

## ADMINISTRATIVE SERVICES AGREEMENT

This Administrative Services Agreement ("Agreement") between **United Behavioral Health** ("Optum") and **Wheaton Park District** ("Customer") is effective **February 1, 2019** ("Effective Date"). This Agreement covers the services Optum is providing to Customer, either directly or in conjunction with one of Optum's affiliates.

### Section 1 – Definitions

When these terms are capitalized in the Agreement they have the meanings set forth below. Defined terms may be used in the singular or plural.

**Employee:** A part-time or full-time current or former employee of Customer or an affiliated employer.

**Employee Assistance Program or EAP:** Services designed to assist Customer's Employees, their dependents, and Customer in finding solutions for personal and workplace problems.

**ERISA:** Employee Retirement Income Security Act of 1974, as amended from time to time, including all rules and regulations promulgated thereunder.

**Network:** The group of Network Providers who entered into, or are governed by, contractual arrangements with Optum to provide health care services to Plan Participants.

**Network Provider:** The physician, or medical professional or facility which participates in a Network and accepts negotiated fees for providing health care services. A provider is only a Network Provider if they are participating in a Network at the time services are rendered to the Plan Participant.

**Participant:** Employee beneficiary or dependent who is covered by the Plan.

**PHI:** Any information Optum receives or provides on behalf of the Plan which is considered Protected Health Information as the term is defined in the privacy regulations of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (collectively, "HIPAA") and American Recovery and Reinvestment Act ("ARRA"), as each is amended from time to time.

**Plan:** The provisions of the plan of benefits to which this Agreement applies, as described in the Summary Plan Description.

**Plan Administrator:** The current or succeeding person, committee, partnership, or other entity designated by the terms of the instrument under which the Plan is operated as defined by ERISA and who is responsible for the Plan's operation.

**Plan Document(s):** The documents provided to Participants that are required by ERISA and are prepared or provided by the Plan Administrator that describe either: the Services covered by this Agreement; eligibility requirements for participation and benefits offered under the Plan; or any other similar information. Examples of Plan Documents include but are not limited to the following: Summary Plan Description, evidence or certificate of coverage, description of Services or a trust agreement.

**Services:** Collectively, the products and services Optum provides and performs pursuant to this Agreement as set forth in **Exhibit A** attached hereto.

**Summary Plan Description or SPD:** The document(s) ERISA requires provided to Plan Participants describing the terms and conditions of coverage offered under the Plan.

### Section 2 – Benefit Plan

**2.1 Responsibility for the Plan and Plan Assets.** Optum is not the Plan Administrator of the Plan. Any references in this Agreement, or elsewhere, to Optum “administering the Plan” are descriptive only and do not confer upon Optum anything beyond certain agreed upon claim administration duties. Except to the extent this Agreement specifically requires Optum to have the fiduciary responsibility for a Plan administrative function, Customer has the sole responsibility for all obligations of the Plan, the Plan Sponsor, and the Plan Administrator under ERISA and any other applicable laws and regulations, including but not limited to benefit design and preparation, distribution of Plan Documents, content and regulatory compliance of the Plan Documents.

**2.2 Plan Consistent with the Agreement.** Customer represents that Plan Documents are consistent with this Agreement. Customer will provide Optum with copies of Plan Documents or any communications describing Plan Documents prior to distributing these materials to Participants, Employees or third parties. Customer will amend Plan Documents or communications related thereto if Optum reasonably determines that references to Optum are not accurate, or a Plan provision is not consistent with this Agreement or the Services. Customer shall be responsible for printing, maintaining a supply of and distributing to Participants, within a reasonable period of time before coverage begins, the Plan Documents and all other information and forms necessary for Participants’ enrollment and continued eligibility for Services under the Plan.

**2.3 Plan Changes.** Customer will provide Optum with notice of any changes to the Plan and/or Plan Documents within a reasonable period of time prior to the effective date of the change to allow Optum to determine if the change will impact the Services. Any change by Customer that impacts the Services must be mutually agreed to in writing prior to implementation of such change. Optum will notify Customer if: (i) the change increases Optum’s cost of providing Services which would result in an increase in fees; or (ii) if in Optum’s reasonable discretion it is unable to implement or administer the change. If the parties cannot agree to a new fee within thirty (30) days of the notice of the new fee, or if Optum notifies Customer that Optum is unable to reasonably implement or administer the change, Optum shall have no obligation to implement or administer the change, and Customer may terminate this Agreement upon sixty (60) days written notice.

**2.4 Affiliated Employers.** Customer represents that together, Customer and any of Customer’s affiliates covered under the Plan make up a single “controlled group” as defined by ERISA. Upon request by Optum, Customer agrees to provide Optum with a list of Customer’s affiliates covered under the Plan.

### **Section 3 – Customer Responsibilities**

**3.1 Reliance on Data.** Optum is not liable for any acts or omissions it makes in reliance on the direction or consent from an authorized representative of Customer. Optum is not responsible or liable for any acts or omissions made in reliance on erroneous data provided by Customer or agents, or the failure of Customer to perform its obligations under this Agreement. Customer understands that Optum cannot timely or accurately perform its duties under this Agreement without complete, accurate, and timely information and that Optum shall have no liability to Customer or any Participant as a consequence of incomplete, inaccurate, or untimely information provided to Optum by Customer or its agents. Customer understands that an additional fee may be required if Optum is required to take corrective action as a result of such incomplete, inaccurate, or untimely information.

**3.2 Authorizations, Data Integrity, and Disclosures.** Customer is responsible for obtaining, prior to furnishing any data or information to Optum (either directly or through a third party), any necessary permissions, consents, or releases, including entering into business associate agreements if required by applicable federal, state or local laws and/or regulations, to allow Customer to deliver Customer data to Optum and Optum to use and disclose such Customer data as set forth under this Agreement or required by law. Optum shall not be responsible or liable for (a) errors in Customer data or data entry done by Customer or Customer’s designated data sources, or (b) errors in services, programs, hardware, data files, or output Optum provides to or maintains for Customer pursuant to this Agreement, if the Optum errors resulted from errors in Customer's or Customer’s data sources’ input data, or from Customer's failure to comply with this Agreement. During and after the Term of this Agreement, Optum may use, reproduce, transfer and combine Customer data and any derivatives of that data for preparing commercially

available normative and benchmark data and databases, and for internal and external research and analysis purposes.

**3.3 Notices to Participants.** In the event this Agreement terminates, Customer will notify all Participants that the Services Optum is providing under this Agreement are discontinued.

**3.4 Providing Funds for Benefits.** Optum is solely responsible for providing funds for all EAP benefits payable to Network Providers.

## **Section 4 – Services**

**4.1 Administrative Services.** Optum will provide the administrative services described in Exhibit A.

**4.2 Network Access, Management and Administration.** To the extent applicable to the Services, Optum will provide Customer and Participants with access to Networks and Network Providers, as well as related administrative services including physician (and other health care professional) relations, clinical profiling, contracting and credentialing, and network analysis and system development. The make-up of the Network can change at any time. Notice will be given in advance or as soon as reasonably possible. Optum does not employ Network Providers and they are not agents or partners of Optum. Network Providers participate in Networks only as independent contractors. Network Providers and the Participants are solely responsible for any health care services rendered to Participants. Optum is not responsible for the medical outcomes or the quality or competence of any Network Provider rendering health care services, health care services provided through an Optum affiliate network, or payment for services rendered by a Network Provider through other network.

**4.3 Customer Reporting Services.** Optum will provide standard summaries of program activities to Customer as part of the Services. Optum reserves the right, from time to time, to change the content, format and/or type of its reports. Ad-hoc and non-standard reporting shall be mutually agreed upon by the parties and may be subject to additional fees.

## **Section 5 – Service Fees**

**5.1 Service Fees.** Customer will pay Optum fees for the Services as set forth in Exhibit A of this Agreement. In addition to the Service fees specified in Exhibit A, Customer must also pay Optum any additional fee that is authorized by a provision elsewhere in this Agreement or is otherwise agreed to by the parties. If Customer delegates payment of Services fees to a broker or agent, it remains Customer's obligation to pay Optum, and payment to a broker or agent will not relieve Customer of that obligation in the event a broker or agent fails to pay Optum or a payment is untimely.

**5.2 Changes in Service Fees.** Optum will provide Customer with at least sixty (60) days prior written notice of revised Service fees. Service fee changes will be effective at the end of the notice period. If applicable, Optum will provide Customer with a notice reflecting the revised Service fees that will replace the existing Exhibit A. If Customer objects to a change in Service fees, Customer may terminate this Agreement by providing written notice to Optum within ninety (90) days after Customer receives written notice of the new fees. Customer must still pay any amounts due for the periods during which the Agreement is in effect and during post-termination transition services.

**5.3 Payments.** If Optum has agreed to allow Customer to self-bill, Customer will remit Service fees to Optum on or before the twentieth (20<sup>th</sup>) calendar day of the current month of Services. Customer shall calculate Service fees owed Optum based on the number of eligible Employees as of the first day of the current month of Services. With each payment of Service fees, Customer shall provide HIPAA compliant remittance detail that includes counts of all applicable Employees and any adjustments made to the Service fees, together with any supporting documentation of the adjustments involving the current month and/or up to the previous two months of Services provided.

**5.4 Penalties.** If monthly Service fees are not paid within ten (10) days after their due date (“Grace Period”), Customer will pay Optum interest on the fees owed at the interest rate of one percent (1%) for each thirty (30) day period or portion thereof for any outstanding balance. Optum billed Customers will be charged accrued interest in their next month’s bill. Self-billing Customers must pay accrued interest for a late payment with their next monthly payment. If a self-billing Customer fails to pay accrued interest for a late payment, Optum reserves the right to revoke permission to self-bill or terminate the Agreement. Optum’s decision to provide Customer with a Grace Period will be based on Optum’s assessment of Customer’s financial condition, as of the Effective Date, and Customer’s compliance with material financial obligations. If Optum determines, based on reasonable information and belief, that Customer’s financial condition has deteriorated, or Customer fails to comply with the material financial obligations specified in this Agreement, Optum may remove the Grace Period upon notice to Customer and either charge interest on payments not received after the due date or terminate the Agreement. Customer agrees to promptly reimburse Optum for any collection costs Optum incurs.

**5.5 Reconciliation.** Optum may periodically reconcile the total amounts Customer has paid Optum with the total amounts Customer owes Optum. If the reconciliation indicates that Optum owes Customer money, Customer’s next payment will be credited. If the reconciliation indicates that Customer owes Optum money, Optum will invoice Customer for the amount due. All adjustments to over and under payments, except when arising from misrepresentation or fraud by the other party, must be reconciled no later than 180 days after the month in question and any reconciliation greater than 180 days shall be deemed waived. Any such variances occurring during the last four months of the Term will be reconciled within 180 days after the Agreement’s termination.

## **Section 6 – Term of the Agreement**

**6.1 Term.** This Agreement will commence on the Effective Date and continue for a period of one (1) year (Initial Term”). The Agreement will auto-renew after the Initial Term for additional one (1) year periods (each such renewal, a “Renewal Term”) unless and until this Agreement is terminated. The Initial Term and each subsequent Renewal Term are referred to herein as (the “Term”).

**6.2 Services End.** Services under this Agreement stop on the date this Agreement terminates, regardless of the date claims are incurred. If Optum agrees to continue providing certain services beyond the termination date, those services will be governed by the terms of this Agreement.

## **Section 7 – Termination**

**7.1 Termination Events.** This Agreement will terminate under the following circumstances: (i) the Plan terminates; (ii) after the Initial Term, either party gives the other party at least ninety (90) days prior written notice; (iii) Optum gives Customer notice of termination because Customer did not pay the fees or other amounts Customer owed Optum when due under the terms of this Agreement; (iv) Customer fails to provide the required funds for payment of benefits under the terms of this Agreement; (v) a party elects to terminate because the other party is in material breach of this Agreement, other than by non-payment or late payment of fees owed by Customer or the funding of Plan benefits, and does not correct the breach within thirty (30) days after being notified in writing; (vi) any state or other jurisdiction prohibits a party from administering the Plan under the terms of this Agreement, or imposes a penalty on the Plan or Optum and such penalty is based on the Services specified in this Agreement, or (vii) as otherwise specified in this Agreement. In a Section 7.1(vi) event, the impacted party may immediately discontinue the Agreement’s application in such state or jurisdiction and the Agreement will continue to apply in all other states. In all circumstances, notice shall be given to the other party when reasonably practical.

**7.2 Post-Termination Transition Services.** When the Agreement is terminated:

**7.2.1** Customer and Optum may mutually agree upon any transition services required and fees to Optum for such transition services;

**7.2.2** Optum will use commercially reasonable efforts to cause Network Providers to continue to provide services to any Participants undergoing treatment at the time of such termination until the earlier of:

**7.2.2.1** the current episode of treatment is complete; or

**7.2.2.2** arrangements are completed for such Participants to be transferred to another provider; or

**7.2.2.3** until thirty (30) days after the termination date of this Agreement; or

**7.2.2.4** the time frame set forth in state statutes or regulations.

## **Section 8 – Records, Information, Audits**

**8.1 Records.** Optum will keep records relating to the Services provided under this Agreement (“Records”) for the later of Optum’s record retention policy or requirements under applicable law.

### **8.2 Access to Information.**

**8.2.1 Customer Access.** If Customer needs Records in order to administer the Plan, Optum will provide Customer access to those Records, if (a) it is legally permissible (b) the Records relate to Services under this Agreement, and (c) Customer gives Optum reasonable advance notice and an explanation of the need for such Records. Optum will provide Records to Customer, only while this Agreement is in effect and for a period of six (6) months after the Agreement terminates, unless Customer demonstrates that the Records requested are required by law or for Plan administration purposes in which case such Records will continue to be available until the later of Optum’s record retention policy or requirements under applicable law. Upon request by Customer, Optum will provide reasonable access to Records to an entity providing Plan administrative services to Customer other than an entity providing audit services, which will be governed by Section 8.3. Before Optum provides any Records, including PHI, to that entity, the parties must sign a mutually agreed-upon confidentiality agreement, and the parties must agree as to what information is minimally necessary to accomplish the Plan administrative service.

**8.2.2 Government Access.** The federal, state and local government and accrediting agencies including, but not limited to, the National Committee for Quality Assurance (the “NCQA”) or to The American Accreditation HealthCare Commission/URAC, and any of their authorized representatives, shall have access to Optum Records and Customer authorizes Optum to release to these agencies all Records within its possession.

**8.3 Audits.** During the term of the Agreement, and at any time within six (6) months following its termination, Customer or a mutually agreeable independent auditor may audit Optum Records once each calendar year. Customer must provide sixty (60) days prior written notice to Optum of Customer’s intent to audit. The scope, place, time, duration, and frequency of each audit must be reasonable and agreed to by Optum. All auditors shall agree to sign confidentiality agreements prior to conducting such audits. Audits will be limited to Records relating to the calendar year in which the audit is conducted, and/or the immediately preceding calendar year and be performed during normal business hours in accordance with generally accepted auditing procedures.

In addition to Customer’s expenses and any applicable fees, Customer will also pay any extraordinary expenses Optum incurs in connection with the audit. For any audit initiated after this Agreement is terminated, Customer will pay all expenses incurred by Optum. Customer will provide Optum with a copy of all audit reports within ten (10) days after Customer receives the audit report(s) from the auditor.

**8.4 Confidential Information.** Each party acknowledges that in the course of performing under this Agreement, or in the course of discussing or negotiating this Agreement it may learn confidential, trade secret, or proprietary information concerning the other party or third parties to whom the other party has an obligation of confidentiality (“Confidential Information”). Without limiting the foregoing, Optum’s Confidential Information

shall include, without limitation, the terms of this Agreement, financial information, employee information, information regarding products, marketing plans, business plans, customer names and lists, software and associated algorithms, developments, improvements, know-how, code (object and source), programs, software architecture, technology and trade secrets, reports generated by or for Optum, Optum's methods of database creation, and Optum's translation, standardization, enhancement, and health data analysis techniques, health data reporting and profiling methods and formats. Without limiting the foregoing, Customer's Confidential Information shall include information regarding Customer's business, and information regarding Customer's premiums and claims data. Confidential Information shall not include PHI, which is subject to the Business Associate Addendum attached hereto. This provision shall survive the termination of this Agreement. Each party agrees that: (a) it will use the other party's Confidential Information only as may be necessary in the course of performing duties, receiving services or exercising rights under this Agreement; (b) it will treat such information as confidential and proprietary; (c) it will not disclose such information orally or in writing to any third party without the prior written consent of the other party; and (d) it will not otherwise appropriate such information to its own use or to the use of any other person or entity. Without limiting the foregoing, each party agrees to take at least such precautions to protect the other party's Confidential Information as it takes to protect its own Confidential Information. Each party is solely responsible for all use of the other party's Confidential Information by anyone who gains access to the Confidential Information under such party's authorization. Upon termination or expiration (without renewal) of this Agreement, each party will return to the other party, or certify as destroyed, all tangible items containing any of the other party's Confidential Information that are held by that party or its employees, agents or contractors, other than one archival copy. Each party agrees to notify the other party if it becomes aware of any unauthorized use or disclosure of the other party's Confidential Information. If either party believes it is required by law or by a subpoena or court order to disclose any of the other party's Confidential Information, it shall, if legally permissible, promptly notify the other party and shall make all reasonable efforts to allow the other party an opportunity to seek a protective order or other judicial relief prior to any disclosure. Nothing in this Agreement shall be construed to restrict disclosure or use of information that was in the possession of or rightfully known by the recipient, without an obligation to maintain its confidentiality, prior to receipt from the other party; is or becomes generally known to the public without violation of this Agreement; is obtained by the recipient in good faith from a third party having the right to disclose it without an obligation of confidentiality; or is independently developed by the receiving party without reference to the other party's Confidential Information.

**8.5 PHI.** The parties agree will comply with all applicable requirements set forth in HIPAA and ARRA. The parties' obligations with respect to the use and disclosure of PHI are outlined in the Business Associate Addendum attached to this Agreement as **Exhibit B**.

## **Section 9 – Indemnification**

**9.1 Indemnification by Optum.** Optum will indemnify Customer and hold Customer, its officers, directors, employees, agents, successors and assigns harmless from and against any and all losses, liabilities, penalties, fines, costs, damages (including taxes), and related costs and expenses, including reasonable attorneys' fees and costs (collectively "Losses"), due to or arising from a third-party claim against Customer to the extent such Losses arise out of or are related to: (i) the gross negligence or willful misconduct of Optum or its agents, subcontractors, and representatives acting on Optum's behalf in the performance of Optum's obligations under this Agreement; or (ii) Optum's material breach of this Agreement. Notwithstanding the foregoing, Customer will remain solely responsible for payment of all Plan benefits and Optum's indemnification will not extend to indemnification of Customer or the Plan against any claims, liabilities, damages, judgments or expenses that constitute payment of Plan benefits.

**9.2 Indemnification by Customer.** Customer will indemnify Optum and hold Optum, its officers, directors, employees, agents, successors and assigns harmless from and against any and all Losses, due to or arising from a third-party claim against Optum to the extent such Losses arise out of or are related to: (i) the gross negligence or willful misconduct of Customer or its agents, subcontractors, and representatives acting on Customer's behalf in the performance of Customer's obligations under this Agreement; or (ii) Customer's material breach of this Agreement.

**9.3 LIABILITY. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR SPECIAL DAMAGES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CONSEQUENTIAL DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, LOST PROFITS, LOST REVENUES, AND LOST BUSINESS OPPORTUNITIES, WHETHER OR NOT THE OTHER PARTY WAS OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF THESE DAMAGES.**

**9.4 Indemnification Procedures.** The indemnification obligations in Sections 9.1, and 9.2 herein are subject to the indemnified party (Indemnified Party): (a) notifying the indemnifying party (Indemnifying Party) promptly and in writing of the Loss, although the failure or delay to so notify by the Indemnified Party will not relieve the Indemnifying Party of its obligations under Section 9 of this Agreement so long as the failure or delay does not prejudice the defense of such claim; (b) providing reasonable assistance in defending the claim; and (c) consenting to the Indemnifying Party's sole authority to defend or settle such claim, provided that the Indemnifying Party will not agree to any stipulation, admission, or acknowledgement of fault, guilt, wrongdoing or liability on the part of the Indemnified Party without the Indemnified Party's prior written consent. An indemnified party may not assert any claims against the Indemnifying Party more than two (2) years after the expiration or termination of this Agreement.

**9.5 Insurance.** During the term of this Agreement, Optum shall maintain in effect commercial general liability insurance in the amount of \$1,000,000 per occurrence and \$3,000,000 aggregate and professional liability insurance coverage in the amount of \$5,000,000 per occurrence and \$5,000,000 aggregate.

## **Section 10 – Disputes**

In the event that any dispute, claim, or controversy of any kind or nature relating to this Agreement arises between the parties, the parties agree to meet and make a good faith effort to resolve the dispute. Nothing herein is intended to prevent either party from seeking any other remedy available at law including seeking redress in a court of competent jurisdiction. This provision shall survive the termination of this Agreement.

## **Section 11 – Service Specific Terms**

### **11.1 Plan Benefits Litigation.**

**11.1.1 Litigation against Optum.** Optum will select and retain defense counsel to represent Optum's and the Plan's interest, if a demand is asserted, or litigation or administrative proceedings are begun by a Participant or Network Provider against Optum, or against the Plan and Optum jointly, to recover Plan benefits, related to Optum's duties under this Agreement ("Plan Benefits Litigation"). In actions against both Customer and Optum, and provided no conflict of interest arises between the parties, Optum will agree to joint defense counsel. Reasonable legal fees and costs Optum incurs will be paid by Customer if Optum gives Customer reasonable advance notice of Optum's intent to charge Customer for such fees and costs, and Optum consults with Customer in a manner consistent with Optum's fiduciary obligations under ERISA on Optum's litigation strategy. Both parties will cooperate fully with each other in the defense of Plan Benefits Litigation. Customer is responsible for the full amount of any Plan benefits paid as a result of such litigation. This provision shall survive the termination of this Agreement.

**11.1.2 Litigation against Customer.** If litigation or administrative proceedings are begun against Customer and/or the Plan, Customer will select and retain counsel, and Customer will be responsible for all legal fees and costs in connection with such litigation. Optum will cooperate fully in the defense of litigation arising out of matters relating to this Agreement. This provision shall survive the termination of this Agreement.

## **Section 12 – Miscellaneous**

**12.1 Subcontractors.** Optum can use subcontractors, including affiliates, to perform Services under this Agreement. Optum will be responsible for their services to the same extent that Optum would have been had Optum performed the Services without the use of an affiliate or subcontractor.

**12.2 Assignment.** Neither party may assign any of its rights or obligations under this Agreement without the written consent of the other party, provided, however, that Optum may assign or transfer this Agreement to an entity controlling, controlled by, or under common control with Optum, or a purchaser of all or substantially all of Optum's assets, subject to notice to Customer of the assignment.

**12.3 Governing Law.** This Agreement is governed by and construed in accordance with the laws of the State of Minnesota, except as to any applicable federal laws, without giving effect to the principles of conflicts of law thereof.

**12.4 Entire Agreement.** This Agreement, with its exhibits and all other attachments, constitutes the entire agreement between the parties governing the subject matter of this Agreement. This Agreement replaces any prior written or oral communications or agreements between the parties relating to the subject matter of this Agreement. Any article, paragraph, section, title, or other heading contained in this Agreement are for convenience of reference only, and are not to be deemed a part of this Agreement nor do they in any way define, limit, construe the terms, scope, intent, and/or meaning of this Agreement or any provision therein.

**12.5 No Third Party Beneficiaries.** This Agreement is solely between Optum and Customer. Nothing in this Agreement is intended to (i) confer or create any rights, remedies, obligations, duties, claims, interests, warranties, or representations whatsoever under or by reason of this Agreement on or to any person other than Customer and Optum and their respective successors and assigns; (ii) relieve, discharge, or shift any obligation or liability of any third party to Optum or Customer; or (iii) give any third party any right of subrogation or action over or against Customer or Optum. This provision shall survive termination of this Agreement.

**12.6 Regulatory Filing.** In the event that Customer is required to file this Agreement with federal, state and local governmental authorities, Customer shall be responsible for filing the Agreement with such authorities as required by any applicable law or regulation. If, following any such filing, the governmental authority requests changes to this Agreement, Optum and Customer shall jointly discuss Customer's response to the governmental authority. In the event any federal, state or local governmental authority requires a change to this Agreement that either Optum or Customer deems to be material, either party may request renegotiation of the affected provisions of this Agreement.

**12.7 Waiver/Estoppel.** Nothing in this Agreement is considered to be waived by any party, unless the party claiming the waiver receives the waiver in writing. No breach of the Agreement is considered to be waived unless the non-breaching party waives it in writing. A waiver of one provision does not constitute a waiver of any other. A failure of either party to enforce at any time any of the provisions of this Agreement, or to exercise any option which is herein provided in this Agreement, will in no way be construed to be a waiver of such provision of this Agreement.

**12.8 Notices.** Any notice, demand, or communication required under this Agreement shall be hand delivered or sent by commercial overnight delivery service, or if mailed, by pre-paid, first class mail to the contact names and addresses listed in the signature block with a copy sent to Optum's General Counsel. The addresses to which notices are sent may be changed by proper notice.

**12.9 Use of Names.** The parties agree not to use each other's name, logo, service marks, trademarks or other identifying information without the written permission of the other; provided, however, Customer grants Optum permission to use Customer's name, logo, service marks, trademarks or other identifying information ("Customer Marks") to the extent necessary for Optum to carry out its obligations under this Agreement. Customer represents that Customer Marks do not infringe the rights of others or inaccurately portray the Services or mislead Participants and are used by Customer in accordance with all applicable laws.



**12.10 Force Majeure.** Each party will take commercially reasonable steps to prevent and recover from disruptive events that are beyond its control and represents that it has backup systems in place in case of emergencies or natural disasters. If either party shall be, wholly or in part, unable to perform any or part of its duties or functions under this Agreement because an act of war, riot, terrorist action, weather-related disaster, earthquake, governmental action, unavailability or breakdown of equipment, or other industrial disturbance which is beyond the reasonable control of the party obligated to perform and which by the exercise of reasonable diligence such party is unable to prevent (each a "Force Majeure Event"), then, and only upon giving the other party, promptly upon identifying the Force Majeure Event, and in reasonably full detail of the Force Majeure Event, verbal and/or written notice, including electronically or facsimile, (if verbally a written notice shall be delivered promptly following the verbal notice) such party's duties or functions shall be suspended during such inability; provided, however, that in the event that a Force Majeure Event delays such party's performance for more than thirty (30) days following the date on which notice was given to the other party of the Force Majeure Event, the other party may terminate this Agreement. Neither party shall be liable to the other for any damages caused or occasioned by a Force Majeure Event. Government actions resulting from matters that are subject to the control of the party shall not be deemed Force Majeure Events.

**12.11 Compliance with Laws.** Customer shall substantially comply with and ensure the Plan substantially complies with all applicable laws and regulations. Except as provided below, Optum shall obtain and maintain any applicable licenses or regulatory approvals necessary for it to perform its services under this Agreement and shall substantially comply with all applicable laws and regulations.

**12.12 Independent Medical Judgment.** Customer and Optum both acknowledge and agree that Participants' treating physician(s) and other health care providers, including but not limited to Network Providers, shall be solely responsible to provide treatment and/or services to Participants and to make all decisions related to patient care and shall exercise their independent medical judgment as to all such matters. Nothing in this Agreement shall be deemed to create any rights of Optum, Customer, or any other person or entity to intervene in any manner with or otherwise interfere with the independent medical judgment of Participants' health care providers with regard to treatment or utilization issues, nor shall it render Optum, Customer, or any other person or entity responsible for the method or means by which any health care provider renders treatment or service to a Participant.

**12.13 No Incentive Payments.** Optum receives no incentive payment based on reduction of services or the charges thereof, reduction of length of stay, or utilization of alternative treatment settings to reduce amounts of necessary or appropriate medical care.

**12.14 Counterparts.** This Agreement may be signed electronically or in multiple counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one instrument.

**12.15 Severability.** If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, then the remaining portions of the Agreement shall be construed as if not containing such provision, and all other rights and obligations of the parties shall be construed and enforced accordingly.

**12.16 Survival of Terms.** Any provisions of this Agreement, or any attachments, and exhibits, which by their nature, extend beyond the expiration, or termination of this Agreement, and those provisions that are expressly stated to survive termination, shall survive the termination of this Agreement, and shall remain in effect until all such obligations are satisfied.

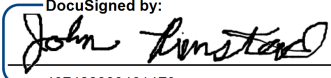
**12.17 Legal Advice.** It is understood and agreed that the Services do not include and Optum will not provide, investment, tax or legal advice. If the Customer requires legal or other expert advice, the Customer should consult its own legal counsel.


**12.18 Improvements and Modification of Services.** Optum reserves the right to upgrade, improve, modify or discontinue any Services provided or made available to Customer under this Agreement.

**ACCEPTED AND AGREED:**

**United Behavioral Health**  
425 Market Street, 14th Floor  
San Francisco, CA 94105

**Wheaton Park District**  
102 E. Wesley St.  
Wheaton, IL 60187

Signature:   
Print Name: John Rimstad  
Print Title: Director Finance  
Date: 2/22/2019

Signature:   
Print Name: Michael Benard  
Print Title: Executive Director  
Date: 2/20/19

Internal Control No.: 00557840.0

**EXHIBIT A – SERVICES AND FEES**

The following are the administrative services Optum has agreed to provide to Customer at the rates set forth herein.

<b>Product</b>	<b>Rate Type</b>	<b>Rate Period</b>	<b>\$ Fee (2/1/19 – 1/31/20)</b>	<b>\$ Fee (2/1/20 – 1/31/22)</b>
Employee Assistance Program - EAP – EMPLOYER EAP 3 Sessions	Per Employee	Per Month	\$1.04	\$1.06

Additional On-Site Support Service hours are available on a fee-for-service basis. Services are billed at an hourly rate plus travel time. Any onsite or training hours can be purchased according to the rates in the grid below.

<b>On-Site Support Service</b>	<b>Fee for Service</b>
Management Development Programs	\$175/on-site hour
Employee Development Programs	\$175/on-site hour
Wellness Seminars	\$175/on-site hour
Information Resource Events	\$175/on-site hour
Critical Incident Response Services	\$225/on-site hour
Travel Time & Trainer Downtime	\$100/hour

Rate Effective Period: 2/1/2019 - 1/31/2022.

If enrollment changes by more than 10%, then Optum reserves the right to revise the rates.

## **EXHIBIT B – BUSINESS ASSOCIATE ADDENDUM**

This Business Associate Addendum (“BAA”) is incorporated into and made part of the Agreement by and between United Behavioral Health, on behalf of itself and its subsidiaries and affiliates (“Business Associate”), and Wheaton Park District (“Covered Entity”), that involve the use or disclosure of PHI (as defined below). The parties agree as follows.

### **1. DEFINITIONS**

1.1 All capitalized terms used in this BAA not otherwise defined herein have the meanings established for purposes of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, as amended and supplemented (collectively, “HIPAA”).

1.2 “Breach” means the acquisition, access, use or disclosure of PHI in a manner not permitted by the Privacy Rule that compromises the security or privacy of the PHI, subject to the exclusions in 45 C.F.R. § 164.402.

1.3 “PHI” means Protected Health Information, as defined in 45 C.F.R. § 160.103, and is limited to the Protected Health Information received from, or received, created, maintained or transmitted on behalf of, Covered Entity.

1.4 “Privacy Rule” means the federal privacy regulations, and “Security Rule” means the federal security regulations, as amended, issued pursuant to HIPAA and codified at 45 C.F.R. Parts 160 and 164 (Subparts A, C & E).

1.5 “Services” means the services provided by Business Associate to Covered Entity to the extent they involve the receipt, creation, maintenance, transmission, use or disclosure of PHI.

### **2. RESPONSIBILITIES OF BUSINESS ASSOCIATE**

With regard to its use and/or disclosure of PHI, Business Associate agrees to:

2.1 not use and/or further disclose PHI except as necessary to provide the Services, as permitted or required by this BAA and in compliance with the applicable requirements of 45 C.F.R. § 164.504(e), or as Required by Law; provided that, to the extent Business Associate is to carry out Covered Entity’s obligations under the Privacy Rule, Business Associate will comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of those obligations.

2.2 implement and use appropriate administrative, physical and technical safeguards and comply with applicable Security Rule requirements with respect to ePHI, to prevent use or disclosure of PHI other than as provided for by this BAA.

2.3 without unreasonable delay, report to Covered Entity (i) any use or disclosure of PHI not provided for in this BAA and/or (ii) any Security Incident of which Business Associate becomes aware in accordance with 45 C.F.R. § 164.314(a)(2)(i)(C). For the purposes of reporting under this BAA, a reportable “Security Incident” shall not include unsuccessful or inconsequential incidents that do not represent a material threat to confidentiality, integrity or availability of PHI (such as scans, pings, or unsuccessful attempts to penetrate computer networks).

2.4 report to Covered Entity within ten business days: (i) any Breach of Unsecured PHI of which it becomes aware in accordance with 45 C.F.R. § 164.504(e)(2)(ii)(C). Business Associate shall provide to Covered Entity a description of the Breach and a list of Individuals affected (unless Covered Entity is a plan sponsor ineligible to receive PHI). Business Associate shall provide required notifications to Individuals and the Media and Secretary, where appropriate, in accordance with the Privacy Rule and with Covered Entity’s approval of the notification text. Business Associate shall pay for the reasonable and actual costs associated with those notifications and with credit monitoring, if appropriate.

2.5 in accordance with 45 C.F.R. § 164.502(e)(1)(ii) and 45 C.F.R. § 164.308(b)(2), ensure that any subcontractors of Business Associate that create, receive, maintain or transmit PHI on behalf of Business Associate agree, in writing, to the same restrictions on the use and/or disclosure of PHI that apply to Business Associate with respect to that PHI, including complying with the applicable Security Rule requirements with respect to ePHI.

2.6 make available its internal practices, books and records relating to the use and disclosure of PHI to the Secretary for purposes of determining Covered Entity's compliance with the Privacy Rule, in accordance with 45 C.F.R. § 164.504(e)(2)(ii)(I).

2.7 within ten business days after receiving a written request from Covered Entity or an Individual, make available to Covered Entity or an Individual information necessary for an accounting of disclosures of PHI about an Individual, in accordance with 45 C.F.R. § 164.528.

2.8 provide access to Covered Entity or an Individual, within ten business days after receiving a written request from Covered Entity or an Individual, to PHI in a Designated Record Set about an Individual, sufficient for compliance with 45 C.F.R. § 164.524.

2.9 to the extent that the PHI in Business Associate's possession constitutes a Designated Record Set, make available, within ten business days after a written request by Covered Entity or an Individual, PHI for amendment and incorporate any amendments to the PHI as requested in accordance with 45 C.F.R. § 164.526.

### **3. RESPONSIBILITIES OF COVERED ENTITY**

Covered Entity:

3.1 shall identify the records it furnishes to Business Associate that it considers to be PHI for purposes of the Agreement, and provide to Business Associate only the minimum PHI necessary to accomplish the Services.

3.2 in the event that the Covered Entity honors a request to restrict the use or disclosure of PHI pursuant to 45 C.F.R. § 164.522(a) or makes revisions to its notice of privacy practices of Covered Entity in accordance with 45 C.F.R. § 164.520 that increase the limitations on uses or disclosures of PHI or agrees to a request by an Individual for confidential communications under 45 C.F.R. § 164.522(b), Covered Entity agrees not to provide Business Associate any PHI that is subject to any of those restrictions or limitations, unless Covered Entity notifies Business Associate of the restriction or limitation and Business Associate agrees in writing to honor the restriction or limitation.

3.3 shall be responsible for using administrative, physical and technical safeguards to maintain and ensure the confidentiality, privacy and security of PHI transmitted to Business Associate pursuant to the Agreement, in accordance with the requirements of HIPAA.

3.4 shall obtain any consent or authorization that may be required by applicable federal or state laws prior to furnishing Business Associate the PHI for use and disclosure in accordance with this BAA.

3.5 if Covered Entity is an employer sponsored health plan, Covered Entity represents that to the extent applicable, it has ensured and has received certification from the applicable Plan Sponsor that the Plan Sponsor has taken the appropriate steps in accordance with 45 C.F.R. § 164.504(f) and 45 C.F.R. § 164.314(b) to enable Business Associate on behalf of Covered Entity to disclose PHI to Plan Sponsor, including but not limited to amending its plan documents to incorporate the requirements set forth in 45 C.F.R. § 164.504(f)(2) and 45 C.F.R. § 164.314(b). Covered Entity shall ensure that only employees authorized under 45 C.F.R. § 164.504(f) shall have access to the PHI disclosed by Business Associate to Plan Sponsor.

### **4. PERMITTED USES AND DISCLOSURES OF PHI**

Business Associate may:

- 4.1 use and disclose PHI as necessary to provide the Services to Covered Entity.
- 4.2 use and disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that any disclosures are Required by Law or any third party to which Business Associate discloses PHI provides written assurances that: (i) the information will be held confidentially and used or further disclosed only for the purpose for which it was disclosed to the third party or as Required by Law; and (ii) the third party promptly will notify Business Associate of any instances of which it becomes aware in which the confidentiality of the information has been breached, in accordance with 45 C.F.R. § 164.504(e)(4).
- 4.3 De-identify any PHI received or created by Business Associate under this BAA in accordance with the Privacy Rule.
- 4.4 provide Data Aggregation services relating to the Health Care Operations of the Covered Entity in accordance with the Privacy Rule.
- 4.5 use PHI for Research projects conducted by Business Associate, its Affiliates or third parties, in a manner permitted by the Privacy Rule, by obtaining documentation of individual authorizations, an Institutional Review Board, or a privacy board waiver that meets the requirements of 45 C.F.R. § 164.512(i)(1), and providing Covered Entity with copies of such authorizations or waivers upon request.
- 4.6 make PHI available for reviews preparatory to Research in accordance with the Privacy Rule at 45 C.F.R. § 164.512(i)(1)(ii).
- 4.7 use the PHI to create a Limited Data Set ("LDS") and use or disclose the LDS for the health care operations of the Covered Entity or for Research or Public Health purposes as provided in the Privacy Rule.

## **5. TERMINATION**

- 5.1 Covered Entity may terminate this BAA and the Agreement if Business Associate materially breaches this BAA, Covered Entity provides written notice of the breach to Business Associate, and Business Associate fails to cure the breach within the reasonable time period set by Covered Entity.
- 5.2 Within thirty (30) days after the expiration or termination for any reason of the Agreement and/or this BAA, Business Associate shall return or destroy all PHI, if feasible to do so, including all PHI in possession of Business Associate's subcontractors. In the event that return or destruction of the PHI is not feasible, Business Associate may retain the PHI subject to this Section 5.2. Business Associate shall extend any and all protections, limitations and restrictions contained in this BAA to Business Associate's use and/or disclosure of any PHI retained after the expiration or termination of the Agreement and/or this BAA, and shall limit any further uses and/or disclosures solely to the purposes that make return or destruction of the PHI infeasible.

## **6. MISCELLANEOUS**

The terms of this BAA shall be construed to allow Covered Entity and Business Associate to comply with HIPAA. Nothing in this Addendum shall confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever. Sections 4 and 5.2 shall survive the expiration or termination of this BAA for any reason.