

**Village of Croton-on-Hudson
Business Associate Agreement**

This Agreement is made and entered into this **22nd** day of **April 2025**, by and between **Village of Croton-on-Hudson (VCOH)** and **Marshall+Sterling Employee Benefits, Inc (“MSEB”)** (collectively, the “Parties”).

VCOH has entered into an agreement with **MSEB** for broker, agent and consulting services; and

MSEB acknowledges that it is a “Business Associate” of **VCOH** as those terms are defined by the Health Insurance Portability and Accountability Act and its implementing regulations (45 C.F.R. Parts 160-164) (“HIPAA”).

In Consideration of the mutual covenants and conditions contained in this Agreement, the parties agree as follows:

- 1. Definitions.** Capitalized terms in this Agreement and not otherwise defined herein shall have the meanings set forth in HIPAA and the Health Information Technology for Economic and Clinical Health Act of 2009 (“HITECH Act”), which definitions are hereby incorporated by reference.
- 2. Obligations and Activities of Marshall+Sterling Employee Benefits.**
 - 2.1 MSEB** agree to use or disclose Protected Health Information (“PHI”) received from or on behalf of **VCOH** or created for **VCOH** only as permitted or required by this Agreement, as required by law, or for **MSEB** internal management and compliance purposes.
 - 2.2 MSEB** agrees to develop, implement, maintain and use appropriate administrative, technical, and physical safeguards to protect the privacy of the PHI other than as provided for by this Agreement. The safeguards must reasonably protect PHI from any intentional or unintentional use or disclosure in violation of the Security and Privacy Rules and limit incidental uses or disclosures made pursuant to a use or disclosure otherwise permitted by this Agreement.
 - 2.3 MSEB** agree to comply with the Security and Privacy Rules and will use appropriate administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic PHI that **MSEB** creates, receives, maintains, or transmits on **VCOH’s** behalf. **MSEB** will also implement the technologies and methodologies used to render the electronic PHI that it creates, receives, maintains, or transmits on behalf of **VCOH** unusable, unreadable, or indecipherable to unauthorized individuals as required by the HITECH Act and the Department of Health and Human Services (“HHS”).
 - 2.4 MSEB** agrees to mitigate, to the extent practicable, any harmful effect that is known to **MSEB** of a use or disclosure of PHI by **MSEB** in violation of the requirements of this Agreement.

- 2.5 MSEB** agrees to report to **VCOH**, any use or disclosure of PHI not provided for by this Agreement of which it becomes aware not more than thirty (30) calendar days after **MSEB** discovers such non-permitted use or disclosure.
- 2.6 MSEB** agrees to report to **VCOH** the aggregate number of unsuccessful, unauthorized attempts to access, use, disclose, modify, or destroy electronic PHI or to interfere with system operations in an information system containing electronic PHI, including pings. Such reports will be provided once per month, on or before the 10th calendar day of such month. **MSEB** will report to **VCOH** any successful unauthorized access, use, disclosure, modification, or destruction of electronic PHI or any successful interference with system operations in an information system containing electronic PHI, in writing, as soon as feasible.
- 2.7 MSEB** agrees to provide notification to **VCOH** of any potential Breach of Unsecured PHI no later than thirty (30) days after the discovery of such potential Breach by **Marshall+Sterling Employee Benefits**, unless a delay is allowed under applicable law. Breach is defined as the unauthorized acquisition, access, use or disclosure of PHI 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. **MSEB** shall treat a potential Breach as being discovered in accordance with 45 CFR §164.410. The notification shall consist of the following: (i) A brief description of the breach, including the date of the breach and the date of discovery; (ii) Identify the types of PHI that were involved in the breach; (iii) Identify who made the non-permitted use or disclosure and who received it; (iv) Identify what corrective action has been taken; and (v) Provide such other information, including a written report and risk assessment under 45 CFR §164.402, as **VCOH** may request.
- 2.8 MSEB** agrees to ensure that any agent, including a subcontractor, to whom it provides PHI, received from, or created or received by **MSEB** on behalf of **VCOH**, agrees to the same restrictions and conditions that apply through this Agreement to **MSEB** with respect to such information. Moreover, **MSEB** shall ensure that any such agency or subcontractor agrees to implement reasonable and appropriate safeguards to protect the member's PHI.
- 2.9 MSEB Inc** agrees to provide access, at the written request of **VCOH**, and in the time and manner mutually agreed by the parties or designated by the Secretary, to PHI in a Designated Record Set in **MSEB** 's custody or control, to **VCOH** or, as directed by **VCOH**, to an Individual or the Individual's designee, in order to meet the requirements under 45 C.F.R. § 164.524. Effective September 23, 2013, if **VCOH** requests an electronic copy of PHI that is maintained electronically in a Designated Record Set in **MSEB** 's custody or control, **MSEB** will provide an electronic copy in the form and format specified by **VCOH** if it is readily producible in such format; if it is not readily producible, **MSEB** will work with **VCOH** to determine an alternative form and format that enable **VCOH** to meet its electronic access obligations under 45 C.F.R. § 164.524.
- 2.10 MSEB** agrees to make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. § 162.526 at the request of **VCOH**

or an Individual, and in the time and manner mutually agreed by the parties or designated by the Secretary.

- 2.11** **MSEB** agrees not to receive, directly or indirectly, remuneration in exchange for any PHI of an Individual unless **VCOH** received valid authorization from the Individual or unless an exception under HIPAA or the HITECH Act applies.
- 2.12** **MSEB** agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by **MSEB** on behalf of **VCOH**, available to **VCOH**, or to the Secretary, in a time and manner mutually agreed by the parties or designated by the Secretary, for purposes of the Secretary determining **VCOH's** compliance with the Security and Privacy Rules.
- 2.13** **MSEB** agrees to document such disclosures of PHI and information related to such disclosures as would be required for **VCOH** to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R § 164.528.
- 2.14** **MSEB** agrees to provide to **VCOH** or an Individual member, in a time and manner mutually acceptable to the parties, information collected in accordance with this Agreement, to permit **VCOH** to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- 2.15** In the event that **MSEB** transmits or receives any Covered Electronic Transactions on behalf of **VCOH**, it shall comply with all applicable provisions of the Standards for Electronic Transactions Rule to the extent required by law, and shall ensure that any agents that assist **MSEB** in conducting Covered Electronic Transactions on behalf of **VCOH** agree in writing to comply with the Standards for Electronic Transactions Rule to the extent required by law.
- 3. Permitted Uses and Disclosures by MSEB.** Except as otherwise limited in this Agreement, **MSEB** may use or disclose PHI to perform functions, activities, or services for, or on behalf of **VCOH**, provided that such use or disclosure would not violate the Security and Privacy Rules if done by **VCOH** including the minimum necessary requirements thereto.
- 3.1** Except as otherwise limited in this Agreement, **MSEB** may use PHI for the proper management and administration of **MSEB** or to carry out the legal responsibilities of **MSEB**.
- 3.2** Except as otherwise limited in this Agreement, **MSEB** may use or disclose PHI to perform functions, activities or securities for, or on behalf of **VCOH** provided that such use or disclosure would not violate the Security and Privacy Rules if done by **VCOH**, or the minimum necessary policies and procedures of the Covered Entity.
- 3.3** Except as otherwise limited in this Agreement, **MSEB** may use PHI to provide administrative services to **VCOH** as permitted by 45 C.F.R § 164.504(e)(2)(i)(A).

- 3.4** Except as otherwise limited in this Agreement, **MSEB** may disclose PHI for the proper management and administration of **MSEB**, provided that disclosures are Required by Law, or **MSEB** 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 **MSEB** of any instances of which it is aware in which the confidentiality of the information has been breached.
- 3.5** Except as otherwise limited in this Agreement, **MSEB** may use PHI to provide Data Aggregation services to **VCOH** as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).
- 3.6** **MSEB** may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(1).
- 4. Obligations of VCOH.** Upon request, **VCOH** shall provide **MSEB** with a copy of its Notice of Privacy Practices and Restrictions:
- 4.1** **VCOH** shall notify **MSEB** of any limitations in the Notice of Privacy Practices of **VCOH** in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect **MSEB**'s use or disclosure of PHI.
- 4.2** **VCOH** shall notify **MSEB** of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect **MSEB**'s use or disclosure of PHI.
- 4.3** **VCOH** shall notify **MSEB** of any restriction to the use or disclosure of PHI that **VCOH** has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect **MSEB** use or disclosure of PHI.
- 5. Permissible Requests by VCOH.** Except as otherwise permitted by this Agreement, **VCOH** shall not request **MSEB** to use or disclosure PHI in any manner that would not be permissible under the Security and Privacy Rules if done by **VCOH**, except that **MSEB** may use or disclose PHI for Data Aggregation, or management and administrative activities of **MSEB** as further specified herein this Business Associate Agreement.
- 6. Terms and Termination.**
- 6.1 Term.** The Term of this Agreement shall be effective upon execution of this Agreement by both parties, and shall terminate when all of the PHI provided by **VCOH** to **MSEB**, or created or received by **MSEB** on behalf of **VCOH**, is destroyed or returned to **VCOH** or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

6.2 Termination for Cause. Upon **VCOH's** knowledge of a material breach of any provision of this Agreement by **MSEB** , **VCOH** shall either:

- 6.2.1.** Provide an opportunity for **MSEB** to cure the breach or end the violation and terminate this Agreement if **MSEB** does not cure the breach or end the violation within the time specified by **VCOH**;
- 6.2.2.** Immediately terminate this Agreement if **MSEB** has breached a material term of this Agreement and cure is not possible; or
- 6.2.3.** If neither termination nor cure is feasible, **VCOH** shall report the violation to the Secretary.

6.3.Effect of Termination.

- 6.3.1.** Except as provided in the following paragraph, upon termination of this Agreement, for any reason, **MSEB** shall return or destroy all PHI received from **VCOH**, or created or received by **MSEB** on behalf of **VCOH**. This provision shall apply to PHI that is in the possession of subcontractors or agents of **MSEB** . **MSEB** shall retain no copies of the PHI.
- 6.3.2.** In the event that **MSEB** determines that returning or destroying the PHI is infeasible, **MSEB** shall provide to **VCOH** notification of the conditions that make return or destruction infeasible. **MSEB** shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as **MSEB** maintains such PHI.

7. Legal Actions.

7.1 Response to Subpoenas. In the event that **MSEB** receives a subpoena (or similar notice or request) from any judicial, administrative or other party arising out of or in connection with this Agreement, including, but not limited to, any unauthorized use or disclosure of PHI or any failure in **MSEB** shall promptly forward a copy of such subpoena to **VCOH** and afford **VCOH** the opportunity to be a part of the decision making with regard to the subpoena including but not limited to responding to the subpoena.

7.2 Indemnity.

- 7.2.1** **MSEB** will indemnify and hold harmless **VCOH** and any member affiliate, trustee, officer, director, employee, volunteer or agent from and against any claim, cause of action, liability, damage, cost or expense, including attorneys' fees and court or proceeding costs, arising out of or in connection with any unauthorized use or disclosure of PHI or any failure in security measures affecting PHI or any other

breach of the terms of this Agreement by **MSEB** or any person or entity under **MSEB**'s control.

7.2.2 **VCOH** will indemnify and hold harmless **MSEB** and any **MSEB** affiliate, trustee, officer, director, employee, volunteer or agent from and against any claim, cause of action, liability, damage, cost or expense, including attorneys' fees and court or proceeding costs, arising out of or in connection with any unauthorized use or disclosure of PHI or any failure in security measures affecting PHI or any other breach of the terms of this Agreement by **VCOH** or any person or entity under **VCOH**'s control.

7.3 Right to Tender or Undertake Defense.

7.3.1 If **VCOH** is named a party in any judicial, administrative or other proceeding arising out of or in connection with any unauthorized use or disclosure of PHI or any failure in **MSEB**'s security or privacy measures affecting PHI, electronic PHI, or any other breach of the terms of this Agreement by (1) **MSEB**, (2) any person or entity under **MSEB**'s control, or (3) its subcontractors or agents, **VCOH** will have the option at any time either (1) to tender their defense to **MSEB**, in which case **MSEB** will provide qualified attorneys to represent **VCOH**'s interests at **MSEB**'s expense, or (2) undertake their own defense, choosing the attorneys, consultants and other appropriate professionals to represent their interests, in which case **MSEB** will be responsible for and pay the reasonable fees and expenses of such attorneys, consultants and other professionals.

7.3.2 If **MSEB** is named a party in any judicial, administrative or other proceeding arising out of or in connection with any unauthorized use or disclosure of PHI or any failure in **VCOH**'s security or privacy measures affecting PHI, electronic PHI, or any other breach of the terms of this Agreement by (1) **VCOH**, (2) any person or entity under **VCOH**'s control, or (3) **VCOH**'s subcontractors or agents, **MSEB** will have the option at any time either (1) to tender its defense to **VCOH**, in which case **VCOH** will provide qualified attorneys to represent **MSEB**'s interests at **VCOH**'s expense, or (2) undertake its own defense, choosing the attorneys, consultants and other appropriate professionals to represent its interests, in which case **VCOH** will be responsible for and pay the reasonable fees and expenses of such attorneys, consultants and other professionals.

7.4 Right to Control Resolution. **VCOH** will have the sole right and discretion to settle, compromise or otherwise resolve any and all claims, causes of actions, liabilities or damages against them, notwithstanding that **VCOH** may have tendered their defense to **MSEB**. Any such resolution shall not relieve **MSEB** of its obligation to indemnify **VCOH**.

8 General Provisions.

8.1 Regulatory References. A reference in this Agreement to a section in the Security and Privacy Rules means the section as in effect or as amended.

8.2 Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for **VCOH** to comply with the requirements of the Security and Privacy, HIPAA and the HITECH Act.

8.3 Survival. The respective rights and obligations of **MSEB** under this Agreement shall survive the termination of this Agreement.

8.4 Interpretation. Any ambiguity in this Agreement shall be resolved to permit **VCOH** to comply with the Security and Privacy Rules.

8.5 No Third-Parties. Nothing express or implied in this Agreement is intended to confer, nor shall anything in this Agreement confer, upon any person or entity other than the parties and their respective successors or assigns any rights, remedies, obligations, or liabilities whatsoever.

8.6 Conflicts. To the extent that the law of the state in which **VCOH** does business is more stringent than Federal law regarding privacy issues, the law of such state shall control, unless such state law is preempted by the Federal law.

8.7 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which shall constitute one binding agreement.

The Parties hereto execute this Agreement the date indicated above.

Village of Croton-on-Hudson

MSEB



By: _____

By: _____

Title: _____

Title: President, MSEB .