

**AMENDMENT NO. 4**  
**CONTRACT FOR MEDICAL SERVICES AND COVERAGE BETWEEN**  
**FLORIDA HEALTHY KIDS CORPORATION AND**  
**SIMPLY HEALTHCARE PLANS, INC.**

This Amendment No. 4, entered into between the Florida Healthy Kids Corporation (“FHKC”) and Simply Healthcare Plans, Inc. (“Insurer”) (collectively referred to as the “Parties”), amends the Contract No.: 2020-03 for Medical Services and Coverage between FHKC and Insurer (“Contract”).

WHEREAS, the Contract allows for amendments by mutual written consent of the Parties;

WHEREAS, the Parties have agreed upon certain revisions to the Contract; and

WHEREAS, the Parties desire to amend the Contract as provided in this Amendment.

NOW, THEREFORE, in consideration of the mutual promises and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Section 1-1, Definitions, is hereby revised by replacing the definition of Adverse Benefit Determination with the following:

**Adverse Benefit Determination:** the denial or limited authorization of a requested service, including determinations based on the type or level of service, requirements for Medical Necessity, appropriateness, setting, or effectiveness of a covered benefit; the reduction, suspension or termination of a previously authorized service; the denial, in whole or in part, of payment for a service unless such denial was made solely because the claim does not meet the definition of a clean claim as defined in 42 CFR 447.45(b); the failure to provide services in a timely manner, as defined by FHKC; the failure of Insurer to act within the timeframes required by law for standard resolution of Grievances and Appeals; and the denial of an Enrollee’s request to dispute a financial liability, including cost sharing, Copayments, premiums and other Enrollee financial liabilities.

2. Section 13, Intermediate Sanctions, is hereby revised by inserting the following after item (h):

FHKC may impose temporary management under 42 CFR 438.702(a)(2) if it finds (through onsite surveys, Enrollee or other complaints, financial status, or any other source) any of the following:

(1) There is continued egregious behavior by the MCO, including but not limited to behavior that is described in 42 CFR 438.700, or that is contrary to any of the requirements of 42 CFR 438, subpart i.

(2) There is substantial risk to enrollees' health.

(3) The sanction is necessary to ensure the health of the MCO's enrollees—

(i) While improvements are made to remedy any applicable violations of 42 CFR 438.700.

(ii) Until there is an orderly termination or reorganization of the MCO.

FHKC retains authority to impose additional sanctions under any Florida Statute or rule that addresses any applicable areas of noncompliance, including those specified under 42 CFR 438.700. Nothing herein prevents FHKC from exercising such authority.

3. Section 21-2, Translation Services; Alternative Formats, is hereby revised by deleting the second and third paragraphs and inserting the following:

Written materials critical to obtaining services must be made available in alternative formats upon request of a potential Enrollee or Enrollee at no cost, include taglines in the prevalent non-English languages in the Service Area and in a conspicuously visible font size explaining the availability of written translation or oral interpretation to understand the information provided, information on how to request auxiliary aids and services, and include the toll-free and TTY/TDY telephone number of Insurer's member/customer service unit.

Insurer shall provide translation services, auxiliary aids, and similar services at no cost.

4. Section 21-3, Enrollee Materials, is hereby revised by deleting the fifth paragraph and replacing it with the following:

Written materials critical to receiving services shall include a notice of nondiscrimination and taglines explaining the availability of written or oral translation in the prevalent non-English languages in the Service Area, as required by Section 1557 of the Affordable Care Act and 42 CFR 438.10(d)(2) and (3), printed in conspicuously visible font size.

5. Section 21-3-1, Specified Enrollee Materials, is hereby revised by deleting item (C) and replacing it with the following:

**C. Provider Directory**

Insurer shall make a Provider directory available on Insurer's website in a machine-readable file and format, as specified by the Secretary of HHS, as well as in paper form upon request. Insurer shall also make a mobile-enabled searchable electronic Provider Directory available on Insurer's website.

Information included in a paper Provider directory must be updated at least monthly if Insurer does not have a mobile-enabled electronic directory or quarterly if Insurer has a mobile-enabled electronic directory. Searchable electronic Provider directories must be updated no later than thirty (30) Calendar Days after Insurer receives updated Provider information.

At a minimum, the Provider directory must contain the following information for each PCP, specialist (including behavioral health Providers), hospital, and pharmacy:

- a. Provider name;
- b. Provider group affiliation, if any;
- c. Specialty, as appropriate;
- d. Street Address(es);
- e. Telephone number(s);
- f. Website URL, if any;
- g. Office hours;
- h. Age limitations, if any;
- i. Cultural and linguistic capabilities including languages offered (including American Sign Language), by the Provider or a skilled medical interpreter at the Provider's office;
- j. Whether Provider's office or facility has accommodations for people with physical disabilities, including offices, exam rooms and equipment; and
- k. Whether the Provider is accepting new patients.

6. Section 21-3-1, Specified Enrollee Materials, is hereby revised by deleting item (F) and replacing it with the following:

F. Notice of Network Provider Termination

Insurer shall notify Enrollees who received services from a terminating provider within the past six (6) months of such termination at least sixty (60) Calendar Days before the effective date of the termination. When such notice is not possible, Insurer shall make a good-faith effort to provide written notice to Enrollees who received primary or regular care from a terminating network Provider by the later of thirty (30) Calendar Days prior to the effective date of the termination or fifteen (15) Calendar Days after receipt or issuance of the Provider termination notice.


7. Section 21-3-1, Specified Enrollee Materials, is hereby revised by deleting item (G) in its entirety.
8. Section 23-2, Appeals, is hereby revised by deleting the first paragraph and replacing it with the following:  
  
 Enrollees may file an Appeal orally or in writing within sixty (60) Calendar Days of the date of notification of an Adverse Benefit Determination. Appeals are limited to a single level. Enrollees wishing to further appeal Insurer's decision to uphold an Appealed decision may proceed to the independent external review process.
9. Section 35, Contract Termination, is hereby revised to add the following subsection:  
  
 FHKC may terminate Contract if the State determines that Insurer has failed to meet any applicable requirements of sections 1932 or 1903(m) of the Act.
10. Except as expressly amended hereby, the Contract shall remain in full force and effect in accordance with its provisions.
11. This Amendment No. 4 sets forth the entire understanding between the Parties with regard to the subject matter hereof. In the event of any conflict between the Contract and this Amendment No. 4, the terms of this Amendment No. 4 shall govern.
12. Except as otherwise expressly set forth herein, this Amendment No. 4 becomes effective upon execution by both Parties.
13. This Amendment No. 4 may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute the same document.

IN WITNESS WHEREOF, the Parties have caused this Amendment No. 4 to be executed by their undersigned officials as duly authorized.

**FOR  
FLORIDA HEALTHY KIDS CORPORATION:**

**FOR  
SIMPLY HEALTHCARE PLANS, INC.:**

Signed:   
 Name: Ryan West  
 Title: Chief Executive Officer  
 Date: 6/24/2021

Signed:   
 Name: Holly Prince  
 Title: President, Medicaid FL  
 Date: 02/12/2021

## **ATTACHMENT B: BUSINESS ASSOCIATE AGREEMENT**

THIS BUSINESS ASSOCIATE AGREEMENT ("AGREEMENT") is entered into by and between Florida Healthy Kids Corporation, a Florida non-profit corporation, ("FHKC" or "Covered Entity") and Simply Healthcare Plans, Inc. (the "BA") (collectively referred to as the "Parties"), and is incorporated in the contract for Medical Services and Coverage between FHKC and BA (hereby referred to as the "Contract" for purposes of this Agreement).

### **1. HIPAA Compliance**

FHKC and BA agree to comply with the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, codified at 42 U.S.C. §1320d through d-9, as amended from time to time ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act ("HITECH"). BA recognizes and agrees that it is directly obligated by law, through the Contract, and through any other written agreement and this Agreement to comply with the provisions of HIPAA and HITECH applicable to BA pursuant to its performance of Services.

### **2. Definitions for Use in this Agreement**

Terms used but not otherwise defined in this Agreement or the Contract shall have the same meaning as those terms in 45 C.F.R. Parts 160, 162, and 164, as modified or supplemented herein.

"Access" means to review, inspect, approach, instruct, communicate with, store Data in, retrieve Data from, or otherwise make use of any Data, regardless of type, form, or nature of storage. Access to a computer, network, or peripherals includes local and remote access.

### **3. Obligations and Activities of BA (Privacy Rule)**

#### **3.1 Operation on Behalf of FHKC**

The BA shall use and disclose Protected Health Information ("PHI") only as shall be permitted by the Contract, this Agreement, any other agreement(s) or as required by law. BA shall have the same duty to protect FHKC's PHI as such term is defined in the Contract and/or under HIPAA, and in furtherance of the duties therein.

#### **3.2 Compliance with the Privacy Rule**

BA agrees to fully comply with the requirements under the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E ("Privacy Rule") applicable to "business associates," as that term is defined in the Privacy Rule, and not use or further disclose PHI other than as permitted or required by the Contract, this Agreement, or as required by law.

BA shall create and/or adopt policies and procedures to periodically audit BA's adherence to all HIPAA regulations. BA acknowledges and promises to perform such audits pursuant to the terms and conditions set out herein. BA shall make such audit policies and procedures available to FHKC for review.

To the extent BA is to carry out one or more of FHKC's obligations under the Privacy Rule, BA agrees to comply with the requirements of the Privacy Rule that apply to FHKC in the performance of such obligations. Except as otherwise allowed in this Agreement and under HIPAA, BA shall not directly or indirectly receive remuneration in exchange for any PHI of an Individual unless the Individual has provided a valid authorization compliant with HIPAA and state law.

### **3.3 Privacy Safeguards and Policies**

BA agrees to use appropriate safeguards to prevent Use or Disclosure of PHI other than as provided for by the Contract, this Agreement, or any other agreement(s) or as required by law.

### **3.4 Mitigation of Harmful Effect of Violations**

BA agrees to inform FHKC without unreasonable delay and mitigate, to the extent practicable, any harmful effect that is known to BA resulting from Access, acquisition, Use, or Disclosure of PHI by BA, or by a subcontractor or agent of BA, resulting from a violation of the requirements of this Agreement.

### **3.5 Privacy Obligations regarding Breaches and Security Incidents**

#### **3.5.1 Privacy Breach**

BA will report to FHKC, immediately following discovery and without unreasonable delay, any Access, acquisition, Use, or Disclosure of FHKC's PHI not permitted by HIPAA, the Contract, this Agreement, or in writing by FHKC. In addition, BA will report, immediately following discovery and without unreasonable delay, but in no event later than five (5) Business Days following discovery, any Breach of Unsecured Protected Health Information, notwithstanding whether BA has made an internal risk assessment and determined that no notification is required. BA shall cooperate with FHKC in investigating the Breach and in meeting FHKC's obligations under HIPAA and any other security breach notification laws. In the event of a Breach, BA and FHKC will work together in good faith to comply with any required regulatory filings due to the Breach.

Any such report shall include the identification (if known) of each Individual whose Unsecured PHI has been, or is reasonably believed by BA to have been, Accessed, acquired, Used, or Disclosed during such Breach. BA will make the report to FHKC's Privacy Officer not more than five (5) Business Days after BA discovers such non-permitted Access, acquisition, Use, or Disclosure.

Regarding any items not known at the time of the initial report, BA will subsequently report to FHKC as answers are determined. All elements will be reported no later than thirty (30) days after the date of the initial report, or as soon as feasible, whichever is sooner.

BA shall track all Breaches and shall periodically report such Breaches in summary fashion as may be requested by FHKC, but not less than annually within sixty (60) days of each anniversary of this Agreement.

### **3.5.2 Access of Individual to PHI and other Requests to Business Associate**

If BA receives PHI from FHKC in a Designated Record Set, BA agrees to provide access to such PHI to FHKC in order for FHKC to meet its requirements under 45 CFR § 164.524. If BA receives a request from an Individual for a copy of the Individual's PHI, and the PHI is in the sole possession of the BA, BA will provide the requested copies to the Individual in compliance with 45 CFR § 164.524 and notify FHKC of such action within five (5) Business Days of completion of the request. If BA receives a request for PHI in the possession of FHKC or receives a request to exercise other individual rights as set forth in the Privacy Rule, BA shall promptly forward the request to FHKC within two (2) Business Days. BA shall then assist FHKC as necessary in responding to the request in a timely manner. If a BA provides copies of PHI to the Individual, it may charge a reasonable fee for hard copies as the regulations shall permit. If requested, BA shall provide electronic copies as required by law.

### **3.5.3 Recording of Designated Disclosures of PHI**

BA agrees to maintain and make available information required to provide an accounting of disclosures to FHKC as necessary to satisfy FHKC's obligations under 45 CFR § 164.528. BA agrees to provide to FHKC, within fifteen (15) days and in a secure manner, information collected in accordance with this provision, to permit FHKC to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528 and applicable state law.

### **3.5.4 Requests to Make an Amendment to the PHI**

BA agrees to make any amendments to PHI maintained by BA in a Designated Record Set as agreed to by FHKC pursuant to 45 CFR § 164.526 or take other measures as necessary to satisfy FHKC's obligations under 45 CFR § 164.526.

### **3.5.5 Security and Privacy Compliance Review upon Request**

HHS Inspection BA shall make its internal practices, books, and records relating to the Access, acquisition, Use, and Disclosure of PHI available to the HHS for purposes of determining Covered Entity's compliance with HIPAA. Except to the extent prohibited by law, BA agrees to notify FHKC of all requests served upon BA for information or documentation by or on behalf of

the HHS. BA shall provide to FHKC a copy of any PHI that BA provides to the HHS concurrently with providing such PHI to the HHS.

### **3.5.6 FHKC Inspection**

Upon written request, BA agrees to make available to FHKC during normal business hours BA's internal practices, books, and records relating to the use and disclosure of PHI or Electronic Protected Health Information ("E PHI") received from, or created or received on behalf of, FHKC in a time and manner designated by FHKC for the purposes of FHKC determining compliance with the HIPAA Privacy and Security Requirements.

## **4. Obligations and Activities of BA (Security Rule)**

### **4.1 Compliance with Security Rule**

BA shall ensure compliance with the HIPAA Security Standards for the Protection of E PHI, 45 C.F.R. Part 160 and Part 164, Subparts A and C (the "Security Rule"), with respect to E PHI covered by the Contract and this Agreement.

### **4.2 Security Safeguards and Policies**

BA agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the E PHI that it creates, receives, maintains, or transmits on behalf of FHKC as required by the Security Rule. The BA will maintain appropriate documentation of its compliance with the Security Rule. These safeguards include:

- Annual training to relevant employees, contractors, and subcontractors on preventing improper Access, acquisition, Use, or Disclosure of PHI, updated as appropriate;
- Adopting policies and procedures regarding the safeguarding of PHI, updated and enforced as necessary; and
- Implementing appropriate technical and physical safeguards to protect PHI, including access controls, transmission security, workstation security, etc.

### **4.3 Security Provisions in Business Associate Contracts**

In accordance with 45 CFR §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, BA shall ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of BA agree in writing to the same restrictions and conditions that apply to BA with respect to such information.

### **4.4 Reporting Security Incidents and Breaches to FHKC**

BA shall track all Security Incidents and shall periodically report such Security Incidents in summary fashion as may be requested by FHKC, but not less than annually within sixty (60) days



of each anniversary of this Agreement. The BA shall reasonably use its own vulnerability assessment of damage potential and monitoring to define levels of Security Incidents and responses for BA's operations.

The BA shall promptly and, with every commercially reasonable effort, within 15 hours of discovery, notify FHKC's Privacy Officer of any Security Incident, including any Breach of Security under section 501.171, Florida Statutes, in a preliminary report, with a full report of the incident within five (5) Business Days of the time it became aware of the incident.

The BA shall likewise notify FHKC in a preliminary report within two (2) Business Days of any unauthorized Access or acquisition, including but not limited to internal User Access to non-test records reported to BA's privacy manager, and any Use, Disclosure, modification, or destruction of PHI by an employee or otherwise authorized User of its system of which it becomes aware with a full report of the incident within five (5) Business Days from the time it became aware of the incident.

BA shall identify in writing key contact persons for administration, Data processing, marketing, information systems and audit reporting within thirty (30) days of the execution of this Agreement. BA shall notify FHKC of any reduction of in-house staff during the term of this Agreement, in writing, within ten (10) Business Days.

When reporting any Security Incident or Breach, BA shall use the "Notification to FHKC of Security Incident or Breach of Protected Health Information" form attached hereto.

#### **4.5 Unsecured Protected Health Information**

For all Unsecured PHI maintained or transmitted by BA or BA's subcontractors, BA shall notify each Individual whose Unsecured PHI has been Accessed, acquired, Used, or Disclosed in a manner not permitted under the HIPAA Privacy Rule which compromises the security and privacy of the PHI, except when law enforcement requires a delay pursuant to 45 CFR § 164.412. If BA cannot identify the specific Individuals whose Unsecured PHI may have been Accessed, BA shall notify all persons whose Unsecured PHI reasonably may have been Accessed.

On behalf of FHKC, BA shall notify such Individuals without unreasonable delay, and in no case later than sixty (60) days after discovery of the Breach. The Notice required under HIPAA shall be made as follows:

- By written Notice in plain language including, to the extent possible:
  - A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
  - A description of the types of Unsecured PHI involved in the Breach (including but not limited to items such as whether full name, social security number, date of

birth, home address, Family Account number, diagnosis, disability code, or other types of information were involved);

- Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;
- A brief description of what BA and FHKC are doing to investigate the Breach, to mitigate the harm to Individuals, and to protect against further Breaches; and
- Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an email address, website or postal address.

- BA must use a method of notification that meets the requirements of 45 CFR 164.404(d).

Further, BA must provide Notice to the media when required under 45 CFR 164.406 and to HHS pursuant to 45 CFR 164.408.

BA also agrees to comply with any similar state laws, such as section 501.171, Florida Statutes, that govern breaches.

BA agrees to pay all costs of notification and any associated mitigation as a result of a Breach or breach of state law, including the provision of, at a minimum, two years of credit monitoring and identity theft protection for such affected Individuals. FHKC, in its sole discretion, shall determine if the Breach or breach of state law is significant enough to warrant such measures and the length of time such mitigation measures shall be offered to the affected Individuals.

In the event of the unpermitted Access, acquisition, Use, or Disclosure of Unsecured PHI, BA shall pay for and maintain a prompt mechanism on the existing toll-free telephone line, email link, and fully functioning web page to respond to any Enrollee's or Applicant's concerns about security, Breach, unauthorized Access, acquisition, Use, or Disclosure, or any credible allegations or suspicions of the above.

#### **4.6 Additional Consumer Protections**

For purposes of this paragraph, the terms and definitions set forth in section 501.171, Florida Statutes, govern over any other conflicting definitions specified in this Agreement. BA understands that FHKC or its customers may be a Covered Entity (as may be BA) under the terms of section 501.171. The reporting requirements set forth in Section 4.4 of this Agreement apply to any Breach of Security. In the event of a Breach of Security, the BA shall indemnify and hold FHKC harmless for expenses and/or damages related to the Breach of Security. Such obligation shall include, but is not limited to, the mailed notification to a governmental agency and any individual in Florida whose Personal Information is reasonably believed to have been Accessed as a result of the Breach of Security. In the event that the BA discovers circumstances requiring notification of more than one thousand (1,000) persons at one time, BA shall also notify, without unreasonable delay, all consumer reporting agencies that compile and maintain

files on consumers on a nationwide basis, as in the Fair Credit Reporting Act, 15 U.S.C. § 1681a(p), of the timing, distribution and content of the Notices. Substitute Notice, as specified in section 501.171(4)(f), Florida Statutes, shall not be permitted except as approved in writing in advance by FHKC. The Parties agree that PHI includes Data elements in addition to those included described as Personal Information under section 501.171 and agree that BA's responsibilities under this paragraph shall include all PHI or EPHI. BA agrees to pay all costs of any associated mitigation as a result of a Breach of Security, including the provision of, at a minimum, one (1) year of credit monitoring and identity theft protection for such affected individuals. FHKC, in its sole discretion, shall determine if the Breach of Security is significant enough to warrant such measures and the length of time such mitigation measures shall be offered to the affected individuals.

## **5. Electronic Transaction and Code Sets**

To the extent that the services performed by BA pursuant to the Agreement involve transactions that are subject to the HIPAA Standards for Electronic Transactions and Code Sets, 45 C.F.R. Parts 160 and 162, with respect to EPHI covered by the Contract and this Agreement, BA shall conduct such transactions in conformance with such regulations as amended from time to time. Without limiting the generality of the foregoing, BA also agrees that it will, in accordance with 45 C.F.R. § 162.923(c), comply with all applicable requirements of 45 C.F.R. Part 162, and require any agent or subcontractor to comply with all applicable requirements of 45 C.F.R. Part 162.

## **6. Permitted Uses and Disclosures by BA – General Use and Disclosure Provisions**

### **6.1 Use of PHI for Operations on Behalf of FHKC**

BA shall conduct all activities in compliance with 45 CFR 164 Subpart C to ensure data security, including, but not limited to encryption of all information that is confidential under Florida or federal law, while in transmission and while resident on portable electronic media storage devices. Encryption is required and shall be consistent with Federal Information Processing Standards, and /or the National Institute of Standards and Technology publications regarding cryptographic standards.

Except as otherwise limited by this Agreement, BA may Use or Disclose PHI to perform functions, activities, or services for, or on behalf of, FHKC as specified in the Contract and this Agreement, provided that such Use or Disclosure would not violate HIPAA if done by FHKC or other policies and procedures of FHKC. BA may Use or Disclose PHI as required by law.

Except as otherwise provided in the Contract or this Agreement, BA is prohibited from further using or disclosing any information received from FHKC, or from any other business associate of FHKC for any commercial purposes of the BA, including, by way of example, "Data mining."

BA shall only request, use and disclose the minimum amount of PHI necessary to accomplish the purposes of the request, use or disclosure.

#### **6.2 No Offshoring**

Except as may be expressly authorized in the Contract between FHKC and BA, BA and any of its subcontractors and agents are prohibited from (a) performing any services under the Contract or this Agreement outside of the continental U.S.; (b) sending, transmitting, or maintaining PHI or Individually Identifiable Health Information outside of the continental U.S.; or (c) allowing PHI or Individually Identifiable Health Information to be Accessed from or maintained outside the continental U.S.

### **7. Permitted Uses and Disclosures by BA – Specific Use and Disclosure Provisions**

#### **7.1 Proper Management and Administration of BA**

BA may use PHI for the proper management and administration of BA or to carry out BA's responsibilities under the Contract and/or this Agreement.

#### **7.2 Third-Party Disclosure Confidentiality**

Except as otherwise limited in the Contract or this Agreement, BA may disclose PHI for the proper management and administration of the BA or to carry out the legal responsibilities of BA, provided that disclosures are required by law or, if permitted by law, this Agreement, the Contract, and any Ancillary Agreements, provided that, if BA discloses any PHI to a third party for such a purpose, BA shall enter into a written agreement with such third party requiring the third party to: (a) maintain the confidentiality, integrity, and availability of PHI and not to use or further disclose such information except as required by law or for the purpose for which it was disclosed, and (b) notify BA of any instances in which it becomes aware in which the confidentiality, integrity, and/or availability of the PHI is breached in a preliminary report within two (2) Business Days with a full report of the incident within five (5) Business Days from the time it became aware of the incident.

#### **7.3 Data Aggregation Services**

Except as otherwise limited in this Agreement, BA may use PHI to provide Data Aggregation Services to FHKC as permitted by 42 CFR § 164.504I(2)(i)(B).

### **8. Provisions for FHKC to Inform BA of Privacy Practices and Restrictions**

#### **8.1 Notice of Privacy Practices**

FHKC shall provide BA with the Notice of Privacy Practices produced by FHKC or provided to FHKC as a result of FHKC's obligations with other organizations in accordance with 45 CFR § 164.520, as well as any changes to such Notice.

#### **8.2 Notice of Changes in Individual's Access or PHI**

FHKC shall provide BA with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect BA's permitted or required uses.

#### **8.3 Notice of Restriction in Individual's Access or PHI**

FHKC shall notify BA of any restriction to the use or disclosure of PHI that FHKC has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect BA's use of PHI.

### **9. Term and Termination**

#### **9.1 Term**

The Term of this Agreement shall be effective concurrent with the Contract, and shall terminate when all of the PHI provided by FHKC to BA, or created or received by BA on behalf of FHKC, is destroyed or returned to FHKC, or, if it is not feasible to return or destroy PHI, protections are extended to such information in accordance with the termination provisions in this section.

#### **9.2 Termination for Cause**

FHKC has the right to immediately terminate this Agreement in the event BA fails to comply with or violates a material provision of this Agreement or any provision of the Privacy and Security Rules. Notwithstanding the aforementioned, BA shall not be relieved of liability to FHKC for damages sustained by virtue of any breach of this Agreement by BA.

#### **9.3 Effect of Termination; Return of Protected Health Information**

Upon termination of this Agreement for any reason, except as provided in subsections below, BA shall, at its own expense, either return and/or destroy all PHI and other Individually Identifiable Health Information received from FHKC or created or received by BA on behalf of FHKC. This provision applies to all Individually Identifiable Health Information regardless of form, including but not limited to electronic or paper format. This provision shall also apply to PHI and other Individually Identifiable Health Information in the possession of subcontractors or agents of BA.

The BA shall consult with FHKC as necessary to assure an appropriate means of return and/or destruction of PHI and Individually Identifiable Health Information, and shall notify FHKC in writing when such destruction is complete. If PHI or Individually Identifiable Health Information is to be returned, the Parties shall document when all information has been received by FHKC.

The BA shall notify FHKC whether it intends to return and/or destroy the PHI or Individually Identifiable Health Information with such additional detail as requested. In the event BA determines that returning or destroying the PHI and Individually Identifiable Health Information received by or created for FHKC at the end or other termination of this BAA is not feasible, BA shall provide to FHKC notification of the conditions that make return or destruction not feasible, and BA shall:

1. Retain only that PHI and Individually Identifiable Health Information that is necessary for BA to continue its proper management and administration or to carry out its legal responsibilities;
2. Return to FHKC (or, if agreed to by FHKC, destroy) the remaining PHI that the BA still maintains in any form;
3. Continue to use appropriate safeguards and comply with the Security Rule with respect to EPHI to prevent use or disclosure of the PHI and Individually Identifiable Health Information, other than as provided for in this section, for as long as BA retains the PHI;
4. Not use or disclose the PHI or Individually Identifiable Health Information retained by BA other than for the purposes for which such information was retained and subject to the same conditions set out under "Permitted Uses and Disclosures by BA – Specific Use and Disclosure Provisions" which applied prior to termination; and
5. Return to FHKC (or, if agreed to by FHKC, destroy) the PHI and Individually Identifiable Health Information retained by BA when it is no longer needed by BA for its proper management and administration or to carry out its legal responsibilities.

## **10. Miscellaneous**

### **10.1 Breach of Agreement**

BA's failure to perform the obligations in this Agreement shall be a breach of this Agreement and/or the Contract and will entitle FHKC to recover any damages it incurs arising from a failure to perform the obligations in this Agreement, including any actual out-of-pocket expenses incurred by FHKC to investigate and remediate the violation, reimbursement for any assessments against FHKC by AHCA due to BA's failure, and/or to pursue injunctive relief.

### **10.2 Severability**

If any of the provisions of this Agreement shall be held by a court of competent jurisdiction to be no longer required by HIPAA, the Parties shall exercise their best efforts to determine whether such provisions shall be retained, replaced, or otherwise modified.

### **10.3 Cooperation**

The Parties agree to cooperate and to comply with procedures mutually agreed upon to facilitate compliance with HIPAA, including procedures designed to mitigate the harmful effects of any improper Access, acquisition, Use, or Disclosure of PHI.

#### **10.4 Regulatory Reference**

Any reference in this Agreement to a section in the HIPAA regulations means those provisions currently in effect or as may be amended in the future.

#### **10.5 Modification and Amendment**

This Agreement may be modified only by express written amendment executed by all Parties hereto. The Parties agree to take such action to amend this Agreement from time to time as is necessary for FHKC to comply with the requirements of HIPAA and applicable state law.

#### **10.6 Survival**

The respective rights and obligations of BA under "Term and Termination" of this Agreement shall survive the termination of this Agreement and the Contract.

#### **10.7 Interpretation**

Any ambiguity in this Agreement or the Contract shall be resolved so as to permit FHKC to comply with HIPAA.

#### **10.8 No Third-Party Rights/Independent Contractors**

The Parties to this Agreement do not intend to create any rights in any third parties. The Parties agree that they are independent contractors and not agents of each other, except nothing herein affects whether BA is an "agent" for purposes of compliance with 42 CFR § 1001.952(d).

#### **10.9 State Law**

BA acknowledges and agrees that it has implemented and will maintain appropriate privacy and security measures to protect personal information consistent with state laws and regulations to the extent those state laws and regulations are applicable to the PHI. The confidentiality obligations hereunder are independent of and do not limit or otherwise affect the Parties' other confidentiality obligations under this Agreement.

#### **10.10 Governing Law**

To the extent not preempted by federal law, this Agreement shall be governed and construed in accordance with the State of Florida without regard to conflicts of law provisions that would require application of the law of another state.

**10.11 Assignment, Binding Nature, and Benefits**

This Agreement binds and benefits the Parties, their respective successors, and their permitted assigns. BA may not assign or subcontract rights or obligations under this Agreement without the express written consent of FHKC. FHKC may assign its rights and obligations under this Agreement under this Agreement to any successor or affiliated entity.

**10.12 Counterparts**

This Agreement may be executed in multiple counterparts, which shall constitute a single agreement, and by facsimile or PDF signatures, which shall be treated as originals.

**REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK**

**SIGNATURE PAGE TO FOLLOW**

Page Break

IN WITNESS WHEREOF, the Parties have caused this BUSINESS ASSOCIATE AGREEMENT, to be executed by their undersigned officials as duly authorized.

<b>FOR</b>	<b>FOR</b>
<b>FLORIDA HEALTHY KIDS CORPORATION:</b>	<b>SIMPLY HEALTHCARE PLANS, INC:</b>
Signed: 	Signed: _____
Name: Ryan West	Name: _____
Title: Chief Executive Officer	Title: _____
Date: 6/24/2021	Date: _____



**NOTIFICATION TO FHKC OF SECURITY INCIDENT OR  
BREACH OF PROTECTED HEALTH INFORMATION**

Contract Information	
Contract Number	Contract Title
Contract Contact Information	
Contact Person for This Incident:	
Contact Person's Title:	
Contact's Address	
Contact's Email:	
Contact's Telephone No:	

Business Associate hereby notifies FHKC that there has been a Security Incident or Breach of Protected Health Information (collectively referred to as a "Breach" for purposes of this Notification) that Business Associate has used or has had access to under the terms of the Business Associate Agreement, as described in detail below:

Detail of the Security Incident or Breach	
Date of Security Incident or Breach	Date of Discovery of Security Incident or Breach
Information about the Breach or Security Incident	
Type of Breach or Security Incident:	
Lost or stolen laptop, computer, flash drive, disk, etc.	
Stolen password or credentials	
Unauthorized Access by an employee or contractor	
Unauthorized Access by an outsider	
Other (describe)	
Detailed Description of the Breach or Security Incident	

**Types of Protected Health Information involved in the Breach or Security Incident (such as Full Name, SSN, Date of Birth, Address, Family Account Number, Disability Code, etc.)**

Personal Information:	Health Information:
Name	Basic information (age, sex, height, etc.)
Address	Disease or medical conditions
Date of birth	Medications
Social Security number	Treatments or procedures
Driver's license or identification card number	Immunizations
Financial insurance information (credit card number, bank account number, etc.)	Allergies
Health insurance information (insurance carrier, insurance card number, etc.)	Information about children
Other Personal or Health Information (describe):	Test results
	Hereditary conditions
	Mental health information
	Information about diet, exercise, weight, etc.)
	Correspondence between patient, or medical power of attorney
	Organ donor authorization

**What steps are being taken to investigate the Security Incident or Breach, mitigate losses, and protect against any further Security Incidents or Breaches?**

List any law enforcement agencies you've contacted about the Security Incident or Breach		
Number of Individuals Impacted	If over 500, do individuals live in multiple states?	
	Yes	No
Breach or Security Incident Notification		
Have you made the Security Incident or Breach public?	If YES, when did you make it public	
Yes	No	
Have you notified the people whose information was Breached or impacted?		
YES. We notified them on:		
Attach a copy of the letter to this form. Don't include any Individually Identifiable Health Information, other than your own contact information.		
NO. Our investigation isn't complete.		
Comments		

Submitted By: Date of Submission:

\_\_\_\_\_