary from time to time.
- b. The Parties acknowledge that Humana Wellness is a Wellness Services provider with respect to the Program under the Wellness Services Agreement. This Agreement pertains to Protected Health Information and Protected Health Information in the possession or control of Humana Wellness in connection with services provided under the Wellness Services Agreement, and in that respect complements or amends any provisions respecting confidentiality of Protected Health Information expressed in the Wellness Services Agreement. However, unless this Agreement specifically describes an administrative service and obligates Humana Wellness to provide it, nothing in this Agreement shall operate to modify or enlarge the scope of administrative services to be provided by Humana Wellness, which are otherwise described in the Wellness Services Agreement.

HIPAA BUSINESS ASSOCIATE AGREEMENT (BAA)

2. With respect to Protected Health Information, generally, the following provisions apply:
- a. The Parties acknowledge that in the course of performing their respective duties under the Wellness Services Agreement, they may acquire or obtain access to or knowledge of Protected Health Information. This information is at all times the property of the Customer and not Humana Wellness, even if it is received by Humana Wellness. Information of this nature that is received by Humana Wellness will be deemed to be information received on behalf of the Customer. However, information that is produced incidentally through application of the computer systems employed by Humana Wellness in the course of providing services under the Wellness Services Agreement will not be considered property of the Customer or any Covered Person, if it is not specific to the Program or not material to Program administration.
 - b. The Parties agree to cooperate in order to safeguard Protected Health Information to ensure that the information remains confidential and is not improperly disclosed. The Parties will make sure that individuals under their direct control, respectively, who perform functions that may bring those individuals into contact with Protected Health Information are made familiar with the confidentiality obligations set forth in this Agreement, appropriately trained in privacy policies directed at safeguarding against improper disclosure, and abide by those requirements as minimum safeguards against improper disclosure. The Parties acknowledge with respect to Protected Health Information that disclosure is improper if it is not allowed by law or made for any purpose other than Program administration or benefits delivery. Disclosure to individuals who perform Program-related functions under the auspices of the Customer or health care provider may be proper, if the disclosure is allowed by law and made for Program purposes. Furthermore, the Customer further represents and warrants that security controls, restrictive processes, and other appropriate safeguards have been put in place between the employer of a Covered Person and the Program to protect Protected Health Information from improper disclosure.
 - c. Humana Wellness will afford access to Protected Health Information or other personal information received by it to the Customer, as permitted under this Agreement and by law. Humana Wellness will afford access to this information to other persons only as reasonably directed in writing by the Customer, with due regard for confidentiality, and Humana Wellness shall have no further obligation with respect to that information. Except as provided in this Agreement, Humana Wellness will disclose Protected Health Information to a third party only if authorized by an ancillary agreement respecting confidentiality. Humana Wellness is directed to afford access to Protected Health Information to the persons listed in **Attachment A**, under circumstances where disclosure is appropriate and necessary.
 - d. In connection with performing its obligations under this Agreement, it may become necessary for Humana Wellness to disclose to the Customer, their designees or third parties under contract with either of them ("**Recipients**", for purposes of this Section) trade secret and/or proprietary information of Humana Wellness. The Customer agrees to safeguard and ensure the confidentiality of such trade secret and/or proprietary information, which shall include information relating to (i) the business of Humana Wellness, its Affiliates, their clients and representatives, (ii) third parties under contract with Humana Wellness, (iii) service provider arrangements or contracts, (iv) service provider network arrangements or contracts, and (v) documentation relating to the computer systems utilized by Humana Wellness.

HIPAA BUSINESS ASSOCIATE AGREEMENT (BAA)

- (1) Access to the trade secret and/or proprietary information described above will be permitted for Recipients only; it may be used by Recipients only in a manner necessary to accomplish the purposes described above with respect to Protected Health Information and other personal information; and it may not be disclosed to any third parties, including their employees that do not have a need to know, without authorization by Customer (except as may be required by order of a court or regulatory agency of competent jurisdiction). Access to such records or information does not constitute a transfer of ownership, permission to appropriate, or license to use the same for any purpose not contemplated under this Agreement.
 - (2) The Customer understands and agrees that the Customer (or its designee) must recognize and abide by restrictions upon disclosure of information and/or systems that are imposed by contracts between Customer and third parties or by law, regulation, or order of a court or regulatory agency.
 - e. Upon termination of this Agreement, records containing Protected Health Information in the possession of Humana Wellness will be either delivered to the Customer or destroyed when Humana Wellness's records retention obligations have been fulfilled. If such delivery or destruction is not feasible, the protections of this Agreement will continue to apply to those records and further uses and disclosures of the Protected Health Information or other personal information shall be limited to those purposes that make the return or destruction of the information infeasible.
 - f. The Customer and Humana Wellness agree that they will require other persons or entities that receive Protected Health Information and/or trade secret or proprietary information in connection with and as permitted by this Agreement to agree in writing to observe the protections described herein as minimum safeguards against improper disclosure of such information.
3. With respect to Protected Health Information, specifically, the following provisions apply:
- a. Humana Wellness and the Customer, intend to protect the privacy and provide for the security of Protected Health Information disclosed to Humana Wellness pursuant to this Agreement in compliance with HIPAA and the regulations promulgated thereunder by the U.S. Department of Health and Human Services, including, but not limited to, Title 45, Section 164.504(e) of the Code of Federal Regulations (C. F. R.), as the same may be amended from time to time and other applicable state and federal laws, rules and regulations.
 - b. The Parties acknowledge that state and federal laws relating to electronic data security and privacy are rapidly evolving and that further amendment of this Agreement may be required to provide for procedures to ensure compliance with such developments. The Parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HIPAA Regulations and other applicable laws relating to the security or confidentiality of Protected Health Information.

HIPAA BUSINESS ASSOCIATE AGREEMENT (BAA)**c. Obligation of Humana Wellness.**

- (1) **Permitted Uses and Disclosures.** Humana Wellness may create, use and/or disclose Protected Health Information of Covered Persons pursuant to this Agreement provided that such use and/or disclosure would not violate the Privacy and Security Rules if done by Customer or the minimum necessary policies and procedures of the Program, for the proper management and administration of Humana Wellness or to carry out the legal responsibilities of Humana Wellness, provided that such disclosures are Required by Law, or Humana Wellness obtains reasonable assurances from the person to whom the information is disclosed that the Protected Health Information will remain confidential and used or further disclosed only as Required by Law or for the purpose for which the Protected Health Information was disclosed to the person, and the person notifies Humana Wellness of any instances of which the person is aware in which the confidentiality of the Protected Health Information has been breached.
- (2) **Specific Use and Disclosure Provisions.**
 - (i) Except as otherwise prohibited by this Agreement, Humana Wellness may use Protected Health Information for the proper management and administration of Humana Wellness or to carry out the legal responsibilities of Humana Wellness.
 - (ii) Except as otherwise prohibited by this Agreement, Humana Wellness may disclose Protected Health Information for the proper management and administration of Humana Wellness, provided that disclosures are Required by Law, or Humana Wellness obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies Humana Wellness of any instances of which it is aware in which the confidentiality of the information has been breached in accordance with the Security Breach and Security Incident notifications requirements of this Agreement.
 - (iii) Except as otherwise prohibited by this Agreement, Humana Wellness may use Protected Health Information to provide data aggregation services to the Customer as permitted by 42 C. F. R. 164.504(e)(2)(i)(B).
 - (iv) Humana Wellness may use Protected Health Information to report violation of law to appropriate Federal and State authorities, consistent with 164.502 (j)(1).
- (3) **Data Aggregation Services.** For purposes of this Section, "Data Aggregation" means, with respect to Protected Health Information pertaining to Covered Persons in the possession of Humana Wellness by virtue of the Wellness Services Agreement, the combining of such Protected Health Information by Humana Wellness with the Protected Health Information received by Humana Wellness in its capacity as a Wellness Services provider of another Covered Entity, as that term is defined under HIPAA to permit data analyses that relate to the operations of the respective Covered Entities.

HIPAA BUSINESS ASSOCIATE AGREEMENT (BAA)

- (4) **Safeguards.** Humana Wellness shall use appropriate safeguards to prevent use or disclosure of Protected Health Information other than as specifically provided for by this Agreement. Such safeguards shall at a minimum include: (i) a comprehensive written information privacy and security policy; and (ii) a program that includes administrative, technical and physical safeguards appropriate to the size and complexity of Humana Wellness's operations and the nature and scope of his/her/its activities; and (iii) appropriate confidentiality agreements with all employees, subcontractors, independent contractors and any entity to which Humana Wellness has delegated or sub-delegated his/her/its rights, duties, activities and/or obligations under this Agreement which contain terms and conditions that are the same or similar to those contained in this Agreement.
- (5) **Reporting of Disclosures and Mitigation.** Humana Wellness shall provide written notice within five (5) calendar days to Customer of any use or disclosure of Protected Health Information other than as specifically provided for by this Agreement. Such notice shall be provided in the manner set out in this Agreement. Humana Wellness agrees to mitigate, to the extent practicable, any harmful effect that is known to Humana Wellness of a use or disclosure of Protected Health Information by Humana Wellness in violation of the requirements of this Agreement.
- (6) **Contractors.** It is understood and agreed that Humana Wellness shall maintain written confidentiality agreements with contractors, including without limitation subcontractors and independent contractors, as necessary to perform the services required under this Agreement, in a form consistent with, the terms and conditions established in this Agreement. Humana Wellness shall ensure that any agents, including subcontractors, to whom it provides Covered Person's Protected Health Information received from, created by, or received by Humana Wellness on behalf of the Program agree to the same restrictions and conditions that apply to Humana Wellness with respect to such Protected Health Information.
- (7) **Availability of Information.** Humana Wellness shall prepare, maintain and retain records relating to the use and disclosure of Protected Health Information in such form and for such time periods as required by applicable state and federal laws, rules and regulations, and in accordance with such standards. The Customer may obtain, copy and have access, upon reasonable request, to any administrative or financial record of Humana Wellness related to the use and disclosure of Protected Health Information. Copies of such records shall be provided to Customer by Humana Wellness upon reasonable request of Customer, which includes the scope of the request, at no additional cost to Customer.
- (i) Humana Wellness shall make Protected Health Information available to Customer as reasonably required to fulfill Customer's obligations to amend such Protected Health Information pursuant to HIPAA and the HIPAA Regulations, including, but not limited to, 45 C. F. R. Section 164.526 and Humana Wellness shall, as directed by Customer, incorporate any amendments to Protected Health Information into copies of such Protected Health Information maintained by Humana Wellness.

HIPAA BUSINESS ASSOCIATE AGREEMENT (BAA)

- (ii) If so directed by Customer, Humana Wellness will provide access to Protected Health Information by Covered Persons, provide copies of Protected Health Information to Covered Persons, and provide an accounting to Covered Persons or to the Customer, as directed by the Customer, of disclosures by Humana Wellness for purposes other than Program operation or delivery that are improper disclosures under HIPAA and the HIPAA Privacy Regulations, but only with respect to Protected Health Information in Humana Wellness's possession and under its control at the time of such disclosure.
 - (iii) However, Humana Wellness will not be responsible for determining the rights of Covered Persons to acquire access to Protected Health Information concerning them (whether or not such information is at any time in the possession of Humana Wellness).
- (8) Amendment of Protected Health Information. Humana Wellness shall make Protected Health Information available to the Customer as reasonably required to fulfill the Customer's obligations to amend such Protected Health Information pursuant to HIPAA and the HIPAA Regulations, including, but not limited to, 45 C. F. R. Section 164.526, and Humana Wellness shall, as directed by Customer, incorporate any amendments to Protected Health Information into copies of such Protected Health Information maintained by Humana Wellness. However, Humana Wellness will not be responsible for determining the rights of Covered Persons to modify Protected Health Information concerning them (whether or not such information is at any time in the possession of Humana Wellness).
- (9) Internal Practices. Humana Wellness shall make its internal practices, books and records relating to the use and disclosure of Protected Health Information received from, created by, or received by Humana Wellness on behalf of the Customer available to the Secretary of the U.S. Department of Health and Human Services for purposes of determining Humana Wellness's compliance with HIPAA and the HIPAA Regulations.
- (10) Notification of Breach. During the term of the Wellness Services Agreement, Humana Wellness agrees to report to the Customer any Security Breach of Unsecured Protected Health Information without unreasonable delay and in no case later than ten (10) calendar days after Discovery of a Security Breach. Such notice shall include the identification of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by Humana Wellness, to have been, accessed, acquired, or disclosed in connection with such Security Breach. In addition, Humana Wellness shall provide any additional information reasonably requested by the Customer for purposes of investigating the Security Breach. Humana Wellness's notification of a Security Breach under this Section shall comply in all respects with each applicable provision of Section 13400 of Subtitle D (Privacy) of ARRA and related guidance issued by the Secretary from time to time.

HIPAA BUSINESS ASSOCIATE AGREEMENT (BAA)

Breach notifications must be reported to the Customer by one (1) of the following methods:

By Mail:

By Phone:

By Email: Mstalcup@peoriagov.org (Mary Ann Stalcup, Human Resources Director)

- (11) With respect to Electronic Protected Health Information, Humana Wellness shall implement and comply with (and ensure that its subcontractors implement and comply with) the administrative safeguards set forth at 45 C. F. R. 164.308, the physical safeguards set forth at 45 C. F. R. 310, the technical safeguards set forth at 45 C. F. R. 164.312, and the policies and procedures set forth at 45 C. F. R. 164.316 to reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Customer. Humana Wellness acknowledges that, effective the later of the Effective Date of this Agreement or February 17, 2010, (i) the foregoing safeguard, policies and procedures requirements shall apply to Humana Wellness in the same manner that such requirements apply to Customer, and (ii) Humana Wellness shall be liable under the civil and criminal enforcement provisions set forth at 42 U.S.C. 1320d-5 and 1320d-6, as amended from time to time, for failure to comply with the safeguard, policies and procedures requirements and any guidance issued by the Secretary from time to time with respect to such requirements.
- (12) With respect to Electronic Protected Health Information, Humana Wellness shall ensure that any agent, including a subcontractor, to whom it provides Electronic Protected Health Information, agrees to implement reasonable and appropriate safeguards to protect it.
- (13) Humana Wellness shall report to Customer any Security Incident of which it becomes aware.

d. Obligations of the Customer.

- (1) The Customer will use appropriate safeguards to maintain the confidentiality, privacy and security of Protected Health Information in transmitting same to Humana Wellness pursuant to the Arrangement and this Agreement.
- (2) The Customer shall notify Humana Wellness of any limitation(s) in the Customer's notice of privacy practices that the Customer produces in accordance with 45 C. F. R. 164.520 (as well as any changes to that notice), to the extent that such limitation(s) may affect Humana Wellness's use or disclosure of Protected Health Information.
- (3) The Customer shall provide Humana Wellness with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes affect Humana Wellness's use or disclosure of Protected Health Information.

HIPAA BUSINESS ASSOCIATE AGREEMENT (BAA)

(4) The Customer shall notify Humana Wellness of any restriction to the use or disclosure of Protected Health Information that the Customer has agreed to in accordance with 45 C. F. R. 164.522, to the extent that such restriction may affect Humana Wellness's use or disclosure of Protected Health Information.

e. Audits, Inspection and Enforcement. From time to time upon reasonable notice, or upon a reasonable determination by the Customer that Humana Wellness has breached this Agreement with respect to Protected Health Information, the Customer may inspect the facilities, systems, books and records of Humana Wellness to monitor compliance with this Agreement. Humana Wellness shall promptly remedy any violation of any term of this Agreement and shall certify the same to the Customer in writing. Waiver, whether expressed or implied, of any breach of any provision of this Agreement shall not be deemed to be a waiver of any other provision or a waiver of any subsequent or continuing breach of the same provision. In addition, waiver of one of the remedies available to either Party in the event of a default or breach of this Agreement by the other Party, shall not at any time be deemed a waiver of a Party's right to elect such remedy (ies) at any subsequent time if a condition of default continues or recurs.

To the extent that the Customer determines that such examination is necessary to comply with the Customer's legal obligations pursuant to HIPAA relating to certification of its security practices, the Customer or the Customer's authorized agents or contractors, may, at the expense of either of them, examine Humana Wellness's facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to the Customer the extent to which Humana Wellness's security safeguards comply with HIPAA, the HIPAA Regulations or this Agreement.

4. Termination.

a. Material Breach. Notwithstanding anything to the contrary in the Wellness Services Agreement or this Agreement, a breach by Humana Wellness of any provision of this Agreement respecting Protected Health Information, as reasonably determined by the Customer, shall constitute a material breach of the Wellness Services Agreement providing grounds for immediate termination of the Wellness Services Agreement.

b. Reasonable Steps to Cure Breach. Humana Wellness shall take reasonable steps to alleviate any potential, alleged or actual violations of permitted disclosures of Protected Health Information. If Humana Wellness's efforts are unsuccessful, Customer may: (i) terminate the Wellness Services Agreement immediately or (ii) if termination of the Wellness Services Agreement is not feasible, report Humana Wellness's breach or violation to the Secretary of the Department of Health and Human Services.

c. Judicial or Administrative Proceedings. Either Party may terminate the Wellness Services Agreement, effective immediately, if: (i) the other Party is named as a defendant in a criminal proceeding for a violation of HIPAA or (ii) a finding or stipulation that the other Party has violated any standard or requirement of HIPAA or other security or privacy laws is made in any administrative or civil proceeding in which the Party has been joined.

HIPAA BUSINESS ASSOCIATE AGREEMENT (BAA)

- d. **Effect of Termination.** Upon termination of the Wellness Services Agreement for any reason, Humana Wellness shall return or destroy all Covered Person Protected Health Information or Protected Health Information created or received by Humana Wellness with respect to the Customer that Humana Wellness still maintains in any form, and shall retain no copies of such Protected Health Information or, if return or destruction is not feasible, it shall continue to extend the protections of this Agreement to such information, and limit further use of such Protected Health Information to those purposes that make the return or destruction of such Protected Health Information infeasible. The Customer shall have the final determination on whether Humana Wellness may destroy documents as opposed to returning the originals.
5. **Indemnification.** The Customer and Humana Wellness will indemnify, hold harmless, and defend each other from and against any and all claims, losses, liabilities, costs and other expenses incurred as a result of, or arising directly or indirectly out of or in connection with: (i) any misrepresentation, breach of warranty or non-fulfillment of any undertaking on the part of a Party under this Agreement respecting Protected Health Information; and (ii) any claims, demands, awards, judgments, actions and proceedings made by any person or organization arising out of or in any way connected with the Party's performance under this Agreement.
6. **Disclaimer.** Humana Wellness makes no warranty or representation that compliance by Humana Wellness with this Agreement, HIPAA or the HIPAA Regulations will be adequate or satisfactory for the Customer's own purposes or that any information in the Customer's possession or control, or transmitted or received by the Customer, is or will be secure from unauthorized use or disclosure. The Customer is solely responsible for all decisions made by it regarding the safeguarding of Protected Health Information.
7. **Assistance in Litigation or Administrative Proceedings.** Humana Wellness shall make itself, and any subcontractors, employees or agents assisting Humana Wellness in the performance of its obligations under this Agreement, available, at no cost to the Customer, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against the Customer, or the Customer's directors, officers or employees based upon claimed violation of HIPAA, the HIPAA Regulations or other laws relating to security and privacy attributable to Humana Wellness, except where Humana Wellness or its contractor, employee or agent is a named adverse Party.
8. **No Third Party Beneficiaries.** The Parties have not created and do not intend to create by this Agreement any third party rights under this Agreement, including but not limited to Covered Persons. There are no third party beneficiaries to this Agreement.
9. **Receipt of Protected Health Information.** Humana Wellness's receipt of Covered Person's Protected Health Information pursuant to the transactions contemplated by the Wellness Services Agreement shall be deemed to occur beginning on the execution date below, and Humana Wellness's obligations under this Agreement shall commence with respect to such Protected Health Information upon such receipt.
10. **Interpretation.** The Parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA Regulations. In the event of any irreconcilable conflict between this Agreement and the Wellness Services Agreement as to the subject matter referenced herein, this Agreement shall control.

HIPAA BUSINESS ASSOCIATE AGREEMENT (BAA)

- 11. **Amendment.** Upon the enactment of any law or regulation affecting the use or disclosure of Protected Health Information, the safeguarding of Electronic Protected Health Information, or the publication of any decision of a court of the United States or any state relating to any such law or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation, both Parties agree to negotiate in good faith any necessary amendment of this Agreement. Such amendment shall not be effective until both Parties have agreed in writing to its terms.
- 12. **Survival.** The respective rights and obligations of Humana Wellness under Sections 4(d) of this Agreement shall survive the termination of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement.

**Harris, Rothenberg International Inc.
d/b/a Humana Wellness:**

City of Peoria:

By: Jeffrey Reid

By: Mary Ann Stalcup

Name: Jeffrey Reid

Name: Mary Ann Stalcup

Title: Senior Vice President

Title: Human Resources Director

Date: 04/06/2020

Date: 1 April 2020

Address for Notice:

Address for Notice:

Humana Inc.
c/o Jennifer Hale
500 W Main Street
Louisville, KY 40202

City of Peoria
c/o Mary Ann Stalcup
419 Fulton Street, Room 403
Peoria, IL 61602

COPY TO:

COPY TO:

Humana Inc.
500 West Main Street
Louisville, KY 40202
Attention: Law Department

HIPAA BUSINESS ASSOCIATE AGREEMENT (BAA)**Attachment A: Persons Authorized to Receive Protected Health Information on behalf of the Customer**

Individual's Name: Mary Ann Stalcup
Title: Human Resources Director
Company Name: City of Peoria
Address: 419 Fulton Street, Room 403
City / State / Zip: Peoria, IL 61602
Telephone No.: 309-494-8584
FAX No.: 309-494-8587
E-Mail Address: Mstalcup@peoriagov.org

Individual's Name: Ed Hopkins
Title: Senior Human Resources Specialist
Company Name: City of Peoria
Address: 419 Fulton Street, Room 403
City / State / Zip: Peoria, IL 61602
Telephone No.: 309-494-8585
FAX No.: 309-494-8587
E-Mail Address: Ehopkins@peoriagov.org

Individual's Name: Debra D. Bush
Title: Affirmative Employment Specialist
Company Name: City of Peoria
Address: 419 Fulton Street, Room 403
City / State / Zip: Peoria, IL 61602
Telephone No.: 309-494-8578
FAX No.: 309-494-8587
E-Mail Address: Dbush@peoriagov.org

Individual's Name:
Title:
Company Name:
Address:
City / State / Zip:
Telephone No.:
FAX No.:
E-Mail Address:

Individual's Name:
Title:
Company Name:
Address:
City / State / Zip:
Telephone No.:
FAX No.:
E-Mail Address:

Add additional names as necessary

STATEMENT OF WORK

Humana Wellness EAP Services
The City of Peoria
Effective Date: 01/01/2020

This Statement of Work No. 1 contains a description of Humana Wellness EAP Services ("EAP Services"), and additional terms and conditions.

DEFINITIONS

All defined terms used in this Statement of Work have the same meaning given to them in the Definitions section of the Agreement, unless otherwise specifically defined below.

"Covered Person" for purposes of this Statement of Work, means an individual residing within the Territory whom Customer deems eligible to receive EAP Services and their household members.

ELIGIBILITY

For Purposes of EAP Services, Customer is not required to provide an Eligibility File of Covered Persons.

EAP SERVICES

General

EAP Services include:

- Intake, assessment and referral services;
- Face-to-face and/or telephonic sessions are included as defined in **Appendix A***;
- Making an appropriate referral for further treatment if additional sessions per issue are needed*;
- Twenty-four (24) hour availability of EAP assessment services and crisis response, via a toll-free telephone line, three hundred sixty-five (365) days a year;
- Follow-up services to Covered Persons utilizing the EAP Services;
- Cross referrals to Work-Life Services (*if included with EAP Services*) when appropriate;
- Review and consultation regarding related benefits;
- Human Resources (HR) and management consultations regarding troubled employees; and
- Extended follow-up services to all employees with substance abuse problems.

**** If only telephonic assistance is purchased, these services are excluded.***

Legal, Mediation, Financial and Identity Theft Services

EAP Services shall also include the following Legal, Mediation, Financial, and Identity Theft Services:

Legal

- In office or telephonic consultations with experienced attorneys who are licensed and qualified to practice law in each state, per area of expertise;
- Each Covered Person is entitled to one (1) initial thirty (30) minute office or telephone consultation per separate legal matter at no cost; and
- In the event a Covered Person wishes to retain a participating attorney after the initial consultation, he/she will be provided with a preferred rate reduction of twenty-five percent (25%) from the attorney's normal hourly rate.
- This benefit cannot be used in any adverse action against any employer.

STATEMENT OF WORK

Mediation

Mediation is a process whereby a trained legal professional assists disputing parties with resolving legal issues. Covered Persons receive a thirty (30) minute consultation at no cost. Additional services are available at a twenty-five percent (25%) discounted rate. Mediators do not give legal advice but can offer their opinion regarding settlement solutions. Covered Persons have the option for a qualified mediator to assist them in resolving cases such as:

- Civil matters including: contractual disputes, real estate, landlord/tenant, collections, consumer disputes, and other civil matters;
- Family matters including: divorce, child custody, child support, parenting agreements, family crisis, elder care matters, and many others; and
- Non-Legal matters including: non-legal disputes between neighbors, co-workers, and other emotionally charged issues.
- This benefit cannot be used in any adverse actions against any employer.

Financial

- Telephone consultations with financial professionals;
- Each Covered Person is entitled to one (1) initial thirty (30) minute telephone consultation per separate financial matter at no cost;
- Financial consultations do not include debt consolidation services.

Identity Theft

Identity (ID) Theft assists Covered Persons with restoring their identity and good credit following an identity theft incident, as follows:

- Each Covered Person is entitled to sixty (60) minutes of ID counseling with a highly trained Fraud Resolution Specialist™ who conducts seven (7) emergency response activities;
- Each Covered Person is entitled to a free "ID Theft Emergency Response Kit™;" and
- Each Covered Person is counseled on preventative steps necessary to take in an effort to avoid future ID theft losses and damages to a Covered Person's credit score and reputation.

WORK-LIFE SERVICES

The Work-Life Services component of EAP Services helps Covered Persons address common life issues such as healthy eating, day care, and elder care needs and includes consultations, assessments, customized referrals to service providers, care giving resources, and other services nationwide, as follows:

- Unlimited telephone consultation, including full exploration of care giving problem, concern or issue;
- The ease, convenience, and flexibility of secure web-based, online resources to reinforce the face-to-face coaching experience;
- Vacancy confirmation, which is when Humana Wellness determines service availability of providers prior to sending referrals to Covered Persons;
- Distribution of educational materials, guides, and handouts to Covered Persons;
- Twenty-four (24) hour availability of service, via a toll-free telephone line, three hundred sixty-five (365) days a year;
- Follow-up services to Covered Persons utilizing the Work-Life Services; and
- Cross referrals to other EAP Services when appropriate.

CONSULTATIONS

The Customer shall be entitled to unlimited management Consultations with its Account Manager, on issues ranging from program utilization and engagement activities to topical training/seminar consultation.

STATEMENT OF WORK

MANAGER REFERRALS

An employee can be formally referred to the EAP by their manager and/or the Human Resources Department because of performance issues, which may include chronic absenteeism, tardiness, anger management, a positive drug screen, etc. (any such referral is referred to herein as a "Manager Referral"). Manager Referrals are included in the EAP Services as set forth in **Appendix A** of this Statement of Work. Manager Referrals are case-managed by Humana Wellness Management Consultants as follows:

- Consult manager and/or Human Resources about how to discuss the Manager Referral with employee;
- Consult about potential risk management/safety issues; and
- Report employee compliance information.

EMPLOYEE MANAGEMENT AND ORIENTATIONS

As a means of introducing employees and managers/supervisors to the EAP Services and creating program awareness, a series of employee orientation and supervisor/manager training sessions will be provided to the Customer upon request.

Employee Orientations educate the workforce about the wide nature of concerns addressed by the EAP Services, including the assurance of confidentiality. In addition, Manager Orientations guide managers, and supervisors on how to use the EAP Services as a management tool.

After the initial rollout of the EAP Services, orientations and training sessions will be provided to the Customer as mutually agreed upon by the Parties.

TRAINING SERVICES AND WORKSHOPS

In addition to the already developed one (1) hour workplace seminars, Humana Wellness can create specialized training programs based on the Customer's request. Such programs and additional training services shall be subject to an additional fee for the design/development of such specialized/customized training program.

Training can be provided in person or via teleconference or webinar. The Humana Wellness training programs are available in multiple formats, including live/on-site, PowerPoint, WebEx, teleconference, Flash Presentations and on CD-ROM. In addition, any such training may be recorded and posted on the web.

In the event the Customer requests customized training services, fees for such services shall be mutually agreed upon by the Parties.

WEBSITE

Covered Persons shall have unlimited access to the EAP website located at www.humana.com/eap, which includes articles, tip sheets, Click 'n Learns, quizzes, interactive assessments, calculators, search locators and tools, Ask The Expert, teleconferences, online Health and Wellness services, and Tools for Managers.

Access

Humana Wellness will provide the Customer with a unique company username and password.

Branding

Customer may add a logo at no additional fee to the EAP website.

VISIBILITY EVENTS

If requested by the Customer, Humana Wellness will participate in the Customer's open-enrollment meetings and health or wellness fairs to ensure continued visibility of the EAP Services and provide orientation information and educational materials on specific topics as requested by the Customer. Humana Wellness and the Customer will mutually agree on the number of hours provided to the Customer for Visibility Events. Fees associated with health and wellness fairs are outlined in **Appendix A**.

STATEMENT OF WORK

SEMINARS

In the event the Customer requests seminars or workshops, fees for such seminars and workshops are outlined in **Appendix A**.

CRITICAL INCIDENT RESPONSE SERVICES

Critical Incident Response Services ("CIRS") are a highly specialized individual and group session services designed to minimize the negative emotional and psychological impact of traumatic events such as organizational change or disruptive natural or man-made events. The goal of the CIRS session is to enhance Covered Persons' ability to transcend workplace trauma and resume focused and productive work activities. Fees associated with CIRS are outlined in **Appendix A**.

CIRS session levels are defined as follows:

- **Standard:** these are scheduled for an agreed upon number of hours in advance with more than two (2) hours' notice. The charges are "per consultant per hour." If the Customer requests that the consultant stay beyond the scheduled hours and if the consultant is available to stay, the same rates would apply. If not, another counselor can then be scheduled to be onsite if the Customer so desires.
- **Immediate:** these are classified as immediate when the onsite presence is requested within two (2) hours of the initial call for assistance and are scheduled for an agreed upon number of hours. The charges are "per consultant per hour." If the Customer requests that the consultant stay beyond the scheduled hours and if the consultant is available to stay, the same rates would apply. If not, another counselor can then be scheduled to be onsite if the Customer so desires. A cancellation fee applies for any scheduled CIRS session that is cancelled within twenty-four (24) hours of the scheduled start time.

FITNESS FOR DUTY EVALUATIONS

Fitness for Duty ("FFD") Evaluations are available when the employer decides that an employee cannot be at work until or unless a qualified professional states that they are safe to be at work and can perform the essential functions of their role. These FFD Evaluations are appropriate for extremely serious employee issues. In these situations, the employee is generally required to undergo the evaluation as a condition of continued employment. An FFD Evaluation is performed by a neutral, independent forensic specialist who has no treatment, financial, or professional relationship with the examinee or the examinee's care givers. These evaluations provide concrete information about an employee's level of functioning and appropriateness for their work environment. An FFD Evaluation can be considered for circumstances such as:

- Threats, expressions or overt violent behavior to self or others;
- Bizarre or highly disruptive behavior impacted performance or the workplace;
- Aggressive or abusive behavior violating company code of conduct; or
- Intoxication or failed drug/alcohol tests (not intended to address acute intoxication).

Humana Wellness will fully case-manage the referral and the FFD Evaluation arrangements and work closely with Human Resources or other designated persons at Customer to resolve the situation. Fees associated with FFD Evaluations are outlined in **Appendix A**.

REPORTING

Humana Wellness will submit quarterly reports. Such reports will detail the categories of presenting problems, the numbers and types of services provided, demographic profiles of all Covered Persons, usage of the EAP website, and Covered Person usage of any other services delivered during the relevant reporting period. The frequency of reports may be changed upon mutual agreement between Humana Wellness and the Customer.

QUALITY MANAGEMENT

Humana Wellness has implemented several different quality assurance procedures which are available upon request by the Customer.

STATEMENT OF WORK

COMMUNICATIONS

The Customer will receive promotions highlighting the EAP Services on a monthly and quarterly basis. The following promotional materials and activities shall be provided to the Customer as follows:

- Humana Wellness will provide the Customer with professional assistance in planning, promoting, administering, and conducting the EAP Services.
- Humana Wellness will collaborate with the Customer to promote the EAP Services and will develop with the Customer a coordinated Communications Plan to promote the EAP Services.
- Humana Wellness will work with the Customer to develop branded promotional materials including one (1) brochure per eligible plus fifty percent (50%) over the eligible count.
- All such materials shall be provided to the Customer at no cost for the initial roll out/implementation of the EAP Services.
- All promotional activities will be conducted by mutual consent between Humana Wellness and the Customer.

Customized Promotional Materials

Fees for customized promotional materials shall be mutually agreed upon by the Parties, and will generally be either an hourly rate or a flat fee, depending on the nature of the work to be performed.

TERMINATION

Effective the date of termination of the Agreement, or the Statement of Work, or the date of termination of the eligibility of a Covered Person, all services provided in this Statement of Work, including access to all remaining eligible EAP sessions, are also terminated.

HUMANA WELLNESS EAP SERVICES PRICING AND PAYMENT TERMS

Humana Wellness payment terms are as outlined in the Agreement. Pricing for Humana Wellness EAP Services are outlined in **Appendix A** as attached to this Statement of Work.

TERM OF STATEMENT OF WORK

The term of this Statement of Work shall be effective as of 01/01/2020, ending on 12/31/2022.

HUMANA WELLNESS EAP SERVICES TIMELINE (NEW CUSTOMERS ONLY)

Timeline for standard implementations are sixty (60) days from the date of the signed Statement of Work. Implementation work will not begin until the Statement of Work is executed.

STATEMENT OF WORK

SIGNATURES

This Statement of Work has been executed by the Parties' duly authorized representatives whose signatures appear below.

Mary Ann Stalcup
Printed Name of Customer Representative

April 1, 2020
Date

Human Resources Director
Representative's Title

City of Peoria
Company


Representative's Signature

Jeffrey Reid
Printed Name of Humana Wellness Representative

04/06/2020
Date

Senior Vice President
Representative's Title

Harris, Rothenberg International Inc. d/b/a Humana Wellness
Company


Representative's Signature

STATEMENT OF WORK

Appendix A – Humana Wellness EAP Services Pricing

For clarity purposes, per “eligible” below means “Covered Persons” as defined in the Humana Wellness Services Agreement. The EAP program is accessible to employees plus all household dependents, but billing is based on Employee Count.

Program Pricing for 630 Employees (the “Employee Count”)*

Humana EAP Services	Fees
6 EAP sessions	\$0.81 per employee per month (PEPM)
Work-Life Services	Included
Legal and Financial Services	Included
Member Website	Included
Employee and Manager Orientations	Included
LifeCoach	Included
Seminars	4 Hours Included
CIRs	2 Hours Included
<i>*Assumptions: Fees are based on the eligible Employee Count and are valid for no fewer than twenty percent (20%) less than the Employee Count noted in the above program pricing. Reductions in Employee Count below this minimum allow Humana Wellness the right to re-evaluate Fees.</i>	
Our rate is guaranteed for three years with a three-year contract	
Fee for Service Options	Fees
Seminars	\$400/hour plus travel charges, if applicable
CIRs:	\$250/hour* plus travel charges, if applicable
• Standard	\$330/hour* plus travel charges, if applicable
• Immediate (within two hours)	*minimum of 1.75 (Standard) & 1.5 (Immediate) hours applies \$300 fee for CIRs cancelled within twenty-four (24) hours of start time
Health or Wellness Fairs	\$100/hour plus travel charges, if applicable
Fitness for Duty Evaluations (FFDE)	Full case management of FFDEs is included in our base rate. However, we will pass on any costs charged by the forensic psychiatrist for comprehensive evaluation, which is typically between \$2,000 and \$5,500 per case.
DOT SAP Referrals	\$750/case, but case management is included in Humana Wellness’s base PEPM rate
EAP Fee Term	
The EAP monthly Fees presented in this Appendix A are valid for the period of time beginning on 01/01/2020 and ending on 12/31/2022, except as otherwise stated.	