

# Plan Administration Agreement

This Plan Administrator Agreement ("Agreement") is made this **15th day of April 2021**, by and between McElroy & Associates, Inc. ("McElroy" or "Plan Administrator"), an Oklahoma corporation, and the Trustees ("Trustees") of the Oklahoma Public Employees Health and Welfare Plan Trust ("Trust").

Whereas, certain governmental agencies ("Participating Agencies") acting under Oklahoma law, by their Inter-Local Governmental Agreement ("Inter-Local Agreement"), established the Oklahoma Public Employees Health and Welfare Plan ("Plan") for the benefit of eligible Employees of the Participating Agencies and their eligible dependents;

Whereas, the Participating Agencies established the Trust to hold the assets of the Plan from which monies may be allocated for the payment of benefit claims from the Plan and the expenses of administering the Plan;

Whereas, the Trustees employed the services of McElroy, as Plan Administrator, by a contract service agreement; and

Whereas, the Trustees and McElroy desire to amend and restate the terms and provisions of that contract service agreement.

Now, therefore, in consideration of the mutual promises and covenants contained herein, it is hereby agreed, as set forth in this Agreement, as follows:

## 1 Definitions

As used in this Agreement, the following terms are defined and shall be read and understood as follows:

- A. "COBRA" - Means the Consolidated Omnibus Reconciliation Act of 1985, as amended.
- B. "Employee" - Employee shall have the same meaning as set forth in the Plan.
- C. "HIPAA" Means the Health Insurance Portability and Accountability Act of 1996, as amended.
- D. "Inter-Local Governmental Agreement" or "Inter-Local Agreement" - Means that which is adopted by resolution by each of the Participating Agencies, under Title 51 O.S. §§ 167, 168, 169, and 172; Title 74 O.S. §§ 1001, et seq.; and other applicable provisions of Oklahoma law which allows the creation of the Trust Agreement and authorizes the creation of the Plan.
- E. "Participant" - Means any Employee or former Employee who is or may become eligible to receive a benefit of any type from the Plan or whose beneficiaries may be eligible to receive any such benefit.

- F. "Participating Agencies" - Means each governmental entity participating in the Inter-Local Agreement.
- G. "Plan" - Means the Oklahoma Public Employees Health & Welfare Plan established and maintained by the Participating Agencies under the Inter-Local Agreement.
- H. "Plan Administrator" - Means the person or entity contracted under the authority of the Inter-Local Agreement, pursuant to this Agreement, to control and manage the operation of the Plan.
- I. "Plan Document" - Means the Inter-Local Agreement authorizing the Trust and the Plan which describes the benefits to be provided under the Plan; benefit book (summary plan description) which describes the benefits provided by the Plan in such language that the average employee can understand his or her rights and responsibilities in respect to the Plan; the Trust Agreement which, under the Inter-Local Agreement, creates and established the Plan itself, together with a Trust to hold the assets of the Plan in trust for the exclusive purpose of providing benefits to Participants and beneficiaries and defraying the reasonable expenses of administering the Plan; any insurance of reinsurance policy or policies written to provide for any benefit offered by the Plan; and any other written instrument which in any way affects the administration, management, or control of the Plan.
- J. "Trust" - Means the Oklahoma Public Employees Health & Welfare Trust as set forth in the Trust Agreement.
- K. "Trust Account" or "Trust Fund" - Means the funds to and from which monies are allocated for the payment of Participants' benefit claims and expenses of administering the Plan.
- L. "Trustees" - Means the natural persons executing the Trust Agreement in their capabilities as Trustees and members of the Board of Review of the Inter-Local Agreement and their successors appointed pursuant to the Trust Agreement, having exclusive authority and discretion to manage and control the assets of the Plan.
- M. "Trust Agreement" - Means the agreement by and among the Participating Agencies establishing the Plan and the Trust.
- N. "Trust Year" - Means the period beginning July 1 of the first year and ending June 30, and each subsequent twelve (12) month period thereafter shall be construed to mean such a Trust Year.

## 2 Plan Administrator Services and Duties

McElroy shall act as the named fiduciary (as defined in the Trust Agreement) and, on behalf of the Participating Agencies, shall have the discretion and authority to control and manage the operation of the Plan pursuant to the terms of the Trust Agreement, including the following:

- A **Staff & Office** - Supply and maintain a staff, equipment, and an office necessary to satisfy the administrative duties and other duties required as Plan Administrator.
- B **General Services** - General services provided by McElroy as they relate to the duties of Plan Administrator, including, but not limited to:
- i. Negotiating contracts with service providers for the Trustees, including a provider of claims administration service, and the Trustees may delegate such ministerial or other duties to McElroy as the Trustees may deem appropriate, provided, the Trustees shall themselves approve and execute any such service contracts or any Plan authorized by the Trust Agreement, make all decisions involving the investment or disposition of any assets of the Trust Fund, and McElroy shall act only in an advisory capacity with respect to all matters.
  - ii. Prepare or cause to be prepared, in accordance with generally accepted accounting principles, un-audited monthly financial statements (income and expense and asset balance sheets), including a monthly reconciliation of all bank accounts.
  - iii. Provide (within reason) all accounting and statistical reports to the Trustees and the Participating Agencies as needed.
  - iv. Prepare or cause to be prepared all Federal and State Tax reports as required.
  - v. File or caused to be filed all proper documentation as required by Oklahoma law, including with the Secretary of State and the Participating Agency counties.
  - vi. Administration and maintenance of all billing and premium payments from Participating Agencies, retirees, and COBRA qualified beneficiaries.
  - vii. Respond to oral and written inquiries from Plan Participants, Participating Agencies, and providers with regard to administration of the Plan, including toll-free customer service and web-based informational services.
  - viii. Assist and/or provide the necessary information and/or instructions to the third-party claims administrator as required to ensure accurate claim payments along with other duties performed by the third-party claims administrator.

- ix. Coordinate and consult with the Trust's legal counsel on matters involving claim payments, subrogation recoveries, and other Plan matters.
- x. Assist the Trustees in determining the actuarial soundness of the Plan to the extent that funds received are sufficient to pay claims and incurred expenses. The cost of an actuary or underwriter will be paid for by the Trust.
- xi. Provide services to the Plan Participants on behalf of the Participating Agencies in connection with the operation of the Plan, including enrolling new Employees in the Plan, applications, maintaining current Plan data, billing, and assisting in the completion of any necessary forms.
- xii. Provide COBRA administration services on behalf of Participating Agencies, including the following:
  - a. Generate and mail initial COBRA notices to all new Plan enrollees.
  - b. Generate and mail specific qualifying event notices to all qualified beneficiaries.
  - c. Receive COBRA elections from qualified beneficiaries.
  - d. Receive COBRA premiums.
  - e. Answer qualified beneficiary premium questions.
  - f. Track all dates required for COBRA compliance.
  - g. Maintain proper documentation of COBRA activity.
  - h. Monitor COBRA's requirements for changes and update notices and procedures, as applicable.
- xiii. Provide HIPAA administration services on behalf of the Plan, including the following:
  - a. McElroy will designate an employee to act as the "privacy official" and "contact person" for the Plan. The privacy official will be responsible for the development and implementation of privacy policies and procedures and development of a compliance program that meets all the administrative requirements of HIPAA privacy rules and state laws governing the privacy of health information (referred to by HIPAA as "protected health

information" or "PHI"). The privacy official will also serve as the contact person for Participants who have questions, concerns, or complaints about the privacy of their PHI.

- b. Monitor HIPAA requirements for changes and update HIPAA policies and compliance program, as applicable.
  - c. Negotiate Business Associate Agreements with third-party vendors on behalf of the Plan, provided, the Trustees shall themselves approve and execute any such agreements.
  - d. Develop, maintain, and mail Plan's Notice of Privacy Practices to all Participants as required by HIPAA.
  - e. Provide workforce training on privacy policies and procedures.
  - f. Notification and management of third-party PHI authorizations for disclosure.
  - g. Management and tracking of access to PHI.
  - h. Provision of electronic hardware in providing security information.
  - i. Provision of accounting and disclosures of PHI to individuals.
  - j. Maintenance of depersonalized reports to minimize the transfer of PHI.
- xiv. Provide over-65 year old retired or retiring members and their family members with advice, guidance and assistance wherever necessary in the decisions associated with choosing a Medicare Supplement policy.
  - xv. Provide over-65 year old retired or retiring members and their family members with advice, guidance and assistance wherever necessary in the decisions and choices associated with choosing a Medicare Part D Plan.
  - xvi. Production and distribution of IRS forms 1094c and 1095c.

**A** **Records** – Maintain, collect, manage, secure and store, either hard copy or electronic, all records and files as required by law and as directed by the Trustees.

- B **Reserve Bank Account** - McElroy shall establish and maintain a reserve bank account ("Reserve Account") with a banking institution designated by the Trustees as a depository for funds of the Trust (income, investment, premium income, and miscellaneous income) and on which to pay expenses of the Trust.
- C **Marketing** - McElroy shall be responsible for any and all marketing of the Plan, but shall obtain the Trustees' approval for any marketing strategies and the enrollment of any and all new Participating Agencies in accordance with adopted policies and procedures.
- D **No Responsibility** - McElroy shall not be responsible for any services or duties otherwise not stated herein.

### 3 Trustees' Duties & Authority

The Trustees shall have the exclusive duty and final authority to interpret and construe the provisions of the Trust Agreement or of any Plan adopted by them; to decide any disputes which may arise with regard to the rights of Employees, Participants, dependents, or beneficiaries; and to retain such accounting, actuarial, administrative, legal, or other assistance as is deemed necessary to assist in the administration of the Trust or of any Plan adopted. Further, it is not the intent of this Agreement to delegate to McElroy discretionary authority or control with respect to any decisions involving the investment and disposition of any assets of the Trust Fund, and McElroy shall act only in an advisory capacity with respect to all matters. The Trustees shall establish and make policies, interpretations, rules, and procedures governing the Plan. McElroy agrees to provide services and perform duties pursuant to such policies, interpretations, rules, and procedures communicated to it in writing by the Trustees.

### 4 Indemnification & Hold Harmless

- A **Plan Administrator's Liability** - McElroy shall indemnify and hold harmless the Plan and the Trustees from any and all claims, including legal judgments, costs of litigation, and reasonable attorney fees, from any person or organization, which claims arise from or are caused by the gross negligence, fraud, or criminal conduct of McElroy, its agents, employees, officers, or directors in the course of performing its duties under this Agreement.
- C **Bonding** - The Trustees shall be responsible for procuring and maintaining, at the expense of the Trust Fund, any bonding coverage required by law or as Trustees deem necessary to protect the assets of the Plan.
- D **Fiduciary Insurance** - McElroy shall purchase and pay for any and all errors and omissions insurance and/or fiduciary liability insurance protecting the Plan Administrator against any loss by reason of errors or omissions which arise out of the Plan administration by McElroy under the terms and provisions of this Agreement.

## 5 Records, Documents, Supplies, & Equipment

- A **Property of the Plan** - McElroy agrees that all files and other recorded information and documents incidental to the administration of the Plan shall be and remain the property of the Plan and shall be delivered to the Trust upon demand. This is to include all member information in a non-proprietary electronic data format.
- B **Safeguard Records** - McElroy shall take reasonable measures to safeguard the Plan's records under its control.
- C **Copies and Access** - Notwithstanding the provisions of Sections 5.A and 5.B, McElroy shall, at the expense of the Trust, have the right to make and return copies of all records and shall have full access to all those records turned over to the Trust which are necessary for McElroy to defend itself against any and all claims and charges.
- D **Return Upon Termination** - McElroy will present to the Trust or its designees all records, documents, supplies, and equipment which are the property of the Plan as soon as reasonably possible after termination of this Agreement, but no later than thirty (30) days after termination. This is to include all Participant information in a non-proprietary electronic data format.

## 6 Compensation

- A **Administration Fees**
  - i. The Trust shall pay a monthly administrative fee as compensation for services performed by McElroy.
  - ii. The administrative fee shall be calculated on a per contract per month basis, whereby a contract shall mean a Participant enrolled in the Plan on the first day of each month and includes active employees, retirees, and COBRA members.
  - ii. McElroy will submit to the Trust, each month, an invoice derived from Plan data, thereby conforming to financial auditing practices.
  - iii. The full amount of the administration fee is payable by the trust no later than the 20th day of each month.
  - iv. McElroy shall retain, without reducing the amount due as calculated from that stipulated in 6.A.2 as additional administrative fees any commission amounts received each month from third party vendors for Medicare Supplements and Medicare Part D products; due to the increased workload required for supporting these product types.

- v. McElroy shall reduce the administrative fee due each month by any commission amounts received from third party vendors, which are not Medicare Supplement or Medicare Part D related.
- vi. McElroy will attempt to negotiate all third party vendor contracts on behalf of the Plan as net commissions, providing evidence thereof. However, if this is not possible, then McElroy will apply the stipulations set forth in 6.A.5.
- vii. The per contract per month fee shall be as follows:

Contract Year	2021-2022	<b>\$16.54</b>
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**B Fee Adjustments** - It is recognized that certain events may have an impact on the amount and/or cost of services required under this Agreement, in which event, McElroy requests that an adjustment be made in the administration fee specified in Section 6.1. Such events shall include, but not be limited to:

- i. Changes in administrative services required by law or regulations that impose greater duties or obligations on McElroy than contemplated by this Agreement.
- ii. Administrative changes due to changes in Plan enrollment, in the program of benefits, insurance policies, eligibility rules, participation agreements, and record-keeping rules.
- iii. Not less than ninety (90) days prior to the end of any contract term in which this Agreement is in effect, McElroy may propose in writing a revision in the administration fee for the following contract term.

**C Other Costs/Fees** - This Agreement does not cover, nor is it limited to, the following items, and McElroy shall be reimbursed by the Trust at cost or at a negotiated cost/fee for any expenditure incurred by McElroy in relation thereto:

- i. Changes from outside vendors, contractors, and providers that are required to perform the administrative functions of this Agreement.
- ii. Data processing and other storage media in the event this Agreement is terminated and McElroy is required to furnish such material to a successor.
- iii. Audits required by any local, state, federal entities or the Trustees.
- iv. Underwriting, actuarial or legal services.
- v. Printing of any documents required by the Plan.
- vi. Expenses associated with the Trustees meetings, except travel expenses incurred by McElroy.

- vii. Expenses associated with marketing the Plan, except travel expenses incurred by McElroy.

## 7 Relationship

- A **Independent Contractor** - McElroy's relationship with the Trustees shall be that of an independent contractor. Nothing contained in this Agreement shall be construed to create the relationship of employee and employer. McElroy shall have the sole power to direct its personnel in carrying out its responsibilities and obligations under this Agreement. However, McElroy will give careful consideration to any suggested changes in methods and details made by the Trustees.
- B **Business Associate** - This Agreement and the performance of Plan Administrator services by McElroy involves "protected health information" (as defined by 45 CFR § 164.501) that is subject to the federal privacy regulations issued pursuant to HIPAA and its implementing regulations (45 CFR §§ 160 and 164, Subparts A and E). As such, McElroy is considered a "business associate" of the Trust and/or the Plan and shall carry out its obligations under this Agreement in conformity with the privacy rule requirements as set forth in Addendum A attached hereto and fully incorporated herein by reference.

## 8 Term of Agreement

- A **Term** - The initial term of this Agreement shall commence **July 1, 2021**, and shall terminate, unless renewed in accordance with the terms set forth below, at the end of the fiscal year of the State of Oklahoma, which is **June 30, 2022**.
- B **Renewal** - Each renewal term after the initial one (1) year term is subject to the review and approval of McElroy and the Trustees. Either McElroy or the Trustees may decline to renew for an additional one (1) year term by giving written notice of their intent not to renew at least ninety (90) days prior to the last day of the then current contract term. If either party fails to give a timely written notice of their intent to not renew for an additional year, this Agreement automatically renews for an additional one (1) year term.
- C **Unacceptable Fee Adjustment** - Failure of the parties to agree on the change of administration fee specified in 6.A, within thirty (30) days of notice of the revised fee, shall automatically terminate this Agreement on the indicated effective date of such change.
- D **Appropriated Funds** - The parties acknowledge and agree that funds paid by the Trust under the terms of this Agreement will be available only as appropriated on a fiscal year basis by properly constituted legal authority. In the event that the Trust determines that sufficient funds have not been appropriated to make the payments required under the terms of this Agreement, the obligations of the Trust shall terminate.

In the event Trust determines to terminate this Agreement due to insufficient funds being appropriated to make the payments required under this Agreement, Trust shall give McElroy written notice of Trust's intent to terminate this Agreement immediately after Trust makes such determination.

**E Unacceptable Performance** - If the Trustees deem that McElroy is not performing its services in an acceptable manner, the Trustees will deliver to McElroy a written "show cause" letter specifying the manner in which the Trustees deem that McElroy has failed to perform its services. McElroy shall have sixty (60) days to cure the non-compliance in the show cause letter. If the non-compliance is not completely or substantially cured by McElroy with the sixty (60) day cure period, the Trustees may, at the Trustees' option, terminate this Agreement and negotiate a termination and transition schedule with McElroy.

**F Termination Upon Default** - This Agreement can also be terminated upon the occurrence of any of the following events of default:

- i. A material breach of any of the provisions of this Agreement by either party, which is not cured within thirty (30) days of receipt of a written notice of such breach.
- ii. In the event of or material breach of any of the provisions of this Agreement and cure is not possible, non-defaulting party, in addition to any other remedies it may have, may terminate this Agreement immediately by giving written notice to the defaulting party.
- iii. The parties acknowledge and agree that no person who has pleaded guilty to or been convicted of a felony offense (including a nolo contendere plea), in or outside the jurisdiction of the State of Oklahoma, may be employed or serve as Plan Administrator pursuant to the terms of the Inter-Local Agreement. In the event McElroy or any officer of McElroy should be so convicted, Trustees may terminate this Agreement immediately by giving written notice to McElroy.

**G Mutual Agreement** - This Agreement may be terminated on any other date mutually agreeable between the parties in writing.

## 9 General Provisions

**A Trust Fund Payments** - The Trustees agree to authorize the Trust Fund to pay any and all taxes, licenses, and fees levied, if any by a local, state, or federal authority, in connection with the operation of the Plan or in connection with the duties of McElroy hereunder.

**B Applicable Law** - This Agreement shall be deemed to have been made and entered into the State of Oklahoma and shall be construed and enforced according to the laws of the State of Oklahoma.

- C **No Trust or Plan Liability** - This Agreement is not a contract of insurance, and McElroy is not an insurer or underwriter of Trust liability under the Plan. It is understood and agreed that liability for payments for benefits under the Plan is the liability of the Trust and that McElroy shall not have any duty to use any of its funds for the payment of such benefits.
- D **Arbitration** - If any dispute shall arise between the Trustees and McElroy, either before, during, or after termination of this Agreement, either party with respect to any transaction under this Agreement, the dispute shall be referred to three arbitrators, one to be chosen by each party and the third by the two so chosen. If either party refuses or neglects to appoint an arbitrator within thirty (30) days after both arbitrators have been named, the third arbitrator shall be selected pursuant to the commercial arbitration rules of the American Arbitration Association. The arbitration shall take place in the State of Oklahoma, and the arbitration proceedings are to be governed by the rules of the American Arbitration Association and the Oklahoma Arbitration Act. The arbitrators shall consider this Agreement an honorable engagement rather than merely a legal obligation; they are relieved of all judicial formalities and may abstain from following the strict rules of law. The decision of a majority of the arbitrators shall be final and binding on both the Board of Review and McElroy, and judgment upon the award rendered by the arbitrators may be entered into any court having jurisdiction thereof. The expense of the arbitrators and the arbitration shall be equally divided between the Trust and McElroy. Arbitration is the sole remedy for disputes arising under this Agreement.
- E **Prevention of Performance** - Neither party shall be liable to the other for any delay or damage or any failure to act (other than payment of money otherwise due) as a result occasioned or caused by reason of federal or state laws or rules, regulations, orders of any public body, or official purporting to exercise in authority or control, respecting the operations covered hereby, or as a result occasioned or caused by strikes, actions or elements, acts of God, or other causes beyond the control of the parties, and the delay, as a result of the above causes, shall not be deemed to be a breach or failure to perform under this Agreement.
- F **Notification** - Any notice, given hereunder by either party hereto the other, shall be in writing and delivered personally or sent by registered mail, postage prepaid, and if to Board of Review, addressed to:

Chairperson of the Board of Review  
Oklahoma Public Employees Health & Welfare Plan  
210 W Delaware Suite 106  
Vinita OK 74301

And if addressed to McElroy:

McElroy & Associates, Inc.  
3851 E. Tuxedo Blvd., Inc.  
Bartlesville, OK 74006

Either party may designate another address at any time by appropriate written notice to the other.

**G** **Entire Agreement** - This Agreement represents the entire Agreement between McElroy and the Board of Review with respect to the services described herein and supersedes all prior and contemporaneous oral or written agreement.

In witness whereof, the parties hereto have caused their duly authorized representatives to execute this Agreement on the date, month, and year first above written.

**Oklahoma Public Employees  
Health & Plan**

**McElroy & Associates, Inc.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_