

## HIPAA Business Associate Agreement

This Business Associate Agreement (the "Agreement") is made and entered into as of 1/1/23, by and between Benefit Insurance Marketing dba Bim Group ("Business Associate;") and Lexington-Fayette Urban County Government (LFUCG) ("Plan Sponsor") on behalf of its group health plan(s) ("Covered Entity").

WHEREAS, Plan Sponsor, Covered Entity, and Business Associate wish to enter into a business relationship or have an existing business relationship; and

WHEREAS, Plan Sponsor, Covered Entity, and Business Associate are committed to compliance with the Privacy, Security, Breach Notification, Standard Transactions and Enforcement Rules of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and its implementing regulations at 45 C.F.R. Parts 160 to 164 ("HIPAA Regulations") and any current and future regulations promulgated under HIPAA or the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"; and together with the other laws and regulations in this paragraph, the "HIPAA Rules"); and

NOW THEREFORE, Plan Sponsor, Covered Entity, and Business Associate enter into the following Business Associate Agreement in furtherance of their mutual compliance with the HIPAA Rules, as described at 45 CFR § 164.504.

### I. DEFINITIONS

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information (PHI), Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

### II. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- a. Business Associate shall be permitted to Use and Disclose PHI consistent with the Minimum Necessary standard (45 C.F.R §164.502(b)) as necessary to perform its obligations to Plan Sponsor and Covered Entity under any underlying services agreement or per their mutual understanding.
- b. Unless otherwise limited herein, in addition to any other Uses and/or Disclosures permitted or authorized by this Agreement or Required by Law, Business Associate may:
  - i. Use the PHI in its possession for its proper management and administration and to fulfill any legal responsibilities, including as related to the services provided to Plan Sponsor and Covered Entity;

- ii. Disclose the PHI in its possession to a third party for the purpose of Business Associate's proper management and administration, including with regard to its fulfillment of services relating to an underlying services agreement or to fulfill any legal responsibilities of Business Associate; provided, however, that the Disclosures are Required by Law or Business Associate has received from the third party written assurances that (a) the information will be held confidentially and used or further Disclosed only as Required by Law or for the purposes for which it was Disclosed to the third party; and (b) the third party will notify Business Associate of any instances of which it becomes aware in which the confidentiality of the information has been breached.
  - iii. Use or Disclose PHI to provide Data Aggregation services to Covered Entity as permitted by 45 CFR §164.504(e)(2)(i)(B), including, without limitation, Disclosure of PHI to Subcontractors, vendors and/or other third parties, as may be necessary to allow Business Associate to perform services; to Use and store PHI in a benchmark database; and to Disclose de-identified and disassociated data for population benchmarking and normative reporting purposes.
  - iv. To create de-identified information in compliance with 45 C.F.R. 164.514(a)-(c). Once PHI has been de-identified, it shall no longer be considered PHI and shall not be subject to the confidentiality obligations or restrictions on Disclosure set forth in this Agreement.
  - v. Use or Disclose PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR §164.502(j)(1).
- a. Business Associate agrees that it will use appropriate safeguards to prevent Use or Disclosure of PHI other than as provided in this Agreement.
  - b. Business Associate agrees to implement administrative, physical, and technical safeguards and comply with Subpart C of 45 CFR Part 164 with respect to ePHI.
  - c. Business Associate agrees to mitigate, to the extent practicable, any harmful effects known to it which are caused by a Use or Disclosure of PHI by it or by one of its agents or Subcontractors in violation of this Agreement.
  - d. Business Associate agrees that it will report to Covered Entity any Use or Disclosure of PHI not allowed by this Agreement if it becomes aware of the Use or Disclosure, provided that Business Associate shall not be obligated to report unsuccessful attempts to penetrate computer networks or servers that do not result in loss of data or degradation of computer networks.

- e. Business Associate agrees that it will ensure that any agent or Subcontractor to whom it provides PHI pertaining to Covered Entity agrees in writing to the substantially similar restrictions and conditions that this Agreement imposes on Business Associate.
- f. Business Associate agrees to provide an appropriate Individual with access to PHI in a Designated Record Set in the manner required of Covered Entity pursuant to the requirements of 45 CFR §164.524.
- g. Business Associate agrees to allow an appropriate Individual to make amendment(s) to PHI in a Designated Record Set in the manner required of Covered Entity pursuant to the requirements of 45 CFR §164.526.
- h. Business Associate agrees to make its internal practices, books, and records (including PHI pertaining to Covered Entity) available to the Secretary for purposes of determining Covered Entity's compliance with the Privacy Rule.
- i. Business Associate agrees to document disclosures of PHI and information related to these disclosures so it or Covered Entity may respond to requests by Individuals for an accounting of disclosures of PHI pursuant to the requirements of 45 CFR §164.528.
- j. Business Associate agrees to provide PHI in the possession or control of Business Associate to appropriate Individuals in order to respond to requests for an accounting of disclosures of PHI pursuant to the requirements of 45 CFR §164.528.
- k. Business Associate agrees to promptly notify Covered Entity if there is a Breach of unsecure PHI pursuant to the requirements of 45 CFR §164.410, in which case Business Associate act in good faith to assist Covered Entity in responding to such Breach, provided that under all circumstances Covered Entity shall be responsible for reporting as required by 45 CFR §164.408.
- l. Business Associate agrees it will not Use or Disclose genetic information for underwriting purposes in violation of the HIPAA Rules.
- m. Business Associate agrees not to receive remuneration, directly or indirectly, in exchange for any PHI unless the Covered Entity or Business Associate previously obtained from the individual a valid authorization in accordance with 45 C.F.R. 164.508, except as otherwise allowed under the HITECH Act.

### III. OBLIGATIONS OF THE COVERED ENTITY

Covered Entity shall comply with the following obligations with respect to Business Associate:

- a. Inform Business Associate of its privacy practices and any agreed restrictions as follows:
  - i. Covered Entity shall advise Business Associate of any limitations in the Notice of Privacy Practices that Covered Entity produces in accordance with 45 CFR §164.520.
  - ii. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to Use or Disclose PHI, to the extent that such changes affect Business Associate's Use or Disclosure of PHI.
  - iii. Covered Entity shall notify Business Associate of any restrictions on Use or Disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restrictions may affect Business Associate's Use or Disclosure of PHI.
- b. Covered Entity shall not request Business Associate to Use or Disclose PHI in any manner that would violate the Privacy Rule.
- c. Covered Entity shall comply with this Agreement and the HIPAA Rules including the execution of policies and procedures, security implementations, a plan amendment, training, and security risk assessments.

### IV. TERM AND TERMINATION

- a. Term. This Agreement shall be effective as of the date stated above and shall terminate when all PHI pertaining to Covered Entity which Business Associate maintains is destroyed or returned to Covered Entity, unless terminated under Subsection (b) below.
- b. Termination for Cause. If Covered Entity or Business Associate learns of a material breach by the other party, it shall: (1) provide a reasonable opportunity for the party to cure the breach or end the violation, or if the party does not cure the breach or end the violation within a reasonable time; (2) terminate this Agreement immediately upon written notice to the breaching party that it has breached a material term of this Agreement and there is no cure.
- c. Effect of Termination:
  - i. Upon termination of this Agreement, Business Associate shall, if feasible, return or destroy all PHI received from Covered Entity, or created or received

by Business Associate on behalf of the Covered Entity. This provision shall also apply to PHI that is in the possession of Subcontractors, vendors and/or other third parties engaged by Business Associate to assist in the provision of services. Business Associate shall retain PHI only as described in Subparagraph (ii) below.

- ii. Business Associate shall retain only that PHI for which return or destruction is infeasible or retention is necessary for Business Associate to continue its proper management and administration or carry out its legal responsibilities. Business Associate shall continue to use appropriate safeguards, comply with the HIPAA Rules, and adhere to the terms of this Agreement with respect to PHI for as long as Business Associate retains the PHI.

## V. MISCELLANEOUS

- a. Regulatory References. Reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.
- b. Amendment. This Agreement may be amended by the written consent of both parties. The parties agree to take such action as may be necessary to amend this Agreement from time to time for Covered Entity or Business Associate to comply with the requirements of the HIPAA Rules.
- c. Survival. The respective rights and obligations of Business Associate under Sections IV(c)(i) and (ii) of this Agreement shall survive termination of this Agreement.
- d. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity or Business Associate to comply with the Privacy Rule and other requirements of the HIPAA Rules. This Agreement shall be interpreted without regard to the rule that a document is to be construed against the party which drafts it.
- e. Complete Integration. This Agreement forms the entire agreement between the parties relating to the subject matter hereof, and supersedes all prior negotiations, discussions, representations, or proposals, whether oral or written, unless expressly incorporated herein. Further, this Agreement may not be modified except in a writing signed by the duly authorized representatives of both parties. If any provision or part of this Agreement is found to be invalid, the remaining provisions shall remain in full force and effect.
- f. Successors and Assigns. This Agreement will inure to the benefit of and be binding upon the successors and assigns of Covered Entity and Business Associate. However, this Agreement is not assignable by either party without the prior written consent of the other party, except that Business Associate may assign or transfer this Agreement to any entity

owned or under common control with Business Associate. Written consent will not be unreasonably withheld.

- g. Not a Fiduciary, Plan Administrator or Agent. Business Associate shall not be considered a fiduciary, plan administrator or agent of any of Covered Entity's employee benefit plans.
- h. No Third-Party Beneficiaries. This Agreement is entered into for the benefit of Covered Entity and Business Associate. There are no third-party beneficiaries to this Agreement. Business Associate's obligations are to Covered Entity only.
- i. Indemnification. Each party to this Agreement will indemnify the other and hold it harmless against any loss, cost, damage, claim, penalty or expense (including reasonable attorneys' fees) arising directly or indirectly from the breaching party's improper Use and/or Disclosure of PHI that is a breach of this Agreement or the HIPAA Rules; provided, however, that in no event shall indemnity amounts provided by Business Associate exceed the lesser of the total amounts paid to Business Associate by Covered Entity during the course of the services or \$500,000.
- j. Confidentiality. Except as otherwise provided in the Privacy Rule or this Agreement, neither party will disclose the terms of this Agreement to any third party without the other party's written consent.
- k. Counterparts. This Agreement may be executed in two or more counterparts, each of which may be deemed an original.
- l. Governing Law. This Agreement shall be governed by the HIPAA Rules and, where not covered by HIPAA or other federal law, the laws of the State of Kentucky.

IX. ACKNOWLEDGEMENT AND SIGNATURES

The parties acknowledge they have read this Agreement, understand it, and agree to be bound by its terms.

Business Associate

By: *Heather Taylor*

Title: Sr. Director of Operations

Date: 12/13/22

Covered Entity

By: *Linda Gorton*

Title: Mayor

Date: 2/13/2023