

SURGERYPLUS SERVICES AGREEMENT

This SURGERYPLUS SERVICES AGREEMENT (this “**Agreement**”) is made effective as of June 1, 2021 (the “**Effective Date**”) by and between Employer Direct Healthcare, LLC, a Delaware limited liability company with its principal place of business located at 2100 Ross Avenue, Suite 550, Dallas, Texas 75201 (“**EDH**” or “**Contractor**”) and the School Board of Brevard County, Florida, a political subdivision of the State of Florida with its principal place of business located at 2700 Judge Fran Jamieson Way, Viera, Florida 32940, more commonly known as Brevard Public Schools (“**Sponsor**” or “**BPS**”). EDH and Sponsor are referred to collectively as the “**Parties**” and individually as a “**Party**.”

RECITALS

- I. Sponsor desires to make available to its employees, their dependents, and other eligible beneficiaries appropriate medical, hospital and other health care services through Sponsor’s self-funded health benefits plan(s) (collectively referred to herein as the “**Plan**”).
- II. Sponsor exercises discretionary authority and control respecting management of the Plan.
- III. EDH has contracted with physicians, other licensed health care practitioners, hospitals, and healthcare facilities (collectively, the “**Network**”) who or which have agreed to provide certain health care services consistent with the rates and terms negotiated by EDH.
- IV. EDH, as part of its network offering, provides individuals enrolled in self-funded health benefits plans which utilize the Network with certain administrative, settlement, case management, travel, and logistics services related to such individuals’ medical procedures.
- V. EDH provides self-funded health benefits plans with access to the Network through its branded offering known as SurgeryPlus.
- VI. Sponsor desires to offer SurgeryPlus to Participants (as defined below) under the Plan.

NOW THEREFORE, in consideration of the promises and mutual covenants contained herein, the Parties agree as follows:

**ARTICLE 1.
DEFINITIONS**

The following terms shall have the following meanings in this Agreement (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

“**Business Associate Agreement**” has the meaning set forth in Section 6.4 of this Agreement.

“**Claim**” has the meaning set forth is Section 4.3(a) of this Agreement.

“**Case Rate**” means the sum of all allowed charges for Medically Necessary Services provided during or in relation to an Episode of Care (inclusive of all technical, professional, facility, and other medical services) billed by Providers. Covered Services included in a Case Rate commonly include, but are not limited to: (a) the Medically Necessary Services rendered by a Provider during an Episode of Care (b) equipment used by a hospital or facility; (c) in-hospital or in-facility medications or biologics and supplies; (d) implants; (e) laboratory testing and services; (f) in-hospital meals; (g) hospital confinement days; (h) in-hospital or in-facility nursing care; (i) in-hospital physical therapy; and (j) post-discharge follow-up consultations occurring within the

applicable global period defined by the Centers for Medicare & Medicaid Services (“**CMS**”). Services commonly excluded from a Case Rate include, but are not limited to: (1) medical consultations and certain diagnostic testing provided in advance of a medical procedure to determine whether or not such procedure is a Medically Necessary Service; (2) Convenience Items; (3) Travel Services; and (4) any medical procedure or medical care that is not a Medically Necessary Service.

“**Comparable Case Rate**” means, with respect to any Episode of Care, the total amount reasonably determined by EDH to be the sum of all allowed charges for Medically Necessary Services provided during or in relation to such Episode of Care (inclusive of all technical, professional, facility, and other medical services) if such Medically Necessary Services were provided by health care providers outside of the Network. In determining any Comparable Case Rate, EDH may take into account: (a) Sponsor’s actual historical bundled case rates and/or claims data; and/or (b) EDH’s observed historical average bundled case rates and claims data. In any event, EDH’s determination of any Comparable Case Rate will take into consideration all applicable procedure codes, geography, and procedure setting (i.e., inpatient vs. outpatient).

“**Convenience Item**” means a service, supply, or other item provided by a Provider during an Episode of Care which is not a Medically Necessary Service. Convenience Items include, without limitation, telephone use, premium television access, and guest meals. A Participant shall have sole financial responsibility for any Convenience Item utilized during such Participant’s Episode of Care.

“**Covered Service**” means any Medically Necessary Service offered by a Provider for which EDH has contracted bundled rates or other reimbursement rates or pricing terms and which is otherwise a covered service under the terms of the Plan.

“**Diagnosis Case Code**” means the diagnosis code(s) (including, without limitation, the applicable ICD-10-CM codes) used by a Provider to identify the anticipated items and services to be provided to a Participant during an Episode of Care.

“**EDH Savings**” has the meaning set forth in Section 4.4(a) of this Agreement.

“**Employee**” means only those Participants who are employees of Sponsor (including those employees receiving Plan benefits through COBRA) or retirees eligible to receive benefits under the Plan. Employee excludes all dependents or other Participants enrolled for coverage in the Plan.

“**Episode of Care**” means the period of time initiated on the first day a Participant receives Covered Services in an inpatient, outpatient, surgery center, in-office, or other health care facility setting from a Provider related to the applicable Diagnosis Case Code and ends when such Participant is discharged from the applicable health care facility.

“**ERISA**” means the Federal Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations and other guidance issued thereunder.

“**HIPAA**” means the Health Insurance Portability and Accountability Act of 1996, including the Administrative Simplification provisions of HIPAA Title II, Subtitle F, the implementing regulations at 45 C.F.R. Parts 160-164, and the Health Information Technology for Economic and Clinical Health Act, enacted as part of the American Recovery and Reinvestment Act of 2009 (“**HITECH**”), and the regulations promulgated thereunder, all as amended from time to time.

“**Initial Term**” has the meaning set forth in Section 5.1 of this Agreement.

“**Invoice**” has the meaning set forth in Section 4.5 of this Agreement.

“Medically Necessary Service” means a health care item or service which a Provider determines to be both reasonable and necessary to diagnose or treat an illness, injury, condition, disease or symptom of a Participant which is consistent with accepted standards of medicine.

“Network” has the meaning set forth in the Recitals to this Agreement.

“Network Services” means those services offered by EDH to Participants who elect to utilize the Network for Covered Services, including, without limitation, intake and referrals of Participants to Providers, non-clinical care coordination and administration, administration of Claims processing and payment, coordination of Travel Services, and/or administration of Plan Incentives.

“Network Use Fee” has the meaning set forth in Section 4.3(b) of this Agreement.

“Participant” means any individual who has enrolled for coverage in the Plan who is eligible to receive Covered Services through the Network.

“Plan” has the meaning set forth in the Recitals to this Agreement.

“Plan Administrator” means a third party administrator specifically designated in the Plan Documents to provide administrative services for and manage the Plan. For the avoidance of doubt, EDH is not the Plan Administrator.

“Plan Documents” means the instrument(s), as amended from time to time, that set forth and govern the benefits provided under the Plan and the duties of Sponsor with respect thereto. Plan Documents include, without limitation, the summary plan description, summary of material modifications, and schedule of benefits.

“Plan Incentives” has the meaning set forth in Section 3.6 of this Agreement.

“Project Executive” has the meaning set forth in Section 3.1 of this Agreement.

“Protected Health Information” shall have the same meaning ascribed to such term in HIPAA.

“Provider” means an appropriately licensed or otherwise legally authorized provider of medical, surgical, hospital, professional, and/or other health-related services that offers Covered Services through the Network. A Provider may be, without limitation, a physician, physician group, anesthesia provider, anesthesia provider group, facility (both hospital and non-hospital facilities), system of facilities (including hospitals, non-hospital facilities, or any combination), or any other provider of medical or health related services.

“Renewal Term” has the meaning set forth in Section 5.1 of this Agreement.

“Report Date” has the meaning set forth in Section 4.4(a) of this Agreement.

“Total Network Use Fee” has the meaning set forth in Section 4.4(a) of this Agreement.

“Travel Services” means the services coordinated by EDH pursuant to this Agreement relating to a Participant’s, and person accompanying such Participant, transportation and lodging during or in relation to an Episode of Care.

ARTICLE 2. ROLE AND RESPONSIBILITIES OF EDH

2.1 **Network Services.** EDH will assist and support Sponsor in communicating the availability of the Network and Network Services to Participants. EDH will offer the Network to all Participants, and EDH will

provide the applicable Network Services for any Participant seeking to utilize the Network for an Episode of Care.

2.2 **Provider Requirements.**

(a) **Credentials.** EDH will require each Provider to cooperate and comply with EDH's credentialing program. Such credentialing program will require Providers to be registered or otherwise qualified in accordance with applicable law and, when applicable to a Provider's role in care processes, to meet accreditation standards, including without limitation, those of the National Committee for Quality Assurance, Joint Commission, or Det Norske Veritas. EDH's credentialing program may also include a review of, as applicable: (i) specialized training, board certification, and fellowships in applicable fields; (ii) relevant and available criminal history; (iii) malpractice claims; (iv) medical board or state licensure sanctions; (v) when applicable, the Provider's procedure-specific treatment and care protocols; and (vi) any other publicly available records. EDH may require Providers to provide EDH with documentation and/or primary sources evidencing such credentialing, and may require Providers to comply with additional credentialing practices and programs. EDH will be responsible for verifying that each Provider satisfies all applicable credentialing requirements.

(b) **Information Regarding Providers.** EDH shall require Providers to provide EDH with contact information (including but not limited to telephone number, fax number, mailing address, physical address, and email address) and to notify EDH of any changes to such contact information. EDH shall not be responsible for verifying the accuracy or completeness of such information. EDH shall further require each Provider to provide EDH with accurate and complete information regarding the qualifications, certifications, and licensure of the Provider, and EDH may verify any such information by comparing it with information which may be found in publicly available provider data repositories (e.g., State medical board sources and/or Council for Affordable Quality Healthcare profiles). Upon reasonable request, and to the extent legally permissible, EDH shall provide any such information to Sponsor.

2.3 **Utilization and Quality Assurance.**

(a) **Education and Communication.** EDH will provide Sponsor with proposed promotional and educational materials designed to raise Participant awareness of availability of the Network and Network Services. As set forth in Section 3.4 below, the Parties shall cooperate to distribute any such promotional and educational materials to Participants. EDH shall maintain copies of all promotional and educational materials.

(b) **Notices to Participants.** EDH will provide a written notice approved by Sponsor to all Participants advising them of the identity of, and relationship among EDH, the Participant, and Sponsor.

(c) **Participant Reports.** Following appropriate HIPAA requirements and standards for the transfer of information relating to any Participant, EDH will provide Sponsor (or any designee of Sponsor who has executed a mutually agreeable confidentiality agreement with EDH) with the following monthly reports: (a) utilization of the Network and Network Services by Participants and (b) available and/or applicable outcome and pricing information relating to Participants utilizing the Network and Network Services for an Episode of Care. Upon reasonable written request, EDH will provide Sponsor access to pertinent substantiating documentation maintained by EDH and required in connection with such reports, subject to the confidentiality requirements contained in Article 6 of this Agreement. Any modifications requested by Sponsor to the reports listed in this Section 2.3(c) shall be subject to a reasonable fee mutually agreed in writing by the Parties to reflect the time and resources necessary to fulfill such request.

2.4 **EDH is Not a Provider.** Sponsor acknowledges and agrees that: (a) EDH does not practice medicine, provide medical advice, render any medical judgment, or make any medical recommendation (as to any Provider or medical treatment), and (b) EDH is not being retained under this Agreement to practice medicine, provide medical advice, render any medical judgment, or make any medical recommendation (as to

any Provider or medical treatment). Sponsor further acknowledges and agrees that Providers shall be solely responsible for (1) all matters relating to medical treatment and/or procedures of Participants and (2) all advisement, evaluation, recommendation, or other similar responsibility or obligation relating to medical treatments and/or procedures of Participants.

2.5 Participant Clearance to Travel. From time to time, a Participant may be required to travel to a Provider for an Episode of Care. It shall be the sole responsibility of Participant to obtain advice from the Provider or Participant's primary care physician and/or other treating physician, whether, in such physician's independent medical opinion, Participant is fit to travel to Provider's location. In accordance with HIPAA standards regarding the release of medical records, EDH shall assist such Participant, or such Participant's representative, with the collection and transfer of medical records and other documentation, as may be reasonably necessary to facilitate the Participant's travel for an Episode of Care.

2.6 Limited Role of EDH. EDH's role is strictly limited to offering the Network and providing Network Services. Sponsor delegates to EDH only those powers and responsibilities with respect to development, maintenance and administration of the Plan that are specifically enumerated in this Agreement. Any function not specifically delegated to EDH shall remain the sole responsibility of Sponsor or its other designees. The Parties acknowledge that: (a) this Agreement is for administrative services only as specifically set forth herein, and (b) this Agreement shall not be deemed a contract of insurance under any laws or regulations. EDH does not insure, guarantee or underwrite the liability of Sponsor under the Plan, or any other third party. EDH does not have the ability to exercise discretionary authority or control regarding management or interpretation of the Plan. Sponsor has total responsibility for payment of Claims under the Plan and all expenses incidental to the Plan. Accordingly, EDH is not a fiduciary of the Plan. EDH shall have no responsibility for collecting premiums or contributions for insurance coverage or for establishing a premium fiduciary account.

2.7 Representations and Warranties of EDH. EDH represents and warrants that: (a) EDH will comply with all laws, rules and regulations applicable to the Network Services, including, without limitation, laws, rules, and regulations which may require EDH to be licensed or otherwise authorized as a third party administrator; (b) EDH will perform all Network Services diligently and professionally, consistent with generally accepted industry standards applicable to third party administrators; and (c) EDH shall maintain all applicable licenses, registrations and certifications necessary to carry out the Network Services. Except as expressly set forth herein, EDH does not make any representations or warranties of any kind, express or implied, including any warranty of quality, merchantability, or fitness for a particular use or purpose. For the avoidance of doubt, EDH makes no warranty, express or implied, concerning: (1) any Provider or other vendor providing services relating to an Episode of Care; or (2) information transmitted in good faith by EDH from third-party sources.

2.8 Non-Discrimination. EDH will not discriminate in delivery of the Network or Network Services to Participants or in the type and quality of Network Services provided to any Participant on the basis of age, race, religion, national origin, sex, marital status, sexual orientation, health status, disability, source of payment for services, or otherwise in contravention of applicable law.

2.9 Written Agreement. The Parties understand and agree that, pursuant to applicable law pertaining to third party administrators, EDH is not permitted to act without a written agreement between EDH and Sponsor, and that any such written agreement must fully state the activities that EDH will perform for Sponsor as a third party administrator. If Sponsor and/or the Plan institutes a policy or procedure that is relevant to EDH's provision of the Network Services pursuant to this Agreement, Sponsor shall provide EDH written documentation setting forth such policy or procedure. For the avoidance of doubt, any such policy or procedure that is in conflict with the terms of this Agreement shall require the written consent of EDH. Any written agreement between EDH and Sponsor, including this Agreement, shall be retained as part of the official records of both EDH and Sponsor for the duration of the agreement and for seven (7) years thereafter.

2.10 **SOC Reports.** Upon reasonable written request of Sponsor, in any event not more than once in any twelve (12) month period, EDH will provide Sponsor an executed copy, from independent auditors engaged and compensated by EDH, of a SOC 1 and SOC 2 examination in accordance with Statement on Standards for Attestation Engagements (SSAE) No. 18 or International Standard on Assurance Engagements (ISAE) No. 3402 (or any successor standards), as applicable, of EDH's controls and systems relating to the services provided hereunder (each, a "**SOC Report**").

2.11 **Insurance and Other Sureties.** EDH shall purchase from and maintain with a company or companies with a rating of "A" or better by AM Best or equivalent, and lawfully authorized and licensed to do business in the jurisdiction in which Sponsor is located insurance in at least the following amounts and coverages: (a) workers' compensation insurance as required by law, and employer's liability coverage with a minimum limit of \$500,000 each accident, \$500,000 disease-each employee and \$500,000 disease-policy limit; (b) general liability insurance with a minimum limit of \$1,000,000 each occurrence and \$2,000,000 annual aggregate bodily injury and property damage; (c) commercial umbrella/excess liability insurance with a minimum limit of \$2,000,000 each occurrence and annual aggregate; (d) automobile liability insurance in a minimum amount of \$1,000,000; (e) cyber liability insurance with a minimum limit of \$5,000,000; and (f) crime coverage with a minimum limit of \$1,000,000. Such insurance policies shall be maintained in full force and effect without interruption during the term. Upon reasonable request, on an annual basis, EDH will provide Sponsor with evidence of such insurance coverage. EDH agrees that whenever required by applicable state or federal law, to maintain a bond, deposit, or other insurance, as appropriate, with a regulatory authority beyond what is described in the Agreement, EDH has and shall maintain such bond or deposit or other insurance in favor of such authority, to be held in trust for the benefit and protection of certain of EDH's clients and/or Participants.

ARTICLE 3. ROLE AND RESPONSIBILITIES OF SPONSOR

3.1 **Project Executive.** Sponsor shall designate in writing an individual project executive having the authority to assist EDH in implementing and promoting the Network and Network Services (the "**Project Executive**"). The Project Executive shall be EDH's primary point of contact for Sponsor with respect to Sponsor's fulfillment of its obligations under this Agreement.

3.2 **Implementation.** Sponsor will be responsible for: (a) providing EDH with Participant claims data, including Protected Health Information, for EDH to analyze savings and implement Sponsor-approved educational and promotional communications strategies to Participants; (b) providing EDH with Participants' eligibility and enrollment data to be used by EDH for testing and implementation purposes; (c) amending the Plan Documents to describe and incorporate the Network and Network Services as available for eligible Participants who require Covered Services and who choose to receive such Covered Services from Providers participating in the Network; (d) facilitating the coordination of the operational processes of EDH, Sponsor, the Plan, the Plan Administrator, and/or other vendor of the Plan with regard to eligibility verification, case management, and billing; (e) facilitating EDH's integration with other vendors, health services providers, plans, and/or the Plan Administrator; and (f) identifying and facilitating communication opportunities for EDH to reach Participants needing treatments or procedures available through the Network.

3.3 **Necessary Consents.** Sponsor represents and warrants to EDH that, to the extent required by applicable law, Sponsor has obtained the requisite consent or authorization from Participants or other third parties necessary for EDH to perform its services hereunder.

3.4 **Educational and Promotional Communication.** Sponsor acknowledges and agrees that the objectives of each Party with respect to this Agreement can only be accomplished if the Network and Network Services are utilized by Participants. Accordingly, Sponsor shall encourage Participants to utilize the Network

and Network Services. Without limiting the generality of the preceding sentence, each year of the Initial Term, Sponsor shall: (a) approve in writing the content of and authorize EDH to distribute to all Participants one (1) print communication and one (1) electronic and/or web-based communication per calendar quarter regarding the Network and Network Services; (b) provide internal education and information to Participants regarding the Network and Network Services, specifically through inclusion of information about the Network and Network Services in Sponsor's annually circulated open enrollment materials and Plan Documents provided to all eligible Employees, and EDH participation in Sponsor's benefits enrollment events; (c) incorporate EDH's Participant portal website into Sponsor's website or portal specifically for Participants; and (d) provide EDH with necessary approval and authorization to distribute educational and promotional communications materials to Participants. For the avoidance of doubt, EDH shall only be permitted to use any such Sponsor-approved educational and promotional materials as authorized by Sponsor in advance of such use. Any breach of this Section 3.4 by Sponsor shall immediately constitute a full and final waiver by Sponsor of any past, present, or future obligation of EDH arising from Section 4.4 of this Agreement, and EDH shall be fully and finally discharged and released from any such obligations.

3.5 Participant Eligibility. On a weekly basis, Sponsor (or Sponsor's designee) shall provide EDH a Participant eligibility file in the manner and in accordance with the criteria set forth in the Enrollment File Feed Requirements, attached hereto as Exhibit A. Sponsor shall maintain sole financial responsibility for any services provided to non-eligible Participants occurring as a result of Sponsor's (or its designee's): (a) untimely provision of an eligibility file to EDH; (b) failure to meet the requirements set forth in Exhibit A; or (c) inclusion of inaccurate information contained in any eligibility file. Additionally, Sponsor shall maintain sole financial responsibility for payment of any fees charged by Sponsor's vendors relating to the provision of Participant eligibility files to EDH in accordance with this Section 3.5.

3.6 Plan Incentives. Sponsor shall provide the financial incentives set forth in Exhibit B (the "**Plan Incentives**") to all Participants utilizing the Network for Covered Services. Any reductions to the Plan Incentives without the written consent of EDH shall immediately constitute a full and final waiver by Sponsor of any past, present, or future obligation of EDH arising from Section 4.4 of this Agreement, and EDH shall be fully and finally discharged and released from any such obligations.

3.7 Use of Marks. Sponsor and EDH each reserve the right to the control and use of their respective names, copyrights, symbols, trademarks, and service marks (the "**Marks**"). No Party shall use the other Party's Marks in advertising, promotional materials, or otherwise without the prior written consent of the Party owning such Marks. Sponsor will permit Sponsor's logo to be displayed in EDH's educational and promotional materials to current or prospective clients and EDH will permit EDH's logo to be displayed in Sponsor's educational and promotional materials, provided that: (a) any use of a Party's logo shall conform to the guidelines and specifications set forth by the Party owning such logo; and (b) each Party obtains the other Party's prior written consent in each instance. Notwithstanding the foregoing, within a reasonable amount of time after the Effective Date, the Parties will cooperate in the mutual approval and distribution of a press release announcing certain terms of this Agreement.

3.8 Plan Interpretation. EDH will administer and adjudicate Claims in accordance with this Agreement, but will have no discretionary authority to interpret or manage the Plan. Sponsor, and not EDH, shall be responsible for determining the benefits, premium rates, underwriting criteria, acquisition of reinsurance, and other procedures applicable to its programs, including the Plan. Sponsor, in its capacity as administrator of the Plan, shall be the final arbitrator and have the final authority and responsibility regarding interpretation, application, and competent administration of its programs, including the Plan, and may delegate such authority to a Plan Administrator. Accordingly, upon reasonable request of EDH, Sponsor or such Plan Administrator will resolve all ambiguities and disputes relating to the Plan Documents, eligibility of a Participant, Plan coverage, denial of Claims, or any other Plan interpretation questions reasonably posed by EDH. If adjudication of a Claim requires interpretation of ambiguous language in the Plan Documents, and

Sponsor or its Plan Administrator has not previously indicated to the EDH the proper interpretation of the language, then Sponsor or its Plan Administrator will be responsible for resolving the ambiguity or any other dispute. In any event, Sponsor's or its Plan Administrator's decision as to any Claim (whether or not it involves a Plan ambiguity or other dispute) will be final and binding.

3.9 **Plan Compliance.** Except as set forth herein, EDH shall have no responsibility or obligation with respect to interpretation, application, or administration of the Plan. Sponsor or its Plan Administrator shall have all responsibility for and shall maintain compliance with all legal requirements applicable to the Plan and satisfaction of any and all reporting, notice, disclosure, and filing requirements imposed by applicable state and federal laws and regulations, including ERISA. Sponsor acknowledges and agrees that EDH will not be deemed to be a legal or tax advisor as a result of the performance of any of its duties under this Agreement, including but not limited to Claims processing, COBRA or HIPAA administration, or with respect to any applicable taxes, fees, or other assessments by a government authority. Except as otherwise provided herein, EDH makes no representation concerning federal, state, or local laws, rules or regulations applicable to Sponsor or the Plan. Sponsor must seek its own counsel for legal advice and guidance.

3.10 **Taxes.** Sponsor or the Plan, as applicable, shall be responsible for the determination and reporting, and Participants shall be responsible for payment, of any applicable federal, state, and/or local tax responsibility, if any, incurred as a result of Sponsor's or the Plan's actions and/or the services provided by EDH under this Agreement.

3.11 **Data Transfers.** Sponsor shall use reasonable and generally accepted methods of encrypting Protected Health Information transmitted by Sponsor to EDH.

ARTICLE 4. SCHEDULING, PRICING, AND PAYMENT

4.1 **Participant Intake; Billing.** Following Provider's initial review of Participant's medical records and information, and subject to a physical examination and medical assessment of Participant, as determined necessary by a Provider, a Provider will confirm to EDH whether or not, in Provider's independent medical opinion, Participant is a suitable candidate for Covered Services during an Episode of Care at a Provider's location, and Provider will advise EDH of the Diagnosis Case Code related to such Episode of Care. The Parties acknowledge and agree, subject to Section 4.11, that it shall be in the Provider's sole discretion to determine whether or not any Covered Service is a Medically Necessary Service. If applicable, a Provider will establish treatment protocols for an Episode of Care and, if needed, the Provider will modify such protocols for a Participant. Sponsor acknowledges and agrees that any of the following shall be billed by Providers to a Participant and/or the Plan, as applicable, through the Plan Administrator: (a) certain medical consultations and certain diagnostic testing provided in advance of a medical procedure to determine whether or not such procedure is a Medically Necessary Service; (b) Convenience Items; and (c) any medical procedure or medical care that is not a Medically Necessary Service.

4.2 **Participant Scheduling.** Upon acceptance of a Participant by a Provider, EDH will verify the Participant's eligibility under the Plan to receive Covered Services. EDH will also coordinate and schedule Covered Services to be provided in connection with the anticipated Episode of Care among the Participant, the Provider(s) and, if applicable, any vendors of Travel Services.

4.3 **Pricing.**

(a) **Claims.** Sponsor shall pay EDH the aggregate sum of all claims, fees, costs, expenses or other charges relating to an Episode of Care or potential Episode of Care (including, without limitation, emergency or urgent Medically Necessary Services rendered during but unrelated to an Episode of Care as described in Section 4.7) which are submitted to EDH by Providers, vendors of Travel Services, or any other

provider of goods or services related to an Episode of Care or potential Episode of Care (each such claim, fee, cost, expense, or charge, a “**Claim**” and collectively, “**Claims**”), with the exception of those Claims subject to good faith dispute by Sponsor. Any Claim related to Medically Necessary Services rendered by a Provider shall be charged by EDH and paid by Sponsor according to the bundled rates or other pricing terms independently agreed to by EDH and the Provider. EDH shall invoice, and Sponsor shall pay, Claims in accordance with Section 4.5.

(b) Network Use Fee. In addition to payment for Claims, Sponsor shall pay to EDH a fee equal to thirty-five percent (35%) of the aggregate sum of all Claims (the “**Network Use Fee**”). If Sponsor, in its sole discretion, determines that it would be in its best financial interest to convert the Network Use Fee to EDH’s fixed fee model (e.g., per employee per month) or hybrid fee model (e.g., percent of Claims, plus PEPM), Sponsor shall have the ability to convert to such fee structure upon thirty (30) days advance written notice to EDH; provided, the rate applicable to such alternative fee model (e.g., PEPM dollar amount and/or percentage amount) shall be the then-current equivalent of the Network Use Fee, as determined by EDH in its reasonable discretion. EDH shall invoice, and Sponsor shall pay, the Network Use Fee in accordance with Section 4.5.

4.4 EDH Savings Guarantee.

(a) EDH Savings and Total Network Use Fee. Within sixty (60) days from the date of EDH’s receipt of all Claims relating to Covered Services or Network Services administered or provided during the Initial Term (the “**Report Date**”), EDH will calculate and provide Sponsor with a tabulation of: (i) Sponsor’s savings during the Initial Term based on: (A) with respect to each Episode of Care during the Initial Term, the difference between the actual Case Rate paid by Sponsor to EDH and the Comparable Case Rate for such Episode of Care; (B) Sponsor’s savings attributable to avoided surgical complications of Participants (determined by EDH using the incremental frequency of complications occurring outside of the Network and the increase in procedure cost associated with such complications); and (C) Sponsor’s savings attributable to avoided medical procedures (determined by EDH using the cost of procedures which were not performed by a Provider, but were otherwise recommended by a physician outside of the Network) (collectively, the “**EDH Savings**”); and (ii) the total amount of Network Use Fees paid by Sponsor during the Initial Term pursuant to Section 4.3(b) (the “**Total Network Use Fee**”).

(b) Setoff or Payment. If the calculation of EDH Savings described in Section 4.4(a) shows the Total Network Use Fee to be in excess of the EDH Savings and a Renewal Term has commenced or will commence pursuant to Section 5.1, then Sponsor shall be entitled to reduce the amount of any payment of Network Use Fees otherwise payable to EDH during such Renewal Term up to the amount of the difference between the Total Network Use Fee and the EDH Savings. If the calculation of EDH Savings described in Section 4.4(a) shows the Total Network Use Fee to be in excess of the EDH Savings and a Renewal Term has not and will not commence pursuant to Section 5.1, then EDH shall make payment to Sponsor in an amount equal to the difference between the Total Network Use Fee and the EDH Savings within thirty (30) days of the Report Date. If the calculation of EDH Savings described in Section 4.4(a) shows the EDH Savings to be in excess of the Total Network Use Fee, Sponsor shall not be entitled to any setoff or payment from EDH.

(c) Guarantee Reporting. On an annual basis, EDH shall provide Sponsor with a pro forma calculation of the EDH Savings and Total Network Use Fee for the purpose of tracking and evaluating the progress and performance of EDH under this Agreement.

(d) Limitations. If Sponsor: (i) breaches Section 3.4 or Section 3.6 of this Agreement; or (ii) reduces the Plan Incentives without the written consent of EDH, such action shall immediately constitute a full and final waiver by Sponsor of any past, present, or future obligation of EDH arising from this Section 4.4, and EDH shall be fully and finally discharged and released from any such obligations. For the avoidance of doubt, EDH’s obligations with respect to this Section 4.4 shall only apply to the Initial Term of this Agreement.

4.5 **Invoicing and Payment.** During the term of this Agreement, EDH will prepare and submit to Sponsor invoices fully disclosing and itemizing the amounts to be paid by Sponsor pursuant to the terms of this Agreement (each, an “***Invoice***”). In accordance with the Florida Local Government Prompt Payment Act, payments shall be made to EDH within forty-five (45) days after BPS’s receipt of an Invoice. Sponsor will pay directly to EDH the amounts included in such Invoices via wire transfer or electronic funds transfer. After receiving payment from Sponsor, EDH will pay the appropriate Providers and vendors of Travel Services.

4.6 **Cancellation Prior to Medical Procedure.** If a Participant, for any reason, is not admitted by a Provider, or if a Participant cancels a scheduled procedure at any time prior to performance of the Episode of Care, Sponsor shall be responsible for the cost of Provider’s review of Participant’s medical records, the cost of any pre-admission testing or treatment provided by a Provider, any expenses related to Travel Services, and any other fees, costs, or expenses actually incurred. Additionally, a Provider may charge a Participant a reasonable cancellation fee (up to \$250) in the event a Participant does not appear for a procedure and the Participant does not provide such Provider advance notice of cancellation. Any charges to Sponsor pursuant to this **Section 4.6** will be listed in an Invoice.

4.7 **Urgent or Emergency Medical Services.** If at any time during an Episode of Care, a Provider determines that any Medically Necessary Service must be performed on an urgent or emergency basis to preserve the life or health of the Participant, Sponsor will be responsible for payment of the Provider’s charges for any such Medically Necessary Service as part of the Episode of Care. The amounts of such charges will be calculated and charged by EDH according to the pricing terms set forth in the agreement between EDH and the Provider, and any such charges will be listed in an Invoice to Sponsor. If any such urgent or emergency Medically Necessary Services are provided to a Participant by a health care provider outside of the Network, charges for such services may be billed by such health care provider through the Plan Administrator.

4.8 **Elective Changes by Participant.** This Agreement does not permit requests of non-Covered Services by a Participant after a Provider has accepted Participant. Any request by Participant to Provider for such non-Covered Services and Provider’s decision to render such non-Covered Services shall be considered outside of the Network and not subject to the scope of this Agreement. EDH and Sponsor shall have no obligation or responsibility with respect to such non-Covered Services.

4.9 **Termination of an Episode of Care.** EDH’s obligations under this Agreement extend only through the end of an Episode of Care. In the event a Participant’s Episode of Care extends more than ten (10) days beyond its anticipated duration, EDH shall notify the Sponsor’s Plan Administrator, and EDH and the Sponsor’s Plan Administrator shall use good faith efforts to mutually agree upon a medically appropriate solution for the transition of coverage for the Participant’s care. In any event, if an Episode of Care extends thirty (30) days beyond the date the Participant was originally admitted to the facility, the Episode of Care will be considered terminated. EDH shall have no obligations or liability with respect to services rendered by a Provider after the termination of an Episode of Care. Payment for any services rendered by a Provider after the termination of an Episode of Care shall be the responsibility of Participant, Sponsor, or the Plan, as applicable.

4.10 **Intentionally Omitted.**

4.11 **Intentionally Omitted.**

4.12 **Delinquent Payment.** If Sponsor fails to pay EDH any amount due to a Provider (with the exception of amounts relating to Claims subject to good faith dispute by Sponsor) within sixty (60) days following Sponsor’s receipt of an Invoice itemizing such amount, EDH will notify Sponsor and the Provider of such failure, and will engage in good faith efforts to facilitate resolution of any payment issues or disputes with respect to such amounts. If EDH is unable to resolve such payment issues or disputes within thirty (30) days of such engagement, EDH will notify Sponsor and the Provider, and the Provider may terminate its agreement

with EDH with regard to Sponsor failing to make payment. The Provider may then seek to recover payment for such undisputed amounts due directly from Sponsor. In such event, Sponsor will lose the benefit of any contractual rates set forth in EDH's agreements with the Provider, and Sponsor will be responsible for the full amount of the Provider's billed charges. This provision is in addition to, and not in lieu of, any other rights and remedies available to EDH under this Agreement, at law, or in equity.

4.13 **Past Due Accounts.** With the exception of amounts subject to good faith dispute by Sponsor, past due amounts will be subject to interest in the amount of the lesser of 1% per month or the applicable state default interest rate.

4.14 **Intermediary Status.** To the extent required under applicable law pertaining to third party administrators: (a) payments received by EDH on behalf of Sponsor from Providers, vendors of Travel Services, Participants, or other parties shall be deemed to have been received by Sponsor, and (b) EDH's payment of any amounts on behalf of Sponsor to Providers, vendors of Travel Services, Participants, or other parties shall not be deemed payment to said parties until payments are received by those parties.

ARTICLE 5. TERM AND TERMINATION

5.1 **Term.** This Agreement shall commence as of the Effective Date and shall remain in effect for three (3) years (the "**Initial Term**"). Following the Initial Term, this Agreement may be renewed by mutual written agreement of the Parties for successive one-year periods (each such period, a "**Renewal Term**").

5.2 **Termination.**

(a) **Termination for Convenience.** This Agreement may be terminated by Sponsor for any reason, or no reason whatsoever, upon sixty (60) days' written notice of termination to EDH, which shall be approved by the governing Board of BPS. Additionally, as soon as reasonably practicable, BPS shall provide written notice to EDH of BPS's intent to request approval of such termination by the governing Board of BPS. In the event Sponsor gives notice of termination of this Agreement in accordance with this Section 5.2(a) prior to the expiration of the Initial Term, the Parties agree that such notice shall immediately constitute a full and final waiver by Sponsor of any past, present, or future obligation of EDH arising from Section 4.4, and EDH shall be fully and finally discharged and released from any such obligations. Notwithstanding anything herein to the contrary, Sponsor shall not be permitted to give notice of termination or terminate this Agreement pursuant to this Section 5.2(a) during the first twelve (12) months of the Initial Term.

(b) **Termination for Non-Appropriation of Funds.** The obligations of Sponsor under this Agreement are subject to the availability of funds lawfully appropriated for its purpose by the State of Florida and Brevard Public Schools. In the event of non-allocation of funds for services pursuant to this Agreement, Sponsor shall provide EDH written notice at the earliest possible date, and this Agreement shall terminate on the last day of the fiscal year for which funds were appropriated. Any such non-allocation of funds and termination of this Agreement pursuant to this Section 5.2(b) shall constitute a full and final waiver by Sponsor of any obligation of EDH arising from Section 4.4, and EDH shall be fully and finally discharged and released from any such obligations.

(c) **Termination for Cause.** Either Party may terminate this Agreement for cause upon written notice to the other Party specifying the nature of such cause for termination. For purposes of this Agreement, "**cause**" shall be construed to mean: (i) a material misrepresentation made by one Party to the other Party relating to this Agreement; or (ii) a material breach of an provision, term, or obligation by either Party set forth in this Agreement that is not cured within thirty (30) days of written notice of such breach or, if such cure cannot be reasonably achieved during such thirty (30) day period, reasonable steps to cure are not

undertaken and diligently and continuously pursued. For the avoidance of doubt, the Parties must fulfill all lawful obligations with respect to the administration of services pursuant to this Agreement during any period of ongoing cure.

(d) **Termination for Insolvency.** This Agreement shall terminate, without notice: (i) upon the institution by or against either Party of insolvency, receivership, or bankruptcy proceedings or any other proceedings for the settlement of either Party's debts; (ii) upon either Party making an assignment for the benefit of creditors; or (iii) upon either Party's dissolution or ceasing to do business.

5.3 **Effect of Termination.** Termination or expiration of this Agreement for any reason shall not affect the obligation of any Party to pay any amount due that arose prior to the effective date of such termination or expiration or to perform any duty that arose prior to the effective date of such termination or expiration. Upon termination or expiration of this Agreement for any reason, each Party shall discontinue representing that it is affiliated with the other Party.

5.4 **Continuity of Care.** In the event of termination or expiration of this Agreement for any reason, EDH shall continue to satisfy all of its obligations under this Agreement relating to the medical procedure or other care of any Participant which was scheduled or coordinated by EDH on or before the effective date of such termination or expiration but was not to be completed until after the effective date of such termination or expiration. The continuing obligations of EDH shall cease when any such Participant has been discharged and medically released by a Provider for return to the Participant's home location or another appropriate medical provider or facility. Sponsor shall be responsible for paying to EDH any Claims and/or Network Use Fees incurred as a result of the services rendered after termination or expiration of this Agreement.

5.5 **No Solicitation of Providers.** During the term of this Agreement and for a period of twelve (12) months after termination or expiration of the Agreement, Sponsor agrees that it will not: (a) enter into a contract directly with any Provider; (b) solicit or attempt to solicit any Provider; or (c) divert or attempt to divert any Provider away from EDH for purposes of contracting directly with Sponsor for the provision the services provided under this Agreement.

ARTICLE 6. RECORDKEEPING, AUDIT RIGHTS, AND CONFIDENTIALITY

6.1 **Recordkeeping.** EDH shall retain all books and records relating to EDH's performance of its obligations under this Agreement, including medical records and records pertaining to Network Use Fees and Claims payments, and shall provide access to such books, records, and information for a minimum period of seven (7) years following the provision of services under this Agreement to any Participant or such longer period of time as may be required by applicable state or federal law. Applicable state or federal regulatory authorities shall have access to such books and records for the purposes of examination, audit, and inspection. Notwithstanding anything to the contrary in this Section 6.1, in the event EDH and Sponsor terminate this Agreement for any reason, EDH may, by written agreement with Sponsor, transfer all records to another third party administrator rather than retain them for seven (7) years. In such instance, the new third party administrator shall acknowledge, in writing, that it is responsible for retaining the records of EDH as required in this Section 6.1.

6.2 **Audit Rights.** EDH shall permit Sponsor to conduct site visits, audits, and inspect the books, records, and information of EDH relating to EDH's provision of services under this Agreement. Such access and inspection shall be provided by EDH during normal business hours and within thirty (30) days after such request is made in writing to EDH. Sponsor shall be responsible for the reasonable, actual out-of-pocket expenses of retrieving, copying, or transmitting such records. To the extent Sponsor requires the review or audit of the operations of EDH, Sponsor shall comply with the requirements of applicable laws pertaining to third party administrators. Accordingly, all information and documentation related to any visit, audit, and/or inspection

of EDH by Sponsor pursuant to this Section 6.2 must remain on file with Sponsor for at least five (5) years from the date of such visit, audit, or inspection, and, upon request of any regulatory official governing EDH's licensure as a third party administrator, Sponsor shall provide such official all such information.

6.3 Confidentiality.

(a) Limitations on Confidential Information. Either Party may, in the course of the relationship established by this Agreement, disclose to the other Party confidential, non-public information including, without limitation, such Party's pricing, methodologies, fee schedules, volume of business, methods, systems, practices, plans, and/or other confidential or proprietary information (collectively "**Confidential Information**"). Confidential Information shall not be deemed to include any information which: (1) is or becomes generally known to the public not as a result of a disclosure by the receiving Party or its Representatives; (2) is already known by the receiving Party on a non-confidential basis prior to disclosure by the disclosing Party; (3) is received by the receiving Party from a third party without restriction on disclosure and without breach of any confidentiality agreement by such third party; or (4) is independently developed by the receiving Party without reliance upon the disclosing Party's information. Each Party shall hold all Confidential Information of the other Party in strict confidence. Each Party shall use, and shall cause each of its agents, subcontractors, employees, service providers, advisors, or auditors ("**Representatives**") to use, all commercially reasonable means (in any case, not less than reasonable care) to safeguard the confidentiality of all Confidential Information of the other Party in the same manner that the Party safeguards its own confidential and/or proprietary information. Each Party shall not, without prior written consent of the other Party: (a) use any Confidential Information of the other Party for any purpose other than as necessary to perform such Party's obligations under this Agreement or to exercise such Party's rights hereunder; or (b) disclose any Confidential Information of the other Party to any third party other than to such Party's Representatives who: (i) have a need to know such Confidential Information to perform such Party's obligations under this Agreement or to exercise such Party's rights hereunder; (ii) who are informed of the confidential nature of the Confidential Information; and (iii) are bound by obligations of confidentiality at least as stringent as the confidentiality provisions in this Agreement. The receiving Party shall remain liable for any breach of confidentiality by such Representatives. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall Sponsor disclose EDH's Confidential Information to any third party administrator, insurance company, data warehouse vendor, health benefit plan (other than the Plan), health benefit plan sponsor (other than Sponsor), health care provider, or any person or entity which provides claims settlement, case management, health benefit navigation, health care coordination, and/or physician or facility "center of excellence" planning or coordination services, without the prior written approval of EDH. If either Party receives a request or demand to disclose all or any part of the Confidential Information of the other Party under the terms of a subpoena or order issued by a court of competent jurisdiction, an agency of any State of the United States or of any other jurisdiction, or otherwise, the Party receiving such request agrees to promptly notify the other Party, to the extent legally permitted, of the existence, terms and circumstances surrounding the request so that the Party whose Confidential Information is subject to the request may, at its option, seek a protective order or other appropriate relief or remedy. If a protective order or other remedy is not timely sought or obtained, the Party subject to the request shall furnish only that portion of the Confidential Information which is legally required and such Party shall use all reasonable efforts to ensure that confidential treatment shall be accorded such Confidential Information. Contractor and BPS acknowledge that unauthorized disclosure or use of Confidential Information may irreparably damage the disclosing Party in such a way that adequate compensation could not be obtained from damages in an action at law. Accordingly, the actual or threatened unauthorized disclosure or use of any Confidential Information shall give the disclosing Party the right to seek injunctive relief restraining such unauthorized disclosure or use, in addition to any other remedy otherwise available (including reasonable attorneys' fees). The Parties hereby waive the posting of a bond with respect to any action for injunctive relief. From time to time, BPS may reasonably request that

Contractor protect the confidentiality of certain Confidential Information in particular ways to ensure that confidentiality is maintained. Contractor has the right to reasonably decline BPS's request.

(b) **Participant Records.** All medical, billing, and other records regarding Participants shall be kept confidential by EDH, in accordance with applicable state and federal laws, including HIPAA, and the Business Associate Agreement to the extent applicable. EDH shall share such information internally only with those having a need to know such information and shall advise any such persons of their confidentiality obligations.

6.4 **HIPAA Compliance.** EDH may receive Protected Health Information from Sponsor, Participants, the Plan, the Plan Administrator, and/or other vendor of the Plan. EDH shall comply with HIPAA and with the provisions of that certain business associate agreement executed by Sponsor and EDH, which is attached to this Agreement as Exhibit C and incorporated herein by reference (the "***Business Associate Agreement***"). Without limiting the foregoing, the Parties shall coordinate delivery and execution of any future agreements which may be required pursuant to HIPAA or other applicable law to allow Sponsor, the Plan, the Plan Administrator, and/or other vendor of the Plan to transfer relevant Protected Health Information to EDH.

6.5 **Survival.** The provisions of this Article 6 shall survive any termination or expiration of this Agreement.

ARTICLE 7. LIMITATION OF LIABILITY

7.1 **Reserved.**

7.2 **Disclaimer of Damages; Limitation of Liability.**

(a) **Disclaimer of Damages; Limitation of Liability.** EXCEPT AS SET FORTH IN SECTION 7.2(b) BELOW, (i) IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, OR TORT DAMAGES (INCLUDING LOST BUSINESS, PROFITS, OR GOODWILL) ARISING OUT OF OR RELATING TO THIS AGREEMENT, AN EXHIBIT, AMENDMENT, AND/OR ADDENDUM, REGARDLESS OF WHETHER THE CLAIM ARISES IN TORT, CONTRACT, OR OTHERWISE, AND EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (ii) IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY UNDER THIS AGREEMENT, AN EXHIBIT, AMENDMENT, AND/OR ADDENDUM AND WITH RESPECT TO THE SERVICES PROVIDED PURSUANT THERETO EXCEED THE AMOUNT OF NETWORK USE FEES ACTUALLY PAID BY SPONSOR TO EDH UNDER THIS AGREEMENT DURING THE IMMEDIATELY PRECEDING TWELVE (12) MONTHS. THE FOREGOING DISCLAIMER OF DAMAGES AND LIMITATION OF LIABILITY REPRESENTS THE ALLOCATION OF RISK BETWEEN THE PARTIES UNDER THIS AGREEMENT AND ARE ESSENTIAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES.

(b) **Exceptions.** The disclaimer of damages and limitation of liability in Section 7.2(a) above in no way limit either Party's liability or any rights and/or remedies either Party may have with respect to: (i) Sponsor's breach of any obligation to pay EDH any amount due under this Agreement, including, without limitation, Sponsor's obligation to pay Claims and Network Use Fees; (ii) EDH's breach of its obligation to provide setoff or payment to Sponsor pursuant to Section 4.4(b) of this Agreement; (iii) Sponsor's breach of its obligations set forth in Section 3.11 of this Agreement; (iv) Sponsor's breach of its obligations set forth in Section 3.3 of this Agreement; (v) either Party's breach of its obligations set forth in Section 6.3 of this Agreement; (vi) either Party's breach of its obligations set forth in the Business Associate Agreement; or (vii) either Party's willful misconduct or fraud.

7.3 **Survival.** The provisions of this Article 7 shall survive any termination or expiration of this Agreement.

**ARTICLE 8.
DISPUTE RESOLUTION**

8.1 Dispute Resolution Procedure.

(a) Negotiation. In the event any dispute arises between the Parties under or concerning this Agreement, or the breach thereof (a "**Dispute**"), the Parties will meet and confer in good faith and attempt to resolve the Dispute. If the Parties do not resolve the Dispute within thirty (30) days of the first meeting, then either Party may, by providing written notice, require both Parties to submit the dispute to mediation.

(b) Voluntary Arbitration. If the negotiation and/or mediation described in Section 8.1(a) does not resolve the Dispute, and if any Party wishes to pursue the Dispute, the Dispute may be submitted to voluntary arbitration administered by the American Arbitration Association ("**AAA**") in accordance with its Commercial Rules. The award of the arbitrator(s) may be final, but either Party may seek resolution in any court of competent jurisdiction. Each Party shall bear its respective arbitration expenses and each shall pay its pro-rata portion of the arbitrator's charges and expenses. Notwithstanding any rules of AAA to the contrary, the arbitrator(s) shall not be permitted to award punitive or exemplary damages.

8.2 Participant Complaint Resolution. EDH will maintain a written procedure to provide timely response to and resolution of any Participant's inquiries, complaints, and grievances in connection with the Network, Network Services, Providers, or any Episode of Care.

8.3 Survival. The provisions of this Article 8 shall survive any termination or expiration of this Agreement.

**ARTICLE 9.
MISCELLANEOUS PROVISIONS**

9.1 Relationship of the Parties. The sole relationship between the Parties to this Agreement is that of independent contractors. This Agreement does not create a joint venture, partnership, agency, employment, or other relationship between the Parties, and neither Party shall have the right or authority to assume, create, or incur any liability or any obligation of any kind, express or implied, on behalf of the other Party except as provided expressly in this Agreement.

9.2 Compliance with Healthcare Laws. By entering into this Agreement, the Parties specifically agree to comply with all applicable laws, rules, and regulations, including: (a) the federal Anti-kickback Statute (42 U.S.C. § 1320a-7b(b)); (b) the federal Stark Law (42 U.S.C. § 1395nn) and any analogs under applicable state law; and (c) any applicable state or federal privacy laws. Accordingly, no part of any consideration paid hereunder is a prohibited payment for the recommending or arranging for the referral of business or the ordering of items or services, nor are the payments arising hereunder intended to induce illegal referrals of business.

9.3 Authority to Bind. Each Party represents and warrants that: (a) it is duly organized, validly existing, and in good standing under the laws of the state of its formation; (b) it has the full power and authority to execute and deliver this Agreement and to perform all of its obligations under this Agreement; (c) the provisions of this Agreement and the performance by the Party of its obligations under this Agreement are not in conflict with its organizational documents or any other agreement to which it is a party or by which it is bound; and (d) each person executing this Agreement has the full authority and capacity to bind the applicable Party.

9.4 Negotiated Agreement. Each Party acknowledges and agrees that the terms and language of this Agreement were the result of negotiations among the Parties, and that each Party had the opportunity to

seek advice from counsel of its choosing. As a result, there shall be no presumption that any ambiguities in this Agreement shall be resolved against any particular Party.

9.5 **Amendments.** This Agreement shall only be amended with the mutual written consent of both Parties.

9.6 **Exhibits.** All exhibits and addenda to this Agreement are an integral part of this Agreement and are incorporated into this Agreement by this reference and made a part hereof for all purposes.

9.7 **Entire Agreement.** This Agreement and the Exhibits and Addenda attached hereto constitute the entire understanding between the Parties. Any prior agreements, negotiations, commitments, and understandings, whether oral or written, with respect to the subject matter of this Agreement, not expressly set forth herein, are not valid or binding on either Party.

9.8 **Headings.** The headings in this Agreement are inserted for convenience only and shall not affect the construction or interpretation of this Agreement.

9.9 **Assignment.** This Agreement shall not be assigned, transferred, or conveyed without the prior written consent of the other Party, but such consent shall not be unreasonably withheld or delayed.

9.10 **Waiver of Rights.** The failure of either Party to enforce any term or provision of this Agreement shall not be construed as a waiver of such provision or of the right of such Party to enforce the same or any other provision.

9.11 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida without regard to any state choice of law statutes.

9.12 **Severability.** If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the Parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the Parties herein set forth.

9.13 **Notices.** Any notice, request, demand, or other communication required or permitted pursuant to this Agreement shall be in writing and shall be deemed to have been duly given if: (a) delivered by hand and receipted for by the Party to whom such notice or other communication shall have been directed, (b) mailed by certified or registered mail with postage prepaid, on the third business day after the date on which it is so mailed; or (c) if sent by reputable overnight courier and receipted for by the Party to whom such notice or other communication shall have been directed. The addresses for such notices or communications shall be as set forth below:

To Sponsor:

The School Board of Brevard County, Florida
Attn: Dr. Beth Thedy, Deputy
Superintendent and CHRO
2700 Judge Fran Jamieson Way
Melbourne, Florida 32940

To EDH:

Employer Direct Healthcare, LLC
Attn: Legal Department
2100 Ross Avenue, Suite 550
Dallas, Texas 75201

9.14 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same Agreement. This Agreement may be executed and delivered by electronic transmission.

9.15 **Force Majeure.** EDH shall not be liable for any failure, inability, or delay to perform hereunder, if such failure, inability, or delay is due to an act of god, war, strike, fire, explosion, sabotage, pandemic, accident, casualty, or any other cause beyond the reasonable control of EDH, provided due diligence is used by EDH in curing such cause and in resuming performance.

9.16 **Rights and Remedies.** Unless expressly limited by this Agreement, the rights and remedies of the Parties provided for in this Agreement are in addition to any other rights and remedies provided by law.

9.17 **Public Records.**

- A. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE BPS CUSTODIAN OF PUBLIC RECORDS AT (321) 633-1000 ext. 11453, recordsrequest@brevardschools.org, BREVARD COUNTY PUBLIC SCHOOLS, RECORDS MANAGEMENT, 2700 Judge Fran Jamieson Way, Viera, Florida 32940.**
- B. This Agreement is subject to and governed by the laws of the State of Florida, including without limitation Chapter 119, F.S., which generally makes public all records or other writings made by or received by the Parties. Contractor acknowledges its legal obligation to comply with Section 119.0701, F.S. Contractor shall keep and maintain public records, as that phrase is defined in the Florida Public Records Act, which would be required to be kept and maintained by BPS in order to perform the scope of services. Contractor shall comply with all requirements for retaining public records and shall transfer, at no cost to BPS, all public records in the possession of Contractor upon a request for such public records. See Section 119.0701(2)(b)4, F.S., for additional record keeping requirements.
- C. A request to inspect or copy public records relating to BPS's contract for services must be made directly to BPS's Custodian of Public Records. If BPS does not possess the requested records, BPS's Custodian of Public Records shall immediately notify Contractor of the request. Contractor must provide a copy of the records to BPS or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S. If Contractor does not timely comply with BPS's request for records, BPS shall be able to sue for breach of contract and the prevailing party shall be entitled to attorney's fees.
- D. Should Contractor fail to provide the requested public records to BPS within a reasonable time, Contractor understands and acknowledges that it may be subject to penalties under Sections 119.0701(3)(c) and 119.10, F.S.
- E. Contractor shall not disclose public records that are exempt, or confidential and exempt, from public records disclosure unless specifically authorized by law for the duration of this Agreement term and following the completion, expiration, or termination of same if Contractor does not

transfer the records to BPS. Upon completion, expiration, or termination of this Agreement, Contractor shall transfer, at no cost to BPS, all public records in its possession or keep and maintain public records required by BPS to perform the services. If Contractor transfers all public records to BPS, Contractor shall destroy any duplicate public records that are exempt, or confidential and exempt, from public records disclosure requirements. If Contractor keeps and maintains public records upon completion, expiration, or termination of this Agreement, Contractor shall meet all applicable requirements for retaining public records and provide requested records to BPS pursuant to the requirements of this Article. All public records stored electronically must be provided to BPS in a format that is compatible with the information technology systems of BPS.

9.18 **E-Verify.** Under Executive Order 11-116, and Section 448.095, Fla. Stat., effective July 1, 2020, Contractor shall use the U.S. Agency of Homeland Security's E-Verify system, <https://e-verify.uscis.gov/emp>, to verify the employment eligibility of all employees hired during the term of this Agreement. Contractor must obtain an affidavit from its subcontractors in accordance with paragraph (2)(b) of section 448.095, F.S., and maintain a copy of such affidavit for the duration of the Contract. Upon written request of BPS, Contractor must provide a copy of its DHS Memorandum of Understanding (MOU) to BPS. This section serves as notice to the Contractor regarding the requirements of section 448.095, F.S., specifically sub-paragraph (2)(c)1, and the BPS's obligation to terminate the Contract if it has a good faith belief that the Contractor has knowingly violated section 448.09(1), F.S..

9.19 **Federal and State Tax.**

BPS is exempt from federal and state taxes for tangible personal property. Contractor shall not be exempted from paying applicable sales tax to the State of Florida and/or the federal government, as the case may be, for the purchase of materials to fulfill contractual obligations with BPS, nor shall Contractor be authorized to use BPS's tax exemption number in securing such materials.

In the event Contractor is also exempt from federal and state taxes for tangible personal property, it shall promptly submit to BPS an appropriate exemption certificate. BPS will sign an exemption certificate submitted to it by Contractor.

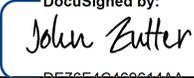
Contractor shall be responsible for payment of its own FICA and social security benefits with respect to this Agreement.

9.20 **Protection and Handling of Data.**

- A. **Compliance with Laws and BPS Policies and Procedures.** Contractor will not knowingly permit any Contractor's personnel to have access to any BPS facility or any records or data of BPS if the person has been convicted of a crime in connection with: (1) computer-related or information technology crimes; (2) fraudulent practices, false pretenses and frauds, and credit card crimes; (3) forgery and counterfeiting; (4) violations involving checks and drafts; (5) misuse of medical records or personnel records; or (6) felony theft. Contractor must, to the extent permitted by law, conduct a check of public records in all of the employee's states of residence and employment for at least the last five (5) years in order to verify the above.
- B. **Data Security.** Contractor agrees to protect and maintain the security of PHI with protection security measures that include maintaining secure environments that are patched and up to date with all appropriate security updates as designated by a relevant authority (e.g. Microsoft notifications, etc.). Likewise, BPS agrees to conform to the following measures to protect and secure data:

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by the duly authorized representatives.

EMPLOYER DIRECT HEALTHCARE, LLC

By: 

DE70E4C469014AA...
Name: John Zutter

Title: CEO

THE SCHOOL BOARD OF BREVARD COUNTY, FLORIDA

By: _____
Misty Belford, Board Chairperson

EXHIBIT A

Enrollment File Feed Requirements

See attached.

Enrollment File Feed Requirements (rev. June 2020)



Enrollment File Summary

Employer Direct Healthcare (“EDH”) requires a weekly enrollment file feed (“Enrollment File”) from all SurgeryPlus™ clients (each a “Plan Sponsor”). Enrollment Files should be system-generated and only contain members eligible for the SurgeryPlus™ program. Enrollment Files are securely managed by EDH’s process to extract, validate, transform and load eligible members into its case management system. Upon request, enrollment validation reports can be generated and delivered to a Plan Sponsor’s designated recipient.

Eligibility Criteria

- **Eligible Members:** The Enrollment File should only include members enrolled in medical plans that are eligible to receive the SurgeryPlus™ benefit as of the file effective date.
- **Eligibility Exclusions:** Please exclude all members from the Enrollment file who:
 - i. are enrolled in medical plans that are ineligible to receive the SurgeryPlus™ benefit; or,
 - ii. receive secondary coverage from the Plan Sponsor
- **Terminated Members**
 - (Preferred) Explicit Termination Date: EDH will remove terminated members from SurgeryPlus™ eligible member roster using an explicit termination date for the member in the Enrollment File. Member records sent with an explicit date can then be removed from subsequent Enrollment Files or can remain with a termination date.
 - Termination by Omission: EDH can remove terminated members from its system based on their omission from Enrollment Files. Please note that terminated members will remain eligible for SurgeryPlus™ until the date they are omitted from the Enrollment File.

File Transfer and Specifications

- **File Layout:** The Enrollment File feed layout is included on Page 2 herein.
- **Automated File Transfer:** EDH hosts a file transfer server that uses Secure File Transfer Protocol (SFTP). Upon receipt of an external facing IP Address, EDH will create a dedicated account and provide credentials to connect and drop Enrollment Files on the server.
- **Test Files:** Test files should be transmitted prior to submitting production files. All test files are to be sent securely via EDH’s SFTP and/or through encrypted email service and include the word “Test.” Please name Test Files as follows:
 - Comma-separated values: “Test_Client_MMDDCCYY.csv”
 - Text: “Test_Client_MMDDCCYY.txt”
- **File Formats:** Please prepare the Enrollment File in an electronically readable format. EDH prefers Enrollment Files in comma-separated values (.csv) format and can also process EDI 834 files. Please note, EDH cannot process Zip files or Microsoft Excel files.
- **Production Files:** Please remove the “Test_” prefix from for all production Enrollment File names as follows:
 - Comma-separated values: “Client_MMDDCCYY.csv”
 - Text: “Client_MMDDCCYY.txt”
- **Population Subset Files:** Please denote COBRA and Retiree population file names as follows:
 - COBRA: “Test_ClientCOBRA_MMDDCCYY” or “ClientCOBRA_MMDDCCYY”
 - Retiree: “Test_ClientRetiree_MMDDCCYY” or “ClientRetiree_MMDDCCYY”

Contact Information

Please contact SurgeryPlus regarding all Enrollment File related inquiries at EligibilityData@edhc.com.

Enrollment File Feed Requirements
(rev. June 2020)



Enrollment File Feed Layout

Usage	Field	Data Type	Description
Sponsor Identity			
Required	Plan_Sponsor_Name	String	Name of the Plan Sponsor
Required	Plan_Sponsor_EIN	String	Plan Sponsor EIN or TIN
Enrollee Identity			
Required	Enrollee_SSN	String	Social Security Number
Situational	Employee_ID	String	Employee Identifier associated with the Enrollee
Situational	Enrollee_Medical_ID	String	Enrollee Medical ID
Optional	Enrollee_Supplemental_ID	String	Enrollee Supplemental ID
Member Identity			
Required	Member_SSN	String	Social Security Number
Required	Enrollee_Indicator	String	Status of the Enrollee
Required	Member_Relationship_Code	String	Code indicating the relationship between two individuals or entities
Optional	Member_Supplemental_ID	String	Member Supplemental ID
Member Eligibility			
Required	Medical_Coverage_Status_Code	String	Current Benefits Status
Required	Medical_Coverage_Effective_Date	Date	Coverage Effective/Start Date
Optional	Medical_Coverage_Termination_Date	Date	Coverage Termination/End Date
Situational	COBRA_COC_Event_Date	Date	COBRA continuation of coverage Event date
Situational	COBRA_COC_Exp_Date	Date	COBRA continuation of coverage Expiration date
Optional	Medicare_Plan_Code	String	Code identifying the Medicare Plan
Optional	Handicap_Indicator	String	Code indicating if individual is handicapped or not.
Member Details			
Optional	Member_Prefix	String	Member Name Prefix
Required	Member_First_Name	String	Member First Name
Optional	Member_Middle_Name	String	Member Middle Name or Initial
Required	Member_Last_Name	String	Member Surname
Optional	Member_Suffix	String	Member Name Suffix
Required	Member_Gender_Code	String	Code indicating the sex of the individual
Required	Member_Birth_Date	Date	Date of Birth
Required	Residence_Address1	String	Residence Street Address
Optional	Residence_Address2	String	Residence Street Address
Required	Residence_City_Name	String	Residence City Name
Required	Residence_State_Code	String	Residence State Code
Required	Residence_Zip_Code	String	Residence Postal Code (5 Digit ZIP)
Optional	Residence_Zip_Plus4_Code	String	Residence Postal Code (Plus 4 Code)
Situational	Residence_Country_Code	String	Residence Country Code
Situational	Mailing_Address1	String	Mailing Street Address
Situational	Mailing_Address2	String	Mailing Street Address
Situational	Mailing_City_Name	String	Mailing City Name
Situational	Mailing_State_Code	String	Mailing State Code
Situational	Mailing_Zip_Code	String	Mailing Postal Code (5 Digit ZIP)
Situational	Mailing_Zip_Plus4_Code	String	Mailing Postal Code (Plus 4 Code)
Situational	Mailing_Country_Code	String	Mailing Country Code
Required	Primary_Phone_Number	String	Telephone Number
Optional	Supplemental_Phone_Number	String	Telephone Number
Required	Primary_Email_Address	String	Electronic Mail Address
Optional	Supplemental_Email_Address	String	Electronic Mail Address
Plan Identity			
Situational	Plan_ID	String	Enrolled Medical Plan Identifier
Situational	Plan_Name	String	Enrolled Medical Plan Name
Optional	Network_ID	String	Medical Plan Network Identifier
Optional	Network_Name	String	Medical Plan Network Name
Optional	TPA_ID	String	Medical Plan TPA Identifier
Optional	TPA_Name	String	Medical Plan TPA Name
Optional	Group_Number	String	Medical Plan Group Number
Enrollee Details			
Required	Coverage_Level_Code	String	Code indicating the level of coverage being provided for this insured
Optional	Enrollee_Employment_Status_Code	String	Code showing the general employment status of an employee/claimant
Optional	Enrollee_Hire_Date	Date	Effective Date of Enrollee's Employment
Optional	Enrollee_Work_Location_Zip_Code	String	Postal Code (5 Digit ZIP)
Custom Fields			
Optional	Custom_Field_1	String	Client Specific Field
Optional	Custom_Field_2	String	Client Specific Field
Optional	Custom_Field_3	String	Client Specific Field
Optional	Custom_Field_4	String	Client Specific Field
Optional	Custom_Field_5	String	Client Specific Field
File Details			
Required	File_Effective_DateTime	Date	Effective Date of Record
Required	File_Run_DateTime	Date	File Run Date

EXHIBIT B**Plan Incentives**

Health Plan	Waive Copay?	Waive Deductible?	Waive Coinsurance?	Provide Financial Reward?	Other Financial Incentive Structure
Qualified Plan	N/A	N/A	N/A	N/A	N/A
Non-Qualified Plan	Yes	Yes	Yes	No	N/A

EXHIBIT C

Business Associate Agreement

See attached.

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this "BA Agreement") is made effective as of June 1, 2021 (the "Effective Date") by and between the School Board of Brevard County, Florida, a political subdivision of the State of Florida with its principal place of business located at 2700 Judge Fran Jamieson Way, Melbourne, Florida 32940 ("Covered Entity") and Employer Direct Healthcare, LLC, a Delaware limited liability company with its principal place of business located at 2100 Ross Avenue, Suite 550, Dallas, Texas 75201 ("Business Associate"). Covered Entity and Business Associate are referred to collectively as the "Parties" and individually as a "Party."

RECITALS

- I. Business Associate has a contracted network of physicians, hospitals, and other healthcare providers and facilities which provide non-emergent, planned surgical and medical procedures according to rates and terms negotiated by Business Associate.
- II. Business Associate's contracted network of providers is made available to individuals through self-funded health benefit plans that incorporate Business Associate's network offering.
- III. Covered Entity has established a self-funded health benefit plan for the benefit of Covered Entity's employees, employees' dependents, and retirees.
- IV. Business Associate and Covered Entity are exploring a service agreement (the "Service Agreement") pursuant to which Business Associate would agree to coordinate and deliver its network offering to and on behalf of Covered Entity.
- V. The Parties desire to enter into this BA Agreement because, as part of the negotiation and performance of the Service Agreement, Covered Entity must disclose Protected Health Information to Business Associate or Business Associate must otherwise access, create, or use Protected Health Information.

Accordingly, in consideration of the promises and mutual covenants contained herein and other good and valuable consideration, the Parties agree as follows:

1. **Definitions.** Capitalized terms used but not otherwise defined in this BA Agreement shall have the same meaning ascribed to such terms in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), any and all regulations promulgated thereunder including the standards for privacy of individually identifiable health information at 45 C.F.R. Parts 160 and 164 ("Privacy Rule") and the standards for the security of electronic protected health information at 45 C.F.R. 160, 162, and 164 ("Security Rule") (the Privacy Rule and the Security Rule are collectively referred to herein as the "HIPAA Rules"), and the Health Information Technology for Economic and Clinical Health Act ("HITECH") provisions of the American Recovery and Reinvestment Act of 2009 ("ARRA").

2. **Use and Disclosure of Protected Health Information.** Business Associate may use and disclose Protected Health Information as permitted or required under this BA Agreement, the Service Agreement, and as Required by Law, but Business Associate shall not otherwise use or disclose any Protected Health Information. Business Associate shall not use or disclose Protected Health Information received from Covered Entity in any manner that would constitute a violation of the HIPAA Rules if so used or disclosed by Covered Entity. To the extent Business Associate carries out any of Covered Entity's obligations under HIPAA, Business Associate shall comply with the requirements of HIPAA that apply to Covered Entity in the performance of such obligations. Without limiting the generality of the foregoing, Business Associate is permitted to use or disclose Protected Health Information as set forth below:

(a) Business Associate may use Protected Health Information internally for Business Associate's proper management and administrative services or to carry out its legal responsibilities.

(b) Business Associate may disclose Protected Health Information to a third-party for Business Associate's proper management and administration, provided that:

- (i) the disclosure is Required by Law;
 - (ii) Business Associate makes the disclosure pursuant to an agreement consistent with Section 6 of this BA Agreement; or
 - (iii) Business Associate makes the disclosure pursuant to a written confidentiality agreement under which the third-party is required to: (A) protect the confidentiality of the Protected Health Information; (B) only use or further disclose the Protected Health Information as Required by Law or for the purpose for which it was disclosed to the third-party; and (C) notify Covered Entity of any acquisition, access, use, or disclosure of Protected Health Information in a manner not permitted by the confidentiality agreement.
- (c) Business Associate may use Protected Health Information to provide Data Aggregation services relating to the Health Care Operations of Covered Entity if required or permitted under the Service Agreement.
- (d) Business Associate may de-identify any and all Protected Health Information obtained by Business Associate under this BA Agreement or the Service Agreement at any location, and use such de-identified data, all in accordance with the de-identification requirements of the Privacy Rule.

3. Safeguards. Business Associate shall use appropriate safeguards to prevent the use or disclosure of Protected Health Information other than as permitted or required by this BA Agreement. In addition, Business Associate shall implement Administrative Safeguards, Physical Safeguards and Technical Safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of Electronic Protected Health Information that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate shall comply with the HIPAA Security Rule with respect to Electronic Protected Health Information.

4. Minimum Necessary Standard. To the extent required by the “minimum necessary” requirements of HIPAA, Business Associate shall only request, use and disclose the minimum amount of Protected Health Information necessary to accomplish the purpose of the request, use or disclosure.

5. Mitigation. Business Associate shall take reasonable steps to mitigate, to the extent practicable, any harmful effect (that is known to Business Associate) of a use or disclosure of Protected Health Information by Business Associate in violation of this BA Agreement or HIPAA.

6. Subcontractors. Business Associate shall enter into a written agreement meeting the requirements of 45 C.F.R. §§ 164.504(e) and 164.314(a)(2) with each Subcontractor (including, without limitation, a Subcontractor that is an agent under applicable law) that creates, receives, maintains or transmits Protected Health Information on behalf of Business Associate. Business Associate shall ensure that the written agreement with each Subcontractor obligates the Subcontractor to comply with restrictions and conditions that are at least as restrictive as the restrictions and conditions that apply to Business Associate under this BA Agreement.

7. Reporting Requirements.

(a) Business Associate shall, without unreasonable delay, but in no event later than three (3) business days after becoming aware of any acquisition, access, use, or disclosure of Protected Health Information in violation of this BA Agreement by Business Associate, its employees, other agents or contractors, or by a third-party to which Business Associate disclosed Protected Health Information (each, an “Unauthorized Use or Disclosure”), report such Unauthorized Use or Disclosure to Covered Entity.

(b) Business Associate shall, without unreasonable delay, but in no event later than three (3) business days after becoming aware of any Security Incident, report it to Covered Entity. Notwithstanding the foregoing, pings, port scans, and similar routine attempts on Business Associate’s firewall that are successfully blocked shall not require reporting due to the infeasibility of recording and reporting all such pings, port scans, and other routine events.

(c) Business Associate shall, without unreasonable delay, but in no event later than three (3) business days after discovery of a Breach of Protected Health Information (whether secured or unsecured), report such Breach to Covered Entity in accordance with 45 C.F.R. § 164.410.

8. Access to Protected Health Information. Within ten (10) business days of a request by Covered Entity for access to Protected Health Information about an Individual contained in any Designated Record Set of Covered Entity maintained by Business Associate, Business Associate shall make available to Covered Entity such Protected Health Information for so long as Business Associate maintains such information in the Designated Record Set. If Business Associate receives a request for access to Protected Health Information directly from an Individual, Business Associate shall forward such request to Covered Entity within five (5) business days.

9. Availability of Protected Health Information. Within ten (10) business days of receipt of a request from Covered Entity for an amendment to an Individual's Protected Health Information contained in any Designated Record Set of Covered Entity maintained by Business Associate, Business Associate shall provide such Protected Health Information to Covered Entity for amendment and incorporate any such amendments in the Protected Health Information (for so long as Business Associate maintains such information in the Designated Record Set) as required by 45 C.F.R. § 164.526. If Business Associate receives a request for amendment to Protected Health Information directly from an Individual, Business Associate shall forward such request to Covered Entity within five (5) business days.

10. Accounting of Disclosures. Within ten (10) business days of notice by Covered Entity to Business Associate that it has received a request for an accounting of disclosures of Protected Health Information (other than disclosures to which an exception to the accounting requirement applies), Business Associate shall make available to Covered Entity such information as is in Business Associate's possession and is required for Covered Entity to make the accounting required by 45 C.F.R. § 164.528.

11. Availability of Books and Records. Business Associate shall make its internal practices, books and records relating to the use and disclosure of Protected Health Information received from or created or received by Business Associate on behalf of, Covered Entity available to the Secretary for purposes of determining Covered Entity's and Business Associate's compliance with HIPAA.

12. Restrictions and Limitations in Notice of Privacy Practices. Business Associate shall comply with any reasonable limitation in Covered Entity's notice of privacy practices to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information and Business Associate receives notification of such reasonable limitation. Business Associate shall comply with any reasonable restriction on the use or disclosure of Protected Health Information that Covered Entity has agreed to or is required to abide by under 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

13. Term. The term of this BA Agreement shall commence on the Effective Date. This Agreement shall terminate when all of the Protected Health Information provided by Covered Entity, or created and received by Business Associate on behalf of the Covered Entity, is destroyed or returned to the Covered Entity or otherwise as set forth in Section 14 of this Agreement.

14. Termination Upon Breach. Any other provision of this BA Agreement or the Service Agreement notwithstanding, this BA Agreement and the Service Agreement may be terminated by Covered Entity in the event of a material breach by Business Associate of the terms and conditions of this BA Agreement. Covered Entity shall provide thirty (30) days' written notice in sufficient detail to enable Business Associate to understand the specific nature of the breach and afford Business Associate an opportunity for Business Associate to cure the breach or end the violation. Should Business Associate fail to cure the breach within such thirty (30) day time frame, Covered Entity may terminate this BA Agreement and the Service Agreement; provided however, that in the event termination is not feasible, in Covered Entity's sole discretion, Covered Entity shall have the right to report the breach to the Secretary. In the event that Business Associate becomes aware of a pattern of activity or a practice of Covered Entity that constitutes a breach or material violation of the obligations of Covered Entity under this BA Agreement, Business

Associate may terminate this BA Agreement and the Service Agreement. Business Associate shall provide Covered Entity thirty (30) days' written notice in sufficient detail to enable Covered Entity to understand the nature of the breach or material violation and afford Covered Entity an opportunity to cure the breach or end the violation. Should Covered Entity fail to cure the breach or end the violation within such thirty (30) day time frame, Business Associate may terminate this BA Agreement and the Service Agreement; provided however, that in the event termination is not feasible, in Business Associate's sole discretion, Business Associate shall have the right to report the breach or violation to the Secretary.

15. Return or Destruction of Protected Health Information upon Termination. Upon expiration or termination of the Service Agreement or this BA Agreement, Business Associate shall either return or destroy all Protected Health Information received from Covered Entity or created or received by Business Associate on behalf of Covered Entity and which Business Associate still maintains in any form. Notwithstanding the foregoing, to the extent that Covered Entity and Business Associate mutually determine that it is not feasible to return or destroy such Protected Health Information, the terms and provisions of this BA Agreement shall survive termination with regard to the Protected Health Information still in the possession of Business Associate, and such Protected Health Information shall be used or disclosed solely for such purpose or purposes which prevented the return or destruction of such Protected Health Information.

16. Reserved.

17. Effect. The provisions of this BA Agreement shall control with respect to Protected Health Information that Business Associate receives from or on behalf of Covered Entity, and the terms and conditions of this BA Agreement shall supersede any conflicting or inconsistent terms or provisions of any existing or future agreement between the Parties, including the Service Agreement and all exhibits and attachments thereto.

18. Relationship of the Parties. Covered Entity and Business Associate acknowledge and agree that Business Associate is at all times acting as independent contractor of Covered Entity under this BA Agreement and not as an employee, agent, partner, or joint venturer of Covered Entity.

19. Regulatory References. A reference in this BA Agreement to a section in HIPAA, the HIPAA Rules, or HITECH means the section as it may be amended from time-to-time.

20. Amendments. This BA Agreement may only be amended by mutual written consent of the Parties. The Parties agree to amend this BA Agreement from time to time as reasonably necessary for Covered Entity to comply with the requirements of HIPAA.

21. Assignment. This BA Agreement may be assigned, transferred, or conveyed by operation of law only with the prior written consent of both Parties, but such consent shall not be unreasonably withheld.

22. No Third-Party Beneficiaries. The Parties have not created and do not intend to create by this BA Agreement any third-party rights, including, but not limited to, third-party rights for Covered Entity's participants.

23. Headings. The headings in this BA Agreement are inserted for convenience only and shall not affect the construction or interpretation of this BA Agreement.

24. Notices. Any notice, request, demand, or other communication required or permitted pursuant to this BA Agreement shall be in writing and shall be deemed to have been duly given if: (a) delivered by hand and receipted for by the Party to whom said notice or other communication shall have been directed, (b) mailed by certified or registered mail with postage prepaid, on the third business day after the date on which it is so mailed; (c) if sent by reputable overnight courier and receipted for by the Party to whom said notice or other communication shall have been directed; or (d) if sent by email or other similar means of electronic communication (with confirmed receipt), upon receipt of transmission notice by the sender. The addresses for such notices or communications shall be as set forth below or as specified by a Party in writing:

To Covered Entity:

School Board of Brevard County, Florida
Attn: Dr. Beth Thedy, Deputy
Superintendent and CHRO
2700 Judge Fran Jamieson Way
Melbourne, FL 32940

To Business Associate:

Employer Direct Healthcare, LLC
Attn: Legal Department
2100 Ross Avenue, Suite 550
Dallas, Texas 75201

25. Counterparts. This BA Agreement may be executed in one or more counterparts, each of which will be deemed an original copy of this BA Agreement and all of which, when taken together, will be deemed to constitute one and the same instrument. This BA Agreement may be executed and delivered by electronic transmission.

[Signature Pages to Follow]

Each Party has read this BA Agreement and agrees to be bound by its terms and conditions. Once fully executed, this BA Agreement is valid, binding, and enforceable against each Party in accordance with its terms.

School Board of Brevard County, Florida

By: _____

Name: _____

Title: _____

Employer Direct Healthcare, LLC

DocuSigned by:

By: _____

Name: **John Zutter**

Title: **CEO**

REGULATORY ADDENDUM

This Regulatory Addendum shall apply only if, to the extent, and for so long as, EDH or its successor is subject to state insurance laws applicable to third party administrators and to the extent that any of the administrative services provided by EDH to Sponsor are subject to such laws. The provisions of this Regulatory Addendum are only applicable if, and to the extent that, EDH is performing services under the Agreement that apply to that particular provision. If EDH shall not perform services that apply to a given provision, then such provision shall have no force or effect. (For example, if EDH does not collect premiums or contributions, then any provisions specifying requirements related to premium collection would not be applicable, and EDH would not be obligated to establish a fiduciary account to hold premiums collected.) Additionally, if EDH is not licensed as a producer, then EDH shall not perform services as a producer, and no provision referring to such services, to insurance commissions, or referring to payment of insurance commissions herein shall apply to EDH.

1. **Georgia.** If Sponsor authorizes EDH to receive premiums or contributions, Sponsor shall follow all the Georgia applicable third party administrator laws regarding receipts and disbursements of premiums and contributions.

2. **Florida.** Sponsor's payments to health care providers must include an explanation of services being reimbursed, which includes, at a minimum: (1) for payments to non-capitated providers, the patient's name, the date of service, the procedure code, the amount of reimbursement, and the identification of the plan on whose behalf the payment is being made; and (2) for capitated providers, the number of patients covered by the contract, the rate per patient, the total amount of the payment, and the identification of the plan on whose behalf the payment is being made.

3. **Kansas.** To the extent applicable if the services specified in the Agreement provide for payment of claims, all claims paid by EDH from funds collected on behalf of or for Sponsor shall be paid only as authorized by the Sponsor. Payments from a claims paying account maintained or controlled by EDH may be made for the following purposes including the payment of claims: (1) Payment of valid claims; (2) payment of expenses associated with the handling of claims to EDH or to other service providers approved by the Sponsor; (3) remittance to the Sponsor, or transfer to a successor administrator as directed by the Sponsor, for the purpose of paying claims and associated expenses; and (4) return of funds held as collateral or prepayment, to the person entitled to those funds, upon a determination by the Sponsor that those funds are no longer necessary to secure or facilitate the payment of claims and associated expenses.

4. **Michigan.** The Parties desire to supplement the Agreement to specifically reference certain provisions of Michigan law applicable to third party administrators and to comply with those laws to the extent applicable and not preempted by federal law, as follows: In Michigan, Sponsor shall provide written notice to each individual covered by the Plan of the following information with respect to services provided by EDH in relation to the Plan: (a) what benefits are being provided; (b) of changes in benefits; (c) the fact that individuals covered by the Plan are not insured or are only partially insured, as the case may be; (d) if the Plan is not insured, the fact that in the event the Plan or Sponsor does not ultimately pay medical expenses that are eligible for payment under the Plan for any reason, the individuals covered by the plan may be liable for those expenses; (e) the fact that the EDH or any third party administrator merely processes claims and does not insure that any medical expenses of individuals covered by the Plan will be paid; (f) the fact that complete and proper claims for benefits made by individuals covered by the Plan will be promptly processed but that in the event there are delays in processing claims, the individuals covered by the Plan shall have no greater rights to interest or other remedies against the EDH or any third party administrator than as otherwise afforded them by law. Sponsor's required written notice shall be promptly displayed in the summary plan description or elsewhere in the Plan Documents, and shall be communicated to individuals covered by the benefit plan within

sixty (60) days from the date their coverage becomes effective, upon each republication of the summary plan description, and in any case not less than every five (5) years in a manner calculated to be received and understood by the average individual covered by the benefit plan.

5. **Nevada.** The Parties desire to supplement the Agreement to specifically reference certain provisions of Nevada law applicable to third party administrators and to comply with those laws to the extent applicable and not preempted by federal law, as follows:

683A.0868 If EDH establishes a panel of providers of health care or contracts with an organization that establishes a panel of providers of health care, EDH shall not charge a provider of health care or such an organization: (a) any fee to include the name of the provider of health care on the panel; or (b) any other fee related to establishing the provider of health care as a provider on the panel. If EDH violates this provision, EDH shall pay to the provider of health care or organization, as appropriate, an amount that is equal to twice the fee charged to the provider of health care or the organization. A court shall award costs and reasonable attorney's fees to the prevailing party in any action brought to enforce this provision. In addition to any such relief, if EDH violates this provision, the Nevada Division of Insurance shall require EDH to suspend the prohibited activities until EDH, as determined by the Nevada Division of Insurance: (a) complies with the provisions of this section; and (b) refunds to all providers of health care or organizations, as appropriate, all fees obtained by EDH in violation of this provision.

683A.405 EDH shall, upon a contracted provider's request, submit to the provider at the time the contract is made a copy of the schedule of payments applicable to that provider, or at any other time within seven (7) days of a provider's request.

683A.087 EDH may advertise the insurance which it administers, if any, only after it receives the approval of Sponsor.

683A.0873(1) EDH shall maintain at its principal office adequate books and records of all transactions between itself, Sponsor and the individuals covered by the plan. The books and records must be maintained in accordance with prudent standards of recordkeeping for insurance and with regulations of the Commissioner of the Nevada Division of Insurance ("Commissioner") for a period of five (5) years after the transaction to which they respectively relate. After the five (5) year period, EDH may remove the books and records from Nevada, store their contents on microfilm or return them to Sponsor.

683A.0873(2) The Commissioner may examine, audit and inspect books and records maintained by EDH under the provisions of this section to carry out the provisions of NRS 679B.230 to 679B.300, inclusive.

683A.0873(3) The names and addresses of persons covered by the plan or any other material which is in the books and records of EDH are confidential except when used in proceedings against EDH.

683A.0873(4) Sponsor may inspect and examine all books and records to the extent necessary to fulfill all contractual obligations to insured persons, subject to restrictions in the written agreement between Sponsor and EDH.

683A.0877(1-7) The following pertains to fiduciary accounts, to the extent applicable:

1. All insurance charges and premiums collected by EDH on behalf of Sponsor and return premiums received from Sponsor are held by EDH in a fiduciary capacity.
2. Money must be remitted within fifteen (15) days to the person or persons entitled to it or be deposited within fifteen (15) days in one or more fiduciary accounts established and maintained by EDH in a bank, credit union or other financial institution in this state. The fiduciary accounts must be separate from the personal or business accounts of EDH.
3. If charges or premiums deposited in an account have been collected for or on behalf of more than one plan sponsor, EDH shall cause the bank, credit union or other financial institution where the fiduciary account is maintained to record clearly the deposits and withdrawals from the account on behalf of each sponsor.
4. EDH shall promptly obtain and keep copies of the records of each fiduciary account and shall furnish any sponsor with copies of the records which pertain to him upon demand of the Sponsor.
5. EDH shall not pay any claim by withdrawing money from the fiduciary account in which premiums or charges are deposited.
6. Withdrawals must be made as provided in the agreement between Sponsor and EDH for:
 - a. Remittance to the Sponsor
 - b. Deposit in an account maintained in the name of the Sponsor
 - c. Transfer to and deposit in an account for the payment of claims
 - d. Payment to a group policyholder for remittance to the insurer entitled to the money
 - e. Payment to EDH for commission, fees or charges
 - f. Remittance of return premiums to persons entitled to them
7. EDH shall maintain copies of all records relating to deposits or withdrawals and, upon the request of Sponsor, provide Sponsor with copies of those records.

683A.0879(1-8) EDH shall approve or deny health claims within thirty (30) days of receipt and shall pay claims within thirty (30) days of approval. If EDH requires additional information to approve or deny a claim, EDH shall notify the claimant of the request for additional information within twenty (20) days after receipt of the claim. EDH shall notify the provider of all the specific reasons for the delay. EDH shall approve or deny the claim within thirty (30) days of receiving additional information, and, if the claim is approved, pay the claim within thirty (30) days of receiving additional information. Interest on claims that are not paid shall equal prime rate at the largest bank in Nevada as determined by the Commissioner of Financial Institutions on January 1 or July 1, plus six percent (6%), calculated from thirty (30) days after the date on which the claim is approved until the claim is paid. Claimants shall not be requested to

resubmit information already provided, unless a legitimate reason is provided and the purpose is not to delay payment, harass the claimant, or discourage filing of claims. EDH shall not pay only a part of a claim that has been approved and is fully payable. A court shall award costs and reasonable attorney's fees to the prevailing party in an action brought pursuant to this section. Payment of interest for the late payment of an approved claim may be waived only if the payment was delayed because of an act of God or other cause beyond the control of EDH. The Nevada Commission of Insurance may require EDH to provide evidence which demonstrates that EDH has substantially complied with the requirements set forth in this section, including payment within thirty (30) days or at least ninety-five percent (95%) of approved claims or at least ninety percent (90%) of the total dollar amount for approved claims. If the Nevada Commission of Insurance determines that EDH is not in substantial compliance with the requirements set forth in this section, EDH may be required to pay an administrative fine in an amount to be determined by the Nevada Commission of Insurance.

683A.088 Each claim paid by EDH from money collected for or on behalf of Sponsor must be paid by a check or draft upon and as authorized by Sponsor.

683A.0883(1-2) (1) The compensation paid to EDH for its services may be based upon premiums or charges collected, on number of claims paid or processed or on another basis agreed upon by EDH and Sponsor, except as provided in subsection (2) below.

(2) Compensation paid to EDH may not be based upon or contingent upon: (a) The claim experience of the policies which it handled; (b) The savings realized by EDH by adjusting, settling or paying the losses covered by Sponsor

6. **New Jersey.** The Parties desire to supplement the Agreement to specifically reference certain provisions of New Jersey law applicable to third party administrators and to comply with those laws to the extent applicable and not preempted by federal law, as follows:

NJRS 17B:27B-6 The Agreement shall be retained as part of the official records of EDH for the
NJAC 11:23-3.1(b) duration of the Agreement and for five years thereafter.

NJRS 17B:27B-6(a) EDH will provide Sponsor the services described in the Agreement and will be
NJAC 11:23-3.1(c)(1) compensated as stated in the Agreement.

NJRS 17B:27B-6(b) Sponsor will be responsible for the provision of enrollment and eligibility
NJAC 11:23-3.1(c)(2)(i) information to EDH.

NJRS 17B:27B-6(b) Sponsor will be responsible to EDH to arrange for a preliminary or escrowed
NJAC 11:23-3.1(c)(2)(ii) deposit of funds by Sponsor as described in the Agreement, if any.

NJRS 17B:27B-6(b) Sponsor will be responsible for the transmittal of funds from Sponsor to EDH
NJAC 11:23-3.1(c)(2)(iii) for the purpose of paying claims as described in the Agreement.

NJRS 17B:27B-6(b) Sponsor will be responsible for notifying EDH of modifications in the
NJAC 11:23-3.1(c)(2)(iv) Sponsor's benefit plans.

NJRS 17B:27B-6(b) Sponsor will be solely responsible for the cost of any ineligible claims paid by
NJAC 11:23-3.1(c)(2)(v) EDH.

NJRS 17B:27B-6(b) NJAC 11:23-3.1(c)(2)(vi)	Sponsor will be solely responsible for any liability incurred on account of any overdue payments by EDH.
NJRS 17B:27B-6(b) NJAC 11:23-3.1(c)(2)(vii)	Sponsor will be solely responsible for procuring any reinsurance or stop-loss insurance relative to the benefit plans under the Agreement.
NJRS 17B:27B-6(c) NJAC 11:23-3.1(c)(3)(i)	EDH will maintain appropriate back-up systems against the loss of the records.
NJRS 17B:27B-6(c) NJAC 11:23-3.1(c)(3)(ii)	EDH will establish and maintain appropriate financial controls.
NJRS 17B:27B-6(c) NJAC 11:23-3.1(c)(3)(iii)	Sponsor may at its sole expense employ an outside auditor to conduct any claims audit under the Agreement.
NJRS 17B:27B-6(c) NJAC 11:23-3.1(c)(3)(iv)	EDH hereby represents and warrants to Sponsor that EDH has, and during the term of the Agreement will maintain, general liability insurance, valuable papers insurance, errors and omissions coverage, and such other coverage as required under NJAC 11:23-3.1(c)(3)(iv) in connection with EDH's performance of its obligations under the Agreement.
NJRS 17B:27B-6(c) NJAC 11:23-3.1(c)(3)(v)&(vi)	EDH will make all records referred to the Agreement, including, without limitation, claims disbursements and experience records, available for the Sponsor's inspection from time to time during normal business hours. In addition, the claims disbursements and experience records will be available at Sponsor's request, including monthly reports if requested.
NJAC 11:23-3.1(c)(3)(vii)	To the extent applicable, EDH will prepare and provide to Sponsor all the data for any prompt-pay reports as may be required for Sponsor to comply with New Jersey law. No prompt-pay penalties are provided for under the Agreement.
NJRS 17B:27B-7(b) NJAC 11:23-3.2(b)	Sponsor shall own the records generated by EDH pertaining to Sponsor, except that EDH shall retain the right to continuing access to books and records to permit EDH to fulfill all of its contractual obligations to Sponsor.
NJRS 17B:27B-7(c) NJAC 11:23-3.2(c)	If the Agreement is canceled, EDH may, with the written agreement of Sponsor, transfer all records to a new administrator instead of retaining them for five years.
NJRS 17B:27B-10 NJAC 11:23-3.5	All funds remitted to EDH by Sponsor shall be held by EDH in a separate account maintained in the name of Sponsor or in a separate account maintained jointly in the names of Sponsor and EDH. If funds have been collected by EDH from a provider or enrollee on behalf of Sponsor, they shall be maintained in a separate account maintained in the name of Sponsor, maintained jointly in the names of Sponsor or EDH or remitted to the Sponsor, as provided in the Agreement. Funds shall not be commingled with any other funds of EDH or other clients of EDH. If an account is jointly held by EDH and Sponsor, it shall be maintained in a State or Federally chartered

insured depository institution, and EDH shall provide Sponsor with a monthly accounting of all transactions in that account. Sponsor shall have the responsibility to make available to EDH funds necessary to enable EDH to pay claims in a timely manner, as provided in the Agreement. EDH shall not be liable to any party for the failure of Sponsor to make funds available to pay claims. Copies of all records pertaining to the collection of funds shall be made available to Sponsor as provided in the Agreement.

NJRS 17B:27B-11
NJAC 11:23-3.6

Any policies, certificates, booklets, termination notices or other written communications delivered by Sponsor to EDH for delivery to enrollees shall be delivered by EDH promptly, in accordance with the instructions of Sponsor and the terms of the Agreement.

- 7. **Wisconsin.** EDH shall prepare sufficient copies of a written notice approved in advance by Sponsor for distribution to all Participants of Sponsor and either shall distribute the copies to the Participants or shall provide the copies to Sponsor for distribution to the Participants. The written notice shall contain all of the following: (a) the names and addresses of EDH and Sponsor; (b) an explanation of the respective rights and responsibilities of EDH, Sponsor, and the Participants; (c) a statement of the extent to which the plan is insured or self-insured, and an explanation of the terms "insured" and "self-insured."
- 8. **Wyoming.** Receipt by EDH of Claims shall be deemed receipt by Sponsor.

Notwithstanding any of the foregoing, in the event any of the provisions of any of the foregoing states' laws that are determined or cited as not being applicable to the Agreement are or become applicable to the Agreement, such provisions shall apply and shall supersede any provisions in the Agreement to the contrary.

IN WITNESS WHEREOF, the Parties have caused this Regulatory Addendum to be executed by the duly authorized representatives.

EMPLOYER DIRECT HEALTHCARE, LLC

By:  _____
DocuSigned by:
John Zutter
DE76E4C469614AA...
 Name: John Zutter _____
 Title: CEO _____

SCHOOL BOARD OF BREVARD COUNTY, FLORIDA

By: _____
 Name: _____
 Title: _____

HINGE HEALTH SERVICES ADDENDUM

This HINGE HEALTH SERVICES ADDENDUM (this “**Addendum**”) is made effective as of June 1, 2021 (the “**Effective Date**”) by and between Employer Direct Healthcare, LLC, a Delaware limited liability company with its principal place of business located at 2100 Ross Avenue, Suite 550, Dallas, Texas 75201 (“**EDH**”) and the School Board of Brevard County, Florida, a political subdivision of the State of Florida with its principal place of business located at 2700 Judge Fran Jamieson Way, Melbourne, Florida 32940 (“**Sponsor**”). This Addendum is made a part of that certain SurgeryPlus Services Agreement (the “**Agreement**”), dated effective as of the date hereof, by and between EDH and Sponsor.

1. **Scope.** EDH and Hinge Health, Inc. (“**Hinge Health**”) have a commercial agreement pursuant to which Hinge Health has authorized EDH to provide access to Hinge Health’s Programs, Products and Services (each, as defined herein) to employer-sponsored group health plans with which EDH has a contractual relationship. This Addendum is entered for the purpose of Sponsor’s group health plan(s) obtaining access to such Program, Products, and Services through EDH as part of the services provided by EDH under the Agreement.

2. **Hinge Health Program.** Hinge Health reduces group health plan chronic musculoskeletal (MSK) conditions spend by digitally delivering best practice care established by leading medical bodies. Hinge Health accomplishes this by uniquely delivering the three pillars of intervention that promote long term success: education, exercise therapy, and behavioral health. In connection with the services provided pursuant to the Agreement, Hinge Health will deliver the personalized care described herein to Participants who engage with and enroll in the various care programs set forth below (collectively the “**Hinge Health Program**” or the “**Program**”). Sponsor must, at a minimum, incorporate and offer the Chronic Program set forth above to Participants as a base level of service. However, additional Programs set forth above may be selected and offered upon written request.
 - a. **Prevention Program.** Hinge Health will provide a software only program to Participants (no sensors, coaching, or tablet). The Prevention Program is designed to increase education of Participants regarding key strengthening and stretching activities around healthy habits and is made available by Hinge Health at no additional charge provided that the Chronic Program defined in (b) below is offered by Sponsor to Participants.

 - b. **Chronic Program.** Hinge Health will deliver evidence-based care for joint pain in a Chronic Program that includes the following: personalized exercise therapy sessions guided by wearable motion-sensors, 1:1 access to personal health coach, personalized educational content, and behavioral health support. The Chronic Program is comprised of (i) the Hinge Health proprietary sensor-enabled exercise band systems and technologies; (ii) coaching and alert features; (iii) Cloud-based data capture and reporting capabilities; and (iv) personalized analytics capabilities (the “**MSK Kit**”). Participants in the Chronic Program may also be offered the non-invasive ENSO High Frequency Impulse Therapy™ pain treatment and device service (the “**ENSO**”), as deemed appropriate by Hinge Health, in its sole and exclusive authority, for symptomatic relief and management of chronic pain. The Chronic Program will be provided to Sponsor’s group health plan(s) at **\$995** per year for each Participant who engages in and enrolls in the Chronic Program.

 - c. **Acute Program.** The Acute Program includes live virtual sessions with a dedicated licensed physical therapist along with software guided rehabilitation and Participant education. If Sponsor selects and incorporates the Chronic Program, Sponsor may also elect to provide the Acute Program at a fee of **\$250** per year for each Participant who receives items or services through the Acute Program. However, a Participant enrolled in the Acute Program will only receive six virtual physical therapy sessions per episode prior to in-person healthcare provider or physical therapy care (additionally, other state laws may limit access without a physician’s referral). Once in-person healthcare provider or physical therapy care occurs, Participants can receive an additional six virtual physical therapy sessions per episode before the process repeats. Costs incurred by Sponsor’s group health plan(s) under the Acute Program for a specific Participant shall be offset against the **\$995** fees charged for such Participant should such Participant initially participate in the Acute Program, but later transition to the Chronic Program or the Surgery Program. In the case of such transition, should such Participant continue to participate in the Chronic Program beyond the one-year anniversary of such Participant’s enrollment in the Acute Program, Sponsor shall be billed the remainder of the Chronic Program or Surgery Program fees up to an annual maximum of **\$995** per the program per year. Should such Participant continue to participate in the Chronic Program or Surgery Program beyond the one-year anniversary of such individual’s enrollment in the Chronic Program or Surgery Program, Sponsor shall be billed an additional **\$995** for the new year.

- d. ***Surgery Program.*** The Surgery Program provides Participants with access to a physical therapist, a health coach, and sensor-guided exercise therapy, and covers both pre- and post-surgical rehabilitation for the most common MSK surgeries and is designed as a continuation of the Chronic Program. Hinge Health will provide the Surgery Program to Sponsor's group health plan(s) for a fee of **\$995** per year per Participant who engages in the Surgery Program. If Sponsor selects and incorporates the Chronic Program in (b) above, Sponsor may elect to provide the Surgery Program to Participants engaged in the Chronic Program for no additional fee (e.g., the annual cost for a particular Participant will not exceed **\$995** per year).
3. **Hinge Health Services.** Hinge Health will provide the following products and services in relation to the Program (collectively the "***Hinge Health Services***" or the "***Services***"):
 - a. EDH, Hinge Health, and Sponsor will agree on the process for contacting Participants to provide information about Hinge Health and the Hinge Health Program.
 - b. Participants that express an interest in a particular Hinge Health Program will undergo a clinical suitability evaluation by Hinge Health before confirming whether such Participants may enroll in the Hinge Health Program. Participants will register with Hinge Health online through the Hinge Health website or app, as described in the marketing materials, complete the screening process, and determine eligibility and clinical qualification.
 - c. Upon a Participant's enrollment in the Chronic Program or Surgery Program, such Participant will receive the following:
 - (i) a set of wearable sensors, a tablet computer installed with Hinge Health's mobile application (if offered and elected), and required accessories (collectively, the "***Products***"). Participants may access the Program through their own device, such as a mobile phone or through a Hinge Health-provided tablet computer, if such tablets are made available and Participant elects to receive one;
 - (ii) guidance through a core 12-week program that includes education, guided exercise, coaching, and facilitated social interactions; and
 - (iii) if, and as appropriate, Participants may also receive the ENSO device and accompanying gel pads and other required accessories (ENSO is offered solely to Chronic Program participants, but Hinge Health may, in its sole discretion, elect to offer ENSO to Participants in other programs).
 - d. Upon enrollment in the Program, Participants will have access to the Hinge Health musculoskeletal educational material, including, if applicable: (i) Personal Account, accessible via the Hinge Health application on the tablet; and (ii) Access to Hinge Health customer service representatives by toll-free number and Web for technical assistance concerning the Hinge Health Programs. Participants may move from one component of the Hinge Health Program to another component as their personal health situation warrants to another without exceeding a maximum fee of \$995 per person per year.
4. **Hinge Health Deliverables.** Hinge Health will provide the following deliverables in relation to the Program (collectively the "***Deliverables***"):
 - a. The Products (if applicable) will be delivered directly to Participants enrolled in the Program at the contact address provided for such Participant by Sponsor, its designee, or by Participant themselves.
 - b. Hinge Health agrees to regularly (up to monthly at Sponsor's request) deliver reports to EDH of appropriate metrics, in compliance with applicable law, which gauge the effectiveness and success of the Program including financial savings. EDH will provide such report(s) to Sponsor in connection with the standard monthly reports EDH provides Sponsor pursuant to the Agreement. Any such report shall be for Sponsor's internal use only.
 - c. EDH, Hinge Health, and Sponsor will jointly communicate the Program, Products, and Services to Participants through print and/or electronic communications. No Party will be permitted to direct any communications to Participants with respect to such subject matter without the consent of the other parties, which consent may be withheld in the sole discretion of such Party. Prior to making any

communication to Participants, EDH, Hinge Health, and Sponsor shall mutually agree on: (i) the written and visual content of the applicable print or electronic materials to be distributed and (ii) the allocation of responsibility and means of fulfillment with respect to any such communications. Hinge Health shall be responsible for all reasonable costs and expenses actually incurred by EDH or Sponsor related to Participant communications, provided that any such expenses are approved in advance by Hinge Health.

- 5. **Hinge Health Fee.** The fee for each component of the Program is set forth above, but will never exceed \$995.00 per year per Participant who engages in and enrolls in the Program (the "**Hinge Health Fee**"). However, the Hinge Health Fee for the Chronic and Surgery Programs associated with an individual Participant and their Cohort (defined below) will be paid in accordance with the 3 milestones for Participant engagement and pain reduction noted below. For the purposes of this Addendum, "**Cohort**" means all Participants who sign up for the Chronic and/or Surgery Program within any given month. On a monthly basis, EDH will bill Sponsor the Hinge Health Fees. Such invoices will provide details regarding such Hinge Health Fees and any reimbursable taxes. Sponsor shall pay EDH all Hinge Health Fees within thirty (30) days of the date of EDH's invoice to Sponsor, and EDH shall timely remit payment to Hinge Health. Should any Hinge Health Fee not be received by EDH within sixty (60) days of EDH's submission of an invoice to a Sponsor, EDH shall notify Hinge Health and Sponsor, and EDH shall engage in good faith attempts to resolve any payment issues or disputes between Hinge Health and Sponsor. If, following thirty (30) days of such engagement, payment still has not been received by EDH, Hinge Health may terminate its provision of the Program, Products, and Services to Sponsor. Hinge Health shall then be entitled to seek payment directly from Sponsor as an intended third-party beneficiary of this Addendum. Delinquent payments will be subject to interest at the applicable state default interest rate.

Milestone Payments

- Milestone 1: Participant enrolls in the Chronic and/or Surgery Program, receives the MSK Kit, and completes at least 1 exercise therapy session.
- Milestone 2: Cohort completes at least 4 exercise therapy sessions within the first 30 days of enrolling in the Chronic and/or Surgery Program.
- Milestone 3: Cohort completes at least 8 exercise therapy sessions within the first 60 days of enrolling in the Chronic and/or Surgery Program.

\$995 total is due and payable for each Participant in 3 increments based on the achievement by such Participant, and, in the case of Milestone 2 and Milestone 3 by such Participant's Cohort, of the following milestones. With respect to each Participant, the Milestone 1 payment of \$695.00 is due once such Participant achieves Milestone 1; the Milestone 2 payment of \$150.00 is due when such Participant's Cohort achieves Milestone 2; and the Milestone 3 payment of \$150.00 is due when such Cohort achieves Milestone 3. If the applicable Cohort does not achieve Milestone 2 or Milestone 3 then payment for such Milestone is not payable.

- 6. **ROI Guarantee.**
 - a. Hinge Health guarantees a 1.5:1 ROI to Sponsor for the Chronic Program during the Guarantee Period. Cost savings are assessed based on the reduction of pain as measured by the visual analog scale ("**VAS**"), before and after participating in the Hinge Health intensive 12-week phase of the Chronic Program. The guarantee period shall be represented as a guarantee effective for a twelve (12) month period from June 1, 2021 through May 31, 2022 (the "**Guarantee Period**").
 - b. To achieve a 1.5:1 ROI, the following calculated value needs to equal one and a half times the cost of the Program:

$$\frac{((\text{Pain at screening}) - (\text{Pain at 12 weeks}))}{(\text{Pain at screening})} \times 100 \times \$71.09 \times \text{number of participants} = \text{total cost saved}$$

*Based on Hinge Health's published clinical studies, Hinge Health saves \$71.09 in MSK costs per Participant per year for every 1 percent decrease in pain.

Example: By way of example, assume 300 Participants go through the Program at a total cost of \$298,500 (300 participants multiplied by \$995). If the average pain reduction is 12% per Participant, then the total Program savings would equal \$255,924 (12 x \$71.09 x 300). Thus, the Program did not achieve the guaranteed ROI of 1.5:1.

- c. If Hinge Health does not achieve a 1.5:1 ROI according to the metric above, Sponsor will receive a prorated refund. Program performance will be assessed, and any required refunds issued at the end of the Guarantee Period for Participants that completed the core 12-week Chronic Program during the Guarantee Period.

At the end of each 12-month period, starting on the Effective Date, for Participants that completed the core 12-week Chronic Program during the preceding 12 months.

Example: By way of example, based on the scenario described in Section 6(b) of this Addendum, the formula set forth would yield Sponsor a refund of $[(\$447,750 - \$255,924)/\$447,750]*\$298,500 = \$127,884$.

- d. The ROI guarantee set forth in this section is in lieu of any savings or performance guarantee set forth in the Agreement, but only with respect to the Hinge Health Program and Services.
7. **Medical Services.** Sponsor acknowledges and agrees that neither EDH nor Hinge Health directly provide medical or physical therapy services. Instead, those professional services are provided by licensed health care providers through a contractual relationship with Hinge Health MSO, Inc. Hinge Health MSO, Inc. is an independent management entity that contracts with a national network of United States based physicians, physical therapists, and other health care providers who provide clinical telehealth services. Hinge Health MSO contracts with various professional organizations to provide the clinical portion of the Services via the Hinge Health platform to Participants. Sponsor further acknowledges and agrees, notwithstanding anything to the contrary in the Agreement, that EDH shall not be responsible for verifying, obtaining assurances of, or obtaining or providing any notification related to any information, qualifications, credentials, or accreditations of any health care provider involved in the provision of the Hinge Health Program, Products, or Services.
 8. **Plan Compliance.** Sponsor shall be responsible for updating or amending its plan documents to describe and incorporate the Hinge Health Program, Products, and Services as available for eligible Participants. Except as set forth herein, EDH shall have no responsibility or obligation with respect to interpretation, application, or administration of the Plan. Sponsor or its Plan Administrator shall have all responsibility for and shall maintain compliance with all legal requirements applicable to the Plan and satisfaction of any and all reporting, notice, disclosure, and filing requirements imposed by applicable state and federal laws and regulations, including ERISA. Sponsor acknowledges and agrees that EDH will not be deemed to be a legal or tax advisor as a result of the performance of any of its duties under this Addendum, including but not limited to Claims processing, COBRA or HIPAA administration, or with respect to any applicable taxes, fees, or other assessments by a government authority. Except as otherwise provided herein, EDH makes no representation concerning federal, state, or local laws, rules or regulations applicable to Sponsor or the Plan. Sponsor must seek its own counsel for legal advice and guidance.
 9. **Use of Marks.** EDH, Hinge Health, and Sponsor each reserve the right to the control and use of their respective names, copyrights, symbols, trademarks, and service marks (the "**Marks**"). No party shall use the other parties' Marks in advertising, promotional materials, or otherwise without the prior written consent of the party owning such Marks. Notwithstanding the foregoing, within a reasonable amount of time after the Effective Date, the Parties will cooperate in the mutual approval and distribution of a public announcement announcing the relationship of the parties and certain terms of this Addendum.
 10. **Arising Data.** As used in this Addendum, Arising Data is, and shall remain, the sole and exclusive property of Hinge Health to the extent that the Participant to whom such Arising Data relates grants Hinge Health such rights. "**Arising Data**" means data that Hinge Health receives directly from Participants utilizing the Program, that Hinge Health later aggregates and anonymizes, including arising from the provision of the Program provided pursuant to this Addendum including data points such as Participant program usage, program data, program feedback, algorithms, and Participant reported outcome measures. Hinge Health may use Arising Data for any lawful purpose. Hinge Health shall have the right to publish Arising Data for scientific whitepapers or similar publication, provided such data is anonymized prior to publication. Sponsor hereby assigns to Hinge Health its right, title and interest in and to all Arising Data in or arising out of or in connection with the Services and shall execute all instruments as may be reasonably necessary for such assignment of Arising Data consistent with this clause. Hinge Health grants to EDH and Sponsor a royalty-free, nontransferable, non-exclusive, worldwide, right and license to use, for the duration of this Addendum for EDH's internal business purposes, any Arising Data shared with EDH as part of the Program.
 11. **Conflicting Provisions.** Except as specifically provided herein, all terms and conditions of the Agreement shall remain in full force and effect. Unless otherwise provided herein, the terms and conditions of the

Agreement shall apply to EDH's provision of the Hinge Health Program, Products, and Services, *mutatis mutandis*, as they apply to EDH's provision of Network access or related administrative or coordinative services under the Agreement, and such terms and conditions shall otherwise be construed and applied accordingly. Similarly, unless otherwise provided herein, the terms and conditions of the Agreement shall apply to Hinge Health, *mutatis mutandis*, as they apply to a Provider under the Agreement, and such terms and conditions shall otherwise be construed and applied accordingly. In the event of any conflict between the terms of the Agreement and this Addendum with respect to the subject matter of this Addendum, the terms of this Addendum shall control. The following Sections of the Agreement shall not apply to the services coordinated or provided by EDH pursuant to this Addendum: Section 2.2; Section 2.3; Section 4.1; Section 4.2; Section 4.3(b); Section 4.4; and Section 8.2.

IN WITNESS WHEREOF, the Parties have caused this Addendum to be executed by the duly authorized representatives.

EMPLOYER DIRECT HEALTHCARE, LLC

DocuSigned by:

By: _____
DE76E4C469614AA...
Name: John Zutter
Title: CEO

SCHOOL BOARD OF BREVARD COUNTY, FLORIDA

By: _____
Name: _____
Title: _____