

## **Business Associate Agreement**

This Business Associate Agreement is made and entered into this 5th day of October, 2021, by and between the City of Fort Lauderdale, a Florida municipality (hereinafter referred to as the "Covered Entity" or "City"), and FBMC Benefits Management, Inc., a Florida corporation, (hereinafter referred to as "Business Associate" or "Contractor").

WHEREAS, the Covered Entity and the Business Associate have established a business relationship in which Business Associate, acting for or on behalf of Covered Entity, receives Protected Health Information as defined by the Health Insurance Portability and Accountability Act of 1996 ("Act"); and

WHEREAS, the Covered Entity and the Business Associate desire to comply with the requirements of the Act's Privacy Rule as further set out below.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements set forth herein, the Covered Entity and the Business Associate agree as follows:

### **1. Definitions**

a. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy and Security Rules ("Privacy Rule"), as codified in 45 Code of Federal Regulations Parts 160 through 164, as may be amended. In addition, "Secretary" means the Secretary of the United States Department of Health & Human Services.

### **2. Obligations and Activities of Business Associate**

a. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required by law.

b. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.

c. Business Associate agrees 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 the requirements of this Agreement.

d. Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.

e. Business Associate agrees to ensure that any agent or subcontractor, to whom it provides Protected Health Information received from, or created or received by

Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

f. Business Associate agrees to provide access, at the request of Covered Entity, and in a reasonable time and manner, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524, if the Business Associate has Protected Health Information in a Designated Record Set.

g. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of Covered Entity or an Individual, in a reasonable time and manner, if Business Associate has Protected Health Information in a Designated Record Set, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. 164.526.

h. Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, 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 Covered Entity, or to the Secretary, in a reasonable time and manner or as designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

i. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.

j. Business Associate agrees to provide to Covered Entity or an Individual, within thirty (30) days of receipt of a written request from the Covered Entity or an Individual, information collected in accordance with Section 2.i of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.

k. Sections 164.308, 164.310, 164.312, and 164.316 of Title 45, Code of Federal Regulations, shall apply to Business Associate in the same manner that such sections apply to Covered Entity.

l. Business Associate shall comply with the privacy, security, and security breach notification provisions applicable to a business associate pursuant to Subtitle D of the Health Information Technology for Economic and Clinical Health Act which is Title XIII of Division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), 42 U.S.C.A. §17921 *et seq.* (2021), as may be amended or revised, ("HITECH"), any regulations promulgated thereunder, and any amendments to the Privacy Rule, all of which are hereby incorporated herein by reference.

### **3. Permitted Uses and Disclosures by Business Associate**

a. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement for Voluntary Benefits Administration dated October 6, 2015, as amended, between the Covered Entity and the Business Associate ("Original Contract"), provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

### **4. Specific Use and Disclosure Provisions**

a. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

b. Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are Required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

c. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

d. Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(1).

e. Business Associate may use Protected Health Information to deidentify the information in accordance with 45 C.F.R. 164.514(a)-(c).

f. Business Associate may use Protected Health Information as Required by law.

g. Business Associate agrees to make uses and disclosures and requests for protected health information consistent with Covered Entity's minimum necessary policies and procedures.

h. Business Associate may not use or disclose protected health information

in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity, except for the specific uses and disclosures set forth above.

## **5. Obligations of Covered Entity**

a. Covered Entity shall notify Business Associate of any limitation(s) in the notice of privacy practices of Covered Entity in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.

b. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose his or her Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.

c. Covered Entity shall notify Business Associate of any 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.

## **6. Permissible Requests by Covered Entity**

a. Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 C.F.R. Part 164 if done by Covered Entity, except that Business Associate may use or disclose Protected Health Information for data aggregation or management and administrative activities of Business Associate if required by the terms of the Original Contract.

## **7. Term and Termination**

a. The Term of this Agreement shall be effective as of the effective date of the Original Contract, and shall terminate when the Original Contract terminates. Upon termination, all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, shall be destroyed or returned to Covered Entity, except that, if it is infeasible to return or destroy Protected Health Information, or if it is illegal to destroy Protected Health Information, the protections are extended to such information, in accordance with the termination provisions in this Section.

b. Upon either party's knowledge of a material breach by the other party, the nonbreaching party shall either:

1. Provide an opportunity of at least thirty (30) days for the breaching party to cure the breach or end the violation and terminate this Agreement and the Original Contract if the breaching party does not cure the breach or end the

violation within the time specified by the nonbreaching party;

2. Immediately terminate this Agreement and the Original Contract if the breaching party has breached a material term of this Agreement and cure is not possible; or

3. If neither termination nor cure is feasible, the nonbreaching party shall report the violation to the Secretary.

c. Effect of Termination

1. Except as provided in paragraph 2 of this section, upon termination of this Agreement, for any reason, Business Associate shall return, or destroy, except as prohibited by Florida law, all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

2. In the event that Business Associate's return or destruction of the Protected Health Information would be infeasible or illegal, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible or illegal, for so long as Business Associate maintains such Protected Health Information. Upon written request from the Covered Entity, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible or illegal. At all times Business Associate shall comply with the Florida public records law and exemptions therefrom, and applicable Florida records retention requirements.

**8. Miscellaneous**

a. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended or revised.

b. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191. If the parties are unable to reach agreement regarding an amendment to this Agreement, either Business Associate or Covered Entity may terminate this Agreement upon ninety (90) days written notice to the other party.

c. The respective rights and obligations of Business Associate under Sections 7(c)(1) and 7(c)(2) of this Agreement shall survive the termination of this Agreement.

d. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.

e. Business Associate shall indemnify, hold harmless, and defend at Business Associate's expense, counsel being subject to Covered Entity's approval, the Covered Entity, and the Covered Entity's officers, employees, volunteers, and agents, (collectively "indemnitees"), against any and all claims, actions, lawsuits, damages, losses, liabilities, judgments, fines, penalties, costs, and expenses incurred by any of the indemnitees arising out of or in connection with Business Associate's or any of Business Associate's officers', employees', agents', or subcontractors' breach of this Agreement or any act or omission by Business Associate or by any of Business Associate's officers, employees, agents, or subcontractors, including Business Associate's failure to perform any of its obligations under the Privacy Rule. Business Associate shall pay any and all expenses, fines, judgments, and penalties, including court costs and attorney fees, which may be imposed upon any of the indemnitees resulting from or arising out of Business Associate's or any of Business Associate's officers', employees', agents', or subcontractors' breach of this Agreement or other act or omission.

f. Venue for any lawsuit by either party against the other party or otherwise arising out of this Agreement, and for any other legal proceeding, shall be in Broward County, Florida, or in the event of federal jurisdiction, in the United States District Court for the Southern District of Florida.

g. **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 CUSTODIAN OF PUBLIC RECORDS, AT 954-828-5002, [PRRContract@fortlauderdale.gov](mailto:PRRContract@fortlauderdale.gov), 100 NORTH ANDREWS AVENUE, FORT LAUDERDALE, FLORIDA, 33301, ATTENTION: CITY CLERK.**

Notwithstanding anything contained in this Agreement to the contrary, except as otherwise provided by superseding federal law, Contractor shall comply with public records laws, and Contractor shall:

1. Keep and maintain public records required by the City to perform the service.
2. Upon request from the City's custodian of public records, provide the City with a copy of the requested records 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, Florida Statutes (2021), as may be amended or revised, or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the

Contractor does not transfer the records to the City.

4. Upon completion of the Contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

IN WITNESS WHEREOF, the City of Fort Lauderdale and Occupational Health Centers of the Southwest, P.A., execute this Business Associate Agreement as follows:

City of Fort Lauderdale

By: \_\_\_\_\_  
Christopher J. Lagerbloom, ICMA-CM,  
City Manager

Approved as to form:

\_\_\_\_\_  
Assistant City Attorney

WITNESSES:

FBMC Benefits Management, Inc.

\_\_\_\_\_  
Signature  
Print Name:

By: \_\_\_\_\_  
David Andrew Faulkenberry  
President, CEO

\_\_\_\_\_  
Signature  
Print Name:

ATTEST:

(CORPORATE SEAL)

\_\_\_\_\_  
Krista M. Campbell  
Chief Operating Officer

STATE OF \_\_\_\_\_:  
COUNTY OF \_\_\_\_\_:

The foregoing Business Associate Agreement was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_ day of \_\_\_\_\_, 2021, by David Andrew Faulkenberry, President, CEO, for FBMC Benefits Management, Inc., a Florida corporation.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Florida  
(Signature of Notary)

\_\_\_\_\_  
(Print, Type, or Stamp Commissioned  
Name of Notary Public)

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_