

## **PLAN AGREEMENT**

This Plan Agreement (this "Agreement") is made effective as of February 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 City of Sebring, a Florida municipal corporation, with its principal place of business located at 368 South Commerce Avenue, Sebring, Florida 33870 ("Sponsor"). EDH and Sponsor are referred to collectively as the "Parties" and individually as a "Party."

### **RECITALS**

- I. EDH 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 EDH.
- II. EDH's contracted network of providers is made available to individuals through self-funded health benefit plans that incorporate EDH's network offering.
- III. As part of EDH's network offering, EDH assists the individuals electing to utilize EDH's network with administrative, settlement, case management, and travel and logistics services relating to the individuals' medical procedures.
- IV. Sponsor has established a self-funded health benefit plan for the benefit of Sponsor's employees, employees' dependents, and retirees.
- V. Sponsor wishes to engage EDH so that EDH's network offering may be incorporated into Sponsor's health benefit plan and made available to the eligible participants enrolled in such plan.

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

### **ARTICLE 1. DEFINITIONS**

Except as otherwise specifically indicated, 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):

- 1.1 "Accompanying Person" means an individual utilizing Travel Services other than a Participant.
- 1.2 "Case Rate" means the pre-determined charge for an Episode of Care which includes the total of all technical, professional, facility, and other medical services billed by Providers and associated with a Diagnosis Case Code.
- 1.3 "Convenience Item" means a service, supply, or otherwise which is not considered necessary for a Participant's medical care. "Convenience Items" may include, without limitation, telephone use, premium television access, and guest meals. A Participant shall have sole financial responsibility for any Convenience Item.
- 1.4 "Diagnosis Case Code" means the code, determined by a Provider, identifying the anticipated Episode of Care for a Participant. In the case of an inpatient procedure, the "Diagnosis Case Code" will be the Medicare Severity Diagnosis Related Group ("MS-DRG") and/or the Current Procedural Terminology Codes ("CPT Codes") associated with the procedure which may be further modified to identify the specific care protocol.
- 1.5 "Episode of Care" means the collective services rendered by any Provider and/or any Provider's professional and medical staff relating to a Diagnosis Case Code. An "Episode of Care" begins on the day a Participant first receives services from a Provider related to such Diagnosis Case Code and ends when the Participant is discharged from the hospital or other healthcare facility to return or travel home. Services provided and expenses

billed as part of an "Episode of Care" commonly include, but are not necessarily limited to: (a) equipment used by a hospital or facility; (b) in-hospital or in-facility medications or biologics and supplies; (c) implants; (d) laboratory testing and services; (e) in-hospital meals; (f) hospital confinement days; (g) pre and post in-hospital or in-facility nursing care; (h) pre and post in-hospital physical therapy; (i) follow-up consultations; and (j) any other Medically Necessary Service related to the Diagnosis Case Code. An "Episode of Care" shall not include: (w) any diagnostic testing provided in advance of a medical procedure to determine whether or not such procedure is a Medically Necessary Service; (x) any Convenience Items; (y) any medical procedure or medical care that is not a Medically Necessary Service and (z) any Serious Reportable Events ("SREs"), as defined by the National Quality Forum.

1.6 "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"), all as amended from time to time.

1.7 "Medically Necessary Service" means a medical service or supply which is determined by a licensed medical professional to be appropriate and necessary for the symptoms, diagnosis or treatment of the medical condition of a Participant and within standards of medical practice within the community for that level of care.

1.8 "Network" means EDH's 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 EDH. The "Network" comprises a part of EDH's branded offering commonly referred to as the SurgeryPlus™ benefit offering.

1.9 "Network Services" means the services offered by EDH to Participants electing to utilize the Network for an Episode of Care. "Network Services" include EDH's assistance with the administrative, settlement, case management, and/or travel and logistics aspects of an Episode of Care and EDH's facilitation of interaction among Sponsor, Providers, Participants, the Plan, and/or the Plan Administrator. The "Network Services" comprise a part of EDH's branded offering commonly referred to as the SurgeryPlus™ benefit offering.

1.10 "Participant" means any person who has enrolled for coverage in the Plan and is eligible to utilize the Network. "Participants" may include persons eligible for coverage as employees, dependents, retirees, through COBRA, or otherwise as persons in good standing under the terms of the Plan.

1.11 "Plan" means the self-funded health benefit plan offered by Sponsor.

1.12 "Plan Administrator" means a third-party administrator engaged by Plan Sponsor to administer benefits offered pursuant to the Plan.

1.13 "Provider" means a licensed or otherwise legally authorized provider of medical, surgical, hospital, professional, and/or other health-related services that offers such services through the Network. A "Provider" may be a physician, physician group, nurse or nurse practitioner, diagnostic or therapeutic ancillary services provider, facility, lab, or provider of durable medical or other necessary equipment.

1.14 "Travel Services" means the services coordinated by EDH pursuant to this Agreement relating to a Participant's and Accompanying Person's transportation and lodging during an Episode of Care.

1.15 "Treating Physician" means a Participant's local treating physician, primary care physician, and/or any other physician or medical care provider supplying medical records for review by a Provider

## **ARTICLE 2. EDH'S ROLE AND RESPONSIBILITIES**

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, including physicians and healthcare facilities, to cooperate with EDH's credentialing program. Such credentialing program may require such Providers to meet National Committee for Quality Assurance credentialing standards or Joint Commission on Hospital Accreditation credentialing standards. EDH may also require Providers to comply with additional credentialing practices and programs, and EDH may require Providers to provide EDH with documentation supporting such credentialing.

(b) **Information Regarding Providers.** EDH will request that Providers provide EDH with accurate and complete information such that EDH can effectively inform Sponsor and Participants about the availability, quality, and efficacy of the medical services offered by each Provider through the EDH member website. Providers shall be solely responsible for the accuracy and completeness of such information.

2.3 **Utilization and Quality Assurance.**

(a) **Utilization Strategy.** EDH will use commercially reasonable efforts to assist Sponsor with the performance of Sponsor's obligation to formulate and deliver a written utilization strategy relating to the Network and Network Services, as further described in Exhibit A attached to this Agreement.

(b) **Notices to Participants.** At a minimum, 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 standards for the transfer of information relating to any Participant, EDH will periodically provide Sponsor with reports summarizing: (a) utilization of the Network and Network Services by Participants and (b) the medical outcomes of Participants utilizing the Network and Network Services for an Episode of Care. Upon reasonable written request, EDH will provide Sponsor access to pertinent documents maintained by EDH and required in connection with such reports, subject to the confidentiality requirements contained in Article 6 of this Agreement.

2.4 **Parties Are Not Providers.** The Parties acknowledge and agree that neither Party will provide medical advice, render any medical judgment, or make any medical recommendation (as to any Provider or medical treatment) to any Participant or to any other person or entity. The Parties further acknowledge and agree that Providers shall be solely responsible for (a) all matters relating to medical treatment and/or procedures of Participants and (b) 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 by automobile or airplane to a Provider for an Episode of Care. The Parties acknowledge and agree that it shall be the sole responsibility of Participant to obtain advice from the Provider or the Participant's Treating Physician whether, in such physician's independent medical opinion, Participant is fit to travel to Provider's location. Utilizing appropriate HIPAA standards regarding the release of medical records, EDH will assist a Participant, or the Participant's representative, with the collection and transfer of medical records and other documentation among the Participant, Treating Physician, and Provider.

2.6 **Limited Role of EDH.** The Parties acknowledge and agree that EDH's role is strictly limited to offering the Network and providing the Network Services. The Parties further acknowledge and agree that EDH is not a fiduciary of Sponsor or the Plan, and EDH shall not be deemed to have any discretionary authority or control regarding management of Sponsor or management or interpretation of the Plan. The Parties further acknowledge and agree that EDH does not assume, insure, guaranty, or underwrite the liability, responsibility, or performance of any other party. The Parties further acknowledge and agree that EDH shall have no responsibility for collecting premiums or contributions for insurance coverage or for establishing a premium fiduciary account.

2.7 **Disclaimer of Warranties.** Except as expressly set forth in this Agreement, the services provided by EDH under this Agreement are furnished as is, where is, with all faults and without warranty 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: (a) any Provider or other vendor providing services relating to an Episode of Care; or (b) 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 on the basis of race, religion, national origin, sex, marital status, sexual orientation, health status, disability, source of payment for services, or age.

2.9 **Written Agreement.** The Parties understand and agree that EDH is not permitted to act without a written agreement between EDH and Sponsor. 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 five (5) years thereafter.

### **ARTICLE 3. SPONSOR'S ROLE AND RESPONSIBILITIES**

3.1 **Project Executive.** Sponsor will designate in writing an individual project executive having the authority to assist EDH in implementing and marketing the Network and Network Services (the "Project Executive"). The Project Executive will 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 employee claims data, including protected health information, so that EDH may most accurately analyze savings and, subject to the approval of Sponsor, implement appropriate targeted marketing strategies; (b) providing EDH with Participants' eligibility and enrollment data to be used by EDH for testing and implementation purposes; (c) amending the Plan to incorporate the Network and Network Services as available for eligible Participants who require certain medically necessary procedures and who select to receive such treatment from Providers participating in the Network; (d) facilitating the coordination of the operational processes of EDH, Sponsor, the Plan, and/or any Plan Administrator with regard to eligibility verification, case management, pre-certification, and billing; (e) facilitating EDH's integration with other health services providers, plans, or third-party administrators; (f) identifying and facilitating communication opportunities for EDH to reach Participants needing treatments or procedures available through the Network; and (g) approving a written utilization strategy as set forth in Exhibit A and permitting its subsequent execution.

3.3 **Marketing.** Sponsor will use commercially reasonable efforts to encourage Participants to utilize the Network and Network Services. Without limiting the generality of the preceding sentence, Sponsor's efforts shall include the approval and assistance with: (a) the delivery of a written utilization strategy, as described in Exhibit A attached to this Agreement; (b) the implementation of an introductory and ongoing communication plan consistent with such utilization strategy; (c) the provision of introductory and ongoing education and information to Participants about the Network and Network Services; and (d) the implementation of EDH's member website on Sponsor's website specifically for Participants.

3.4 **Employee Eligibility.** On a weekly basis, whether directly or indirectly, Sponsor will provide EDH an employee eligibility file per the specifications outlined by EDH during the implementation process. Provision of such employee eligibility file is imperative so that EDH may properly determine whether a participant is entitled to Network Services and to ensure the appropriate calculation of EDH Fees.

3.5 **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 another Party's Marks in advertising, promotional materials, or otherwise without the prior written consent of the Party owning such Marks. Notwithstanding anything to the contrary in this Agreement, the Parties agree that, within a reasonable

amount of time after the Effective Date, the Parties will distribute a mutually approved press release announcing certain terms of this Agreement. Additionally, notwithstanding anything to the contrary in this Agreement, Sponsor will permit Sponsor's logo to be displayed on EDH's website and in EDH's marketing materials to current or prospective clients, provided that any use of Sponsor's logo shall conform to the reasonable guidelines and specifications set forth by Sponsor. In addition, and for the avoidance of doubt, EDH's provision of information related to Providers, the Network, or the Network Services to third parties under executed non-disclosure agreements, including information gathered in EDH's credentialing process, shall not be prohibited under this Agreement.

3.6 **Plan Interpretation and Compliance.** Sponsor shall be the final arbitrator and have the final authority regarding interpretation, application, and administration of the Plan. Accordingly, EDH shall have no responsibility or obligation with respect to interpretation, application, or administration of the Plan. Sponsor shall bear all responsibility for the Plan's compliance with applicable state and federal laws and regulations, including the Federal Employment Retirement Income Security Act ("ERISA"). In furtherance of such obligation, Sponsor shall be solely responsible for satisfying any and all reporting, notice, disclosure, or filing requirements imposed by ERISA or any other state or federal law or regulation applicable to the Plan.

3.7 **Taxes.** Sponsor or the Plan, as applicable, shall be solely responsible for the payment of all required federal, state, or local taxes which may arise as a result of the services administered by EDH pursuant to this Agreement. Accordingly, EDH shall have no obligation with respect to payment of any such taxes.

#### **ARTICLE 4. SCHEDULING, PRICING, AND PAYMENT**

4.1 **Provider Acceptance of Patient.** Following Provider's initial review of Participant's medical records and information, and subject to a physical examination and medical assessment of Participant, as needed, Provider will confirm to EDH whether or not, in Provider's independent medical opinion, Participant is a suitable candidate for 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. Provider will establish treatment protocols for each Episode of Care and modify such protocols for Participant, if needed. Provider will notify EDH of any changes in the Diagnosis Case Code or anticipated Episode of Care. Sponsor shall confirm to EDH that Participant has met any obligations related to a Plan deductible prior to beginning an Episode of Care.

4.2 **Patient Scheduling.** Upon acceptance of a Participant by a Provider, EDH's confirmation of the Participant's coverage under the Plan, and EDH's receipt of payment from the Participant of the Participant's remaining deductible (if applicable), EDH will coordinate and schedule the services to be provided in connection with the anticipated Episode of Care among the Participant, the Provider, and any vendors of Travel Services, if applicable.

#### **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 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 (each such claim, fee, cost, expense, or charge, a "Claim" and collectively, "Claims"). Any Claim related to medical services rendered by a Provider will be charged by EDH and paid by Sponsor according to the Case Rates or any other pricing terms independently agreed to by EDH and the Provider. EDH will itemize and fully disclose any Claims in an Invoice (defined below).

(b) **EDH Fees.** In addition to payment for Claims, each month, Sponsor shall pay to EDH a fee equal to \$4.00 per eligible employee of Sponsor (the "Network Use Fee"). During the first year of the Initial Term, Sponsor shall receive a discount on the Network Use Fee. Accordingly, during the first year of the Initial Term only, the Network Use Fee shall be \$3.00 per eligible employee of Sponsor. Additionally, each month, Sponsor shall pay EDH a fee for EDH's marketing and implementation services equal to \$0.25 per eligible employee of Sponsor (the "Marketing Fee"). The Network Use Fee and the Marketing Fee shall be collectively referred to as the "EDH Fees." The number of eligible employees to be used in calculating the EDH Fees shall be the monthly weighted average of

eligible employees of Sponsor according to the Sponsor-provided employee eligibility files of the prior month. EDH will fully disclose the EDH Fees in an Invoice.

(c) **Changes in Plan Design.** Sponsor acknowledges and agrees that, as of the Effective Date, the Plan documents do not include any requirement that EDH and/or the Network be the exclusive source of medical coverage for any procedure or category of medical services (any such requirement in the Plan documents, a "Plan Carveout"). If at any time during the term of this Agreement the Plan documents are amended to include a Plan Carveout other than a Plan Carveout for bariatric medical procedures, then, during the period in which any such Plan Carveout is effective, the method for calculating the Network Use Fee specified in Section 4.3(a) shall be negotiated and agreed to by the parties.

#### 4.4 **EDH Savings Guarantee.**

(a) **Guarantee.** Within a reasonable time after expiration of the Initial Term (defined below), EDH will compare all Episodes of Care over the Initial Term to Sponsor's actual historical bundled case rates and claims data, where available and applicable, or if not available or applicable, to EDH's observed historical average bundled case rates and claims data (in either case, the "Historical Case Rates"). Using the Historical Case Rates determined to be applicable by EDH, EDH will calculate Sponsor's savings during the Initial Term based on the difference between the actual Case Rates paid by Sponsor to EDH during the Initial Term and the Historical Case Rates, avoided complication savings, and avoided procedure savings (the "EDH Savings"). At the end of the Initial Term, EDH will provide Sponsor with a tabulation of the EDH Savings and the Network Use Fees over the Initial Term. Any Network Use Fees paid by Sponsor in excess of the EDH Savings shall be credited to Sponsor (the "Guarantee Amount") such that the Network Use Fees and EDH Savings are equal over the Initial Term (the "Guarantee"). If applicable, the Guarantee Amount will be credited by EDH against future amounts due from Sponsor during a Renewal Term (defined below), or if a Renewal Term is not applicable, EDH will remit the Guarantee Amount directly to Sponsor.

(b) **Example of Calculation of Guarantee.** Assume that the actual Case Rates paid by Sponsor to EDH for procedures during the Initial Term were \$75,000. Also assume that the Historical Case Rates for the same procedures were \$100,000. Assume that Sponsor saved \$5,000 because of an avoided spine procedure, and Sponsor saved \$10,000 because of an avoided knee replacement complication. Finally, assume that Network Use Fees during the Initial Term totaled \$20,000. The calculation of EDH Savings would be \$100,000.00 minus \$75,000.00 plus \$5,000.00 plus \$10,000. Thus, the EDH Savings would be \$40,000.00. The calculation of net savings for the purposes of the Guarantee would be \$40,000.00 minus \$20,000.00, or \$20,000.00. Because the EDH Savings exceeded Network Use Fees over the Initial Term, EDH would not owe any amount to Sponsor as a result of the Guarantee.

(c) **Requirement of Utilization Strategy.** As set forth in Exhibit A to this Agreement, the Parties shall mutually agree to the terms of a written utilization strategy which shall include the schedule and nature of communications relating to Sponsor's implementation and marketing of the Network and Network Services. As further set forth in Exhibit A, a copy of such written utilization strategy shall be provided to each Party and shall be attached to this Agreement as an addendum to Exhibit A. Notwithstanding anything to the contrary in this Agreement, if the Parties cannot mutually agree to the terms of such a written utilization strategy or if such utilization strategy is not attached as an addendum to Exhibit A of this Agreement, the Guarantee shall be null and void.

4.5 **Invoicing and Payment.** Periodically during the term of this Agreement, EDH will prepare and submit to Sponsor an invoice fully disclosing and itemizing the amounts to be paid by Sponsor pursuant to the terms of this Agreement (each, an "Invoice"). Any such Invoice may include, without limitation, amounts related to Claims and/or amounts related to any applicable EDH Fees. Not more than 10 days after Sponsor's receipt of an Invoice, Sponsor will pay directly to EDH the amounts included in such Invoice 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. EDH will refund any deductible received by the Patient within fifteen (15) business days of cancellation of the Episode of Care and will promptly notify Sponsor of such refund of deductible. Any such charges will be listed in an Invoice.

4.7 **Urgent or Emergency Medical Services.** If at any time during an Episode of Care, Provider determines that any Medically Necessary Service that is not otherwise included within the Case Rate 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. Any such charges will be listed in an Invoice.

4.8 **Elective Changes by Participant.** This Agreement does not include or permit authorization of elective changes by a Participant after a Provider has accepted the Participant. Moreover, this Agreement does not cover changes to other factors reasonably under control of the Participant during an Episode of Care. Any request by Participant to Provider for such elective changes and Provider's decision to render such elective services will be considered outside of the Network and not subject to the scope of this Agreement. EDH will have no obligation or responsibility with respect to such elective 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, which, as defined in Article 1 of this Agreement, terminates upon discharge of a Participant. In the event an Episode of Care extends thirty (30) days beyond the date the Participant was originally admitted by a Provider, the Episode of Care shall be deemed terminated. The Parties acknowledge and agree that EDH shall have no obligations or liability with respect to services rendered by a Provider after the termination of an Episode of Care. The Parties further acknowledge and agree that payment for any services rendered by a Provider after the termination of an Episode of Care shall be the responsibility of the Participant, Sponsor, or the Plan.

4.10 **Proof of Patient Financial Responsibility.** EDH or a Provider may require proof of a Participant's ability to pay for additional or unforeseen services requested or required during an Episode of Care. Such assurance may take the form of proof of coverage under the Plan or a deposit, surety, or letter of credit in such amount as reasonably required.

4.11 **Disputes Regarding Adjustments to Price.** In the event that a Participant, Sponsor, or the Plan Administrator on behalf of Sponsor makes a factually supported assertion that a physician-initiated urgent or emergency service was not a Medically Necessary Service, EDH will retain an independent arbitrator having appropriate clinical expertise for the purpose of determining the medical necessity of such care. EDH will require Provider to supply to the arbitrator such Participant's medical records as the arbitrator may reasonably request. If the arbitrator determines that all or a portion of such care was not a Medically Necessary Service, the charges associated with such care will be canceled or reduced pro-rata with such determination. Each party to the arbitration will bear its respective arbitration expenses and each will pay its pro-rata portion of the arbitrator's charges and expenses. The arbitrator's decision shall be final and binding upon Provider, Participant, Sponsor, and/or Plan Administrator, as applicable.

4.12 **Delinquent Payment.** If Sponsor fails to pay EDH any amount due to a Provider within sixty (60) days following Sponsor's receipt of an Invoice itemizing such amount, EDH may notify the Provider of such failure, and EDH may engage in good faith efforts to facilitate resolution of any payment issues or disputes. If EDH is unable to resolve such payment issues or disputes within thirty (30) days of such engagement, EDH may notify the Provider, and the Provider may terminate its agreement with EDH with regard to the Sponsor failing to make payment. The Provider may then seek to recover payment for 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 shall be responsible for the full amount of the Provider's 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.** Past due accounts will be subject to the reimbursement of collection costs and the applicable state default interest rate.

## **ARTICLE 5. TERM AND TERMINATION**

5.1 **Term.** This Agreement shall commence as of the Effective Date and shall remain in effect for a three (3) year period ending January 31, 2024 (the "Initial Term"). Following the Initial Term, this Agreement shall automatically renew for successive one-year periods (each such period, a "Renewal Term") unless either Party provides written notification of non-renewal to the other Party not less than sixty (60) days prior to the end of the then-current term.

### **5.2 Termination.**

(a) **Termination for Convenience.** This Agreement may be terminated by either Party for any reason, or no reason whatsoever, upon one hundred eighty (180) days' written notice of termination to the other Party. 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 as follows: (i) the Guarantee provided in Section 4.4 shall be void, and EDH will have no payment obligation with respect Section 4.4; (ii) during the 180-day period following Sponsor's notice of termination, in lieu of payment of the Network Use Fee, Sponsor shall pay to EDH a fee equal to the greater of (A) thirty-five percent (35.0%) of the aggregate sum of all Claims arising during that period or (B) \$4.00 per eligible employee of Sponsor per month (in either case, the "Early Termination Fees"); and (iii) Sponsor shall immediately pay EDH a fee equal to \$24.00 per eligible employee of Sponsor (the "Breakup Fee"), provided that Sponsor shall not be obligated to pay the Breakup Fee if Sponsor provides notice of termination to EDH during the final twelve (12) months of the Initial Term. The number of eligible employees to be used in calculating any such Early Termination Fees or Breakup Fee shall be the monthly weighted average of eligible employees of Sponsor according to the Sponsor-provided employee eligibility files of the month prior to Sponsor's notice of termination. EDH will itemize and fully disclose the Early Termination Fees and Breakup Fee in monthly Invoices during the period following Sponsor's notice of termination. 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 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 obligation to be performed by either Party under this Agreement that is not cured within thirty (30) days of written notice of such breach or for which reasonable steps to cure are not undertaken and diligently and continuously pursued if such cure cannot reasonably be achieved during such thirty (30) day period.

(c) **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 of this Agreement for any reason shall not affect the obligation of any Party to pay any amount due or to perform any duty that arose prior to the effective date of such termination. Upon termination 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 of this Agreement for any reason, EDH shall continue to satisfy all of its obligations under this Agreement relating to the medical procedure of any Participant which was scheduled or coordinated by EDH on or before the effective date of such termination but was not to be completed until after the effective date of such termination. The continuing obligations of EDH pursuant to the



preceding sentence 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 EDH Fees incurred as a result of the services rendered after termination 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 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 this Agreement, including medical records, 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 cases, 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 or Sponsor's representatives 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. EDH or any Provider may charge a reasonable amount for retrieving, copying, or transmitting such records.

### 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 concerning such Party's pricing, methodologies, fee schedules, volume of business, methods, systems, practices, plans, and/or other confidential or proprietary information, except as may be required by law (collectively "Confidential Information"). Each Party acknowledges and agrees that it will hold all Confidential Information of the other Party in strict confidence. Each Party undertakes and agrees to use, and to cause each of its 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 acknowledges and agrees that it will not, without prior written consent of the other Party: (a) use any Confidential Information of the other Party for its own benefit; or (b) disclose any Confidential Information of the other Party to any third party. 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, inclusive of a request for public records, the Party receiving such request agrees to promptly notify the other Party 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 within ten (10) days of receipt of such notice. Each Party acknowledges and agrees that if a protective order or other remedy is not timely sought or obtained, the Party subject to the request will furnish only that portion of the Confidential Information which is legally required and such Party will use all reasonable efforts to ensure that confidential treatment will be accorded such Confidential Information. For the avoidance of doubt, this Agreement and any fee schedules and/or discounts associated with this Agreement shall be considered "Confidential Information."

(b) Participant Records. All medical, billing, and other records regarding Participants will be kept confidential by the Parties, in accordance with applicable state and federal laws. The Parties will 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 (as defined pursuant to HIPAA) from Sponsor, the Participants, the Plan, or the Plan Administrator. Accordingly, EDH shall comply with the provisions of that certain Business Associate Agreement dated November 30, 2020 executed by Sponsor and EDH, which is attached to this Agreement as Exhibit B and fully incorporated by reference. Sponsor will coordinate delivery and execution of any future agreements which may be required pursuant to HIPAA to allow Sponsor and/or Plan Administrator to transfer relevant Protected Health Information to EDH.

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

## ARTICLE 7. INDEMNIFICATION AND LIMITATION OF LIABILITY

### 7.1 Indemnification.

(a) EDH Indemnification. EDH will indemnify, defend, and hold harmless Sponsor and Sponsor's past, present, and future affiliates, governing persons, officers, equity owners, and employees from and against the full amount of any and all liabilities, losses, penalties, fines, damages, and expenses incurred or suffered by Sponsor with respect to any and all claims, controversies, suits, legal actions, and proceedings (including mediation and arbitration proceedings), whether civil, criminal, investigative, administrative, or legislative, asserted, initiated, filed, claimed, or otherwise pursued by a third party arising from or caused by (i) the breach of any term, covenant, agreement, condition, representation, or warranty under this Agreement by EDH, or (ii) the negligence or willful misconduct of EDH; provided, however, EDH's indemnification obligation under this Section 7.1(a) shall be prorated to the extent any such losses incurred by Sponsor are contributed to by a breach of this Agreement by Sponsor or the negligence or willful misconduct of Sponsor.

(b) Sponsor Indemnification. Subject to the limitations set forth in Fla. Stat. sec. 768.28, Sponsor will indemnify, defend, and hold harmless EDH and EDH's past, present, and future affiliates, governing persons, officers, equity owners, and employees from and against the full amount of any and all liabilities, losses, penalties, fines, damages, and expenses incurred or suffered by EDH with respect to any and all claims, controversies, suits, legal actions, and proceedings (including mediation and arbitration proceedings), whether civil, criminal, investigative, administrative, or legislative, asserted, initiated, filed, claimed, or otherwise pursued by a third party arising from or caused by (i) the breach of any term, covenant, agreement, condition, representation, or warranty under this Agreement by Sponsor, (ii) or (ii) the negligence or willful misconduct of Sponsor; provided, however, Sponsor's indemnification obligation under this Section 7.1(b) shall be prorated to the extent any such losses incurred by EDH are contributed to by a breach of this Agreement by EDH or the negligence or willful misconduct of EDH.

### 7.2 Limitation of Liability.

(a) Limitation of Liability. Except as set forth in Section 7.2(b), below, (i) in no event shall either Party be liable to the other 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 one million dollars (\$1,000,000). The foregoing limitations of liability represent the allocation of risk between the Parties under this agreement and are essential elements of the basis of the bargain between the Parties. Notwithstanding anything in this Section 7.2(a) to the contrary, to the extent the

limitations of liability set forth in Fla. Stat. § 768.28 are applicable to sponsor in any proceeding, the statutory limitations set forth therein shall apply in lieu of this Section 7.2(a).

(b) **Exceptions.** Notwithstanding anything to the contrary contained in Section 7.2(a) above, the foregoing limitations of liability in no way limit any rights and remedies either Party may have with respect to: (i) Sponsor's obligations to pay EDH any amount due pursuant to this Agreement, including, without limitation, Sponsor's obligations to pay Claims and EDH Fees; (ii) EDH's obligation to pay the Guarantee Amount to Sponsor; (iii) breaches of Section 6.3 of this Agreement; (iv) breaches of the Business Associate Agreement between the Parties, attached hereto as Exhibit B; or (v) willful misconduct or fraud.

7.3 **Survival.** The provisions of this Article 7 shall survive any termination 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) **Binding Arbitration.** If any such negotiation and/or mediation does not resolve the Dispute, and if any Party wishes to pursue the Dispute, the Dispute shall be submitted to binding arbitration administered by the American Arbitration Association ("AAA") in accordance with its Commercial Rules. The award of the arbitrator(s) shall be final and binding upon the Parties, and either Party may have judgment entered upon the award by 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 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 intend to comply with all applicable laws, rules and regulations, including: (i) the federal Anti-kickback Statute (42 U.S.C. § 1320a-7b(b)); (ii) the limitation on certain physician referrals, also referred to as the Stark Law (42 U.S.C. § 1395nn); and (iii) 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) the person executing this Agreement has the full authority and capacity to bind the 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 may only be amended with the mutual written consent of both Parties.

9.6 **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.

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

9.8 **Assignment.** This Agreement may be assigned, transferred, or conveyed by operation of law only with the prior written consent of the other Party, but such consent shall not be unreasonably withheld.

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

9.10 **Governing Law.** This Agreement shall be governed by ERISA and all applicable regulations thereunder. To the extent not preempted by ERISA or any other federal law, this Agreement shall be construed in accordance with the laws of the State of Texas without regard to any state choice of law statutes.

9.11 **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.

9.12 **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 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. The addresses for such notices or communications shall be as set forth below:

**To EDH:**

Employer Direct Healthcare, LLC  
Attn: General Counsel  
2100 Ross Avenue, Suite 550  
Dallas, Texas 75201

**To Sponsor**

City of Sebring  
Attn: City Administrator  
368 South Commerce Avenue  
Sebring, Florida 33870

9.13 **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.

9.14 **Force Majeure.** Neither Party shall be liable for any failure, inability or delay to perform hereunder, if such failure, inability, or delay is due to war, strike, fire, explosion, sabotage, accident, casualty, or any other cause beyond the reasonable control of the Party so failing, providing due diligence is used by that Party in curing such cause and in resuming performance.

9.15 **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.


*[Signature Pages to Follow]*

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

**Employer Direct Healthcare, LLC**

**City of Sebring**

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

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

Name: John Zutter

Name: Scott Noethlich

Title: CEO

Title: City Administrator

## EXHIBIT A

### Procedures Regarding Written Utilization Strategy

The Parties understand and agree that the objectives of each Party with respect to this Agreement can only be accomplished if the Network and Network Services are utilized by eligible Participants during the term of this Agreement. The Parties further agree that maximum utilization of the Network and Network Services by the Participants can most effectively be accomplished through the collaborative efforts of both Parties.

Accordingly, EDH and Sponsor shall mutually agree to the terms of a written utilization strategy which shall include the schedule and nature of communications relating to EDH and Sponsor's implementation and marketing of the Network and Network Services. Sponsor shall have the ultimate obligation to formulate and draft the written utilization strategy, obtain the signatures of each Party, and circulate a fully executed copy of such utilization strategy to both Parties. However, EDH will assist Sponsor by suggesting proven strategies and communications that may be integrated as milestones into the written utilization strategy.

Examples of such proven strategies and marketing communications that may be incorporated as milestones into the written utilization strategy include, but are not limited to: (a) meetings and training sessions between EDH and any of Sponsor's benefits or human resources representatives; (b) EDH's attendance at Sponsor's health fairs or vendor summits, (c) EDH-led webinar presentations or Q&A sessions for employees; (d) Sponsor-led open enrollment meetings or other Sponsor-led informational events; (e) training sessions relating to the Network and Network Services hosted by EDH; and (f) marketing communications released to any or all of the following: (i) enrolled employees or dependents; (ii) Sponsor's human resources employees, benefit teams, or health fair coordinators; (iii) Sponsor's benefit program vendors; (iv) Sponsor's safety managers or supervisors; and/or (v) any Sponsor-identified key contacts that may help drive employee awareness of the benefits associated with the Network and Network Services. EDH will carry out the design and delivery of any marketing communications agreed to by the Parties in the written utilization strategy.

The utilization strategy described herein shall be agreed to in writing by the Parties and shall be attached as an addendum to this Exhibit A on or before February 1, 2021. The Parties agree and understand that it may be necessary to revise certain terms of the utilization strategy to drive implementation and utilization. As a result, the Parties agree that they may amend the terms of an existing utilization strategy from time to time, but only by mutual written consent of the Parties.

**EXHIBIT B**

*[Exhibit B Begins on the Following Page]*



**CITY OF SEBRING**

**AGENDA ITEM SUMMARY**

MEETING DATE: December 15, 2020

PRESENTER: Robinson

AGENDA ITEM#: 8 H - Surgery Plus (EDH) Business Associate Agreement

BACKGROUND: Health insurance plan changes were presented to Council on October 20, 2020. Surgery Plus was a benefit added to allow employees and dependents the option to receive covered services in an inpatient, outpatient, surgery center, in-office, or other health care facility setting from a Provider in the Surgery Plus (EDH) Network at no cost to the employee and a reduced contract rate to the City. The attached Business Associate Agreement is required to outline the use and disclosure of protected health information. The agreement has been reviewed by Bob Swaine.

REQUESTED MOTION: Approve Business Associate Agreement as presented.

COUNCIL ACTION:

APPROVED  
DENIED  
TABLED TO: \_\_\_\_\_  
OTHER

Moved by: \_\_\_\_\_; Seconded by: \_\_\_\_\_  
Dettman Ivy Lowrance Stewart Carlisle

## **BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (this "BA Agreement") is made effective as of 11/30/2020, 2020 (the "Effective Date") by and between City of Sebring, a Florida municipal corporation, with its principal place of business located at 368 South Commerce Avenue, Sebring, Florida 33870 ("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. Subject to Florida Statute 119.07 *et seq.*, 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. Indemnification. Business Associate (the "Indemnifying Party") shall indemnify, defend and hold harmless the Covered Entity (the "Indemnified Party") and its officials, employees, affiliates, agents, and representatives from and against any and all third party liabilities, costs, claims, suits, actions, proceedings, demands, losses, and liabilities of any kind (including court costs and reasonable attorneys' fees) brought by a third party, arising from or relating to the acts or omissions of the Indemnifying Party or any of its directors, officers, subcontractors, employees, affiliates, agents, and representatives in connection with Indemnifying Party's performance under this BA Agreement or the Service Agreement. The indemnification provisions of this Section 16 shall survive the termination of this BA Agreement.

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

received 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 received 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:**

City of Sebring  
Attn: City Administrator  
368 South Commerce Avenue  
Sebring, Florida 33870

**To Business Associate:**

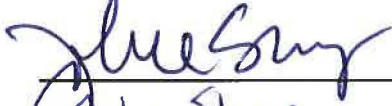
Employer Direct Healthcare, LLC  
Attn: Legal Department  
2100 Ross Avenue, Suite 550  
Dallas, Texas 75201

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.

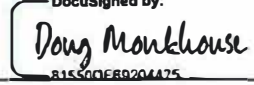
*[Signature Pages to Follow]*

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.

**City of Sebring**

By:   
Name: John Shoop  
Title: mayor

**Employer Direct Healthcare, LLC**

By:   
Name: Doug Monkhouse  
Title: General Counsel

## EXHIBIT C

### REGULATORY ADDENDUM

This Regulatory Addendum (this "Addendum") is made effective as of January 1, 2021 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 City of Sebring, a Florida municipal corporation, with its principal place of business located at 368 South Commerce Avenue, Sebring, Florida 33870 ("Sponsor"). EDH and Sponsor are referred to collectively as the "Parties" and individually as a "Party." This Addendum is intended by the Parties to supplement the Plan Agreement (the "Agreement"), dated effective as of January 1, 2021.

The Parties desire to supplement the Agreement to specifically reference certain provisions of law applicable to third-party administrators and to comply with those laws. Accordingly, pursuant to the terms and conditions of the Agreement and in consideration of the mutual promises contained herein, the Parties agree as follows:

1. **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.

2. **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.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.



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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(1-5) 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

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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.

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

3. **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 for  
NJAC 11 - 23-3.1(c)(2)(iii) 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 Sponsor's  
NJAC 11:23-3.1(c)(2)(iv) benefit plans.

NJRS 17B:27B-6(b) Sponsor will be solely responsible for the cost of any ineligible claims paid by EDH.

NJAC 11:23-3.1(c)(2)(v)

NJRS 17B:27B-6(b) Sponsor will be solely responsible for any liability incurred on account of any  
NJAC 11:23-3.1(c)(2)(vi) overdue payments by EDH.

NJRS 17B:27B-6(b) Sponsor will be solely responsible for procuring any reinsurance or stop-loss  
NJAC 11:23-3.1(c)(2)(vii) insurance relative to the benefit plans under the Agreement.

NJRS 17B:27B-6(c) EDH will maintain appropriate back-up systems against the loss of the records.

NJAC 11:23-3.1(c)(3)(i)

NJRS 17B:27B-6(c) EDH will establish and maintain appropriate financial controls.

NJAC 11:23-3.1(c)(3)(ii)

NJRS 17B:27B-6(c) Sponsor may at its sole expense employ an outside auditor to conduct any claims  
NJAC 11:23-3.1(c)(3)(iii) audit under the Agreement.

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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.

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.

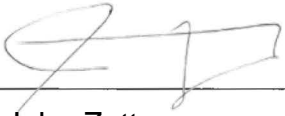
*[Signature Pages to Follow]*


EXHIBIT C

Each Party has read this Addendum and agrees to be bound by its terms and conditions.

**Employer Direct Healthcare, LLC**

**City of Sebring**

By:   
Name: John Zutter  
Title: CEO

By:   
Name: Scott Noethlich  
Title: City Administrator