

HIPAA BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the “Agreement”) is entered into as of September 23, 2013, by and among You, (hereinafter “Covered Entity”) and PlanSource Benefits Administration, Inc. (hereinafter “Business Associate”).

WHEREAS, Covered Entity and Business Associate are parties to one or more agreements and/or may in the future become parties to additional agreements (collectively, the “Underlying Agreements”), pursuant to which Business Associate provides certain services to Covered Entity and, in connection with such services, creates, receives, uses or discloses for or on behalf of Covered Entity certain individually identifiable Protected Health Information (“PHI”) that is subject to protection under the Health Insurance Portability and Accountability Act of 1996 as amended by the Health Information Technology for Economic and Clinical Health Act Title XIII of Division A of the American Recovery and Reinvestment Act, 2009 (“HITECH”) and regulations promulgated there under, as such law and regulations may be amended from time to time (collectively, “HIPAA”); and

WHEREAS, Covered Entity and Business Associate wish to comply in all respects with the requirements of HIPAA, including requirements applicable to the relationship between a Covered Entity and its Business Associates;

NOW, THEREFORE, in consideration of the mutual promises set forth below and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **DEFINITIONS.** Terms used but not otherwise defined in this Agreement will have the same meaning as those terms in HIPAA.
2. **OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE.**

Business Associate agrees to:

- a. Not use or disclose PHI other than as permitted or required by the Underlying Agreement, this Agreement or as required by law;
- b. Establish and use appropriate administrative, technical and physical safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Agreement;
- c. Report to Covered Entity any use or disclosure of PHI not provided for by this Agreement of which it becomes aware, including breaches of unsecured PHI as required at 45 CFR 164.410, and any security incident of which it becomes aware;
- d. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information;
- e. Make available PHI in a designated record set to Covered Entity as necessary to satisfy Covered Entity’s obligations under 45 CFR 164.524;
- f. Make any amendment(s) to PHI in a designated record set as directed or agreed to by Covered Entity

pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526;

- g. Maintain and make available the information required to provide an accounting of disclosures to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528;
- h. To the extent Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s); and
- i. Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with HIPAA.

3. **PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE.**

Except as otherwise limited in this Agreement:

- a. Business Associate may only use or disclose PHI to perform functions, activities, or services for or on behalf of Covered Entity as specified in the Agreement.
- b. Business Associate may use or disclose PHI as required by law.
- c. Business Associate agrees to make uses and disclosures and requests for PHI consistent with Covered Entity's minimum necessary policies and procedures.
- d. Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity.

4. **OBLIGATIONS OF COVERED ENTITY.**

- a. Covered Entity represents that it has obtained or will obtain all consents or authorization that may be required by HIPAA and applicable state law prior to furnishing Business Associate with PHI.
- b. Covered Entity will notify Business Associate of any limitation(s) in its Notice of Privacy Practices of Covered Entity under 45 CFR Part 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- c. Covered Entity will notify Business Associate in writing promptly, but in no event later than, two (2) business days, of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- d. Covered Entity will notify Business Associate in writing of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

5. **TERM AND TERMINATION**

- a. *Term.* This Agreement will be effective as of the date indicated above and will continue in effect unless terminated as provided in this Agreement.

- b. *Termination by Covered Entity.* Covered Entity may immediately terminate this Agreement if Covered Entity determines that Business Associate has breached a material term of this Agreement provided that Business Associate has not cured such breach within five (5) business days of receipt of written notice thereof by Covered Entity.
- c. *Termination by Business Associate.* Business Associate may immediately terminate this Agreement if Business Associate determines that Covered Entity has breached a material term of this Agreement provided that Covered Entity has not cured such breach within five (5) business days of receipt of written notice thereof by Business Associate.
- d. *Automatic Termination.* This Agreement will automatically terminate without further action of the parties upon the termination or expiration of the Underlying Agreements between Covered Entity and Business Associate.
- e. *Effect of Termination.* Upon the termination of this Agreement for any reason, Business Associate shall (i) retain only that PHI which is necessary for Business Associate to continue its proper management and administration or carry out its legal responsibilities; (ii) return to Covered Entity or destroy the remaining PHI; provided, however, that if return or destruction of said PHI is not commercially feasible, Business Associate will notify Covered Entity of same in writing; (iii) continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI to prevent use or disclosure of the PHI, other than as provided for in this Section for as long as Business Associate retains PHI; (iv) not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set forth in this Agreement.

6. MISCELLANEOUS

- a. *Entire Agreement.* This Agreement constitutes the entire agreement of the parties with respect to the parties' compliance with HIPAA and supersedes all prior or contemporaneous written or oral memoranda, arrangements, contracts or understandings between the parties hereto relating to same.
- b. *Amendment.* The parties agree to take such action as is necessary to comply with the requirements of HIPAA, as amended, and any other applicable laws. Business Associate will have the right to amend this Agreement at any time through the addition or modification of amendments to this Agreement in order to comply with HIPAA and other laws and regulations as applicable to the parties' relationship under HIPAA. This Agreement will automatically be amended such that the obligations imposed on either or both parties will allow the parties to remain in compliance with such regulations and laws.
- c. *Regulatory References.* A reference in this Agreement to a section in HIPAA means the section as in effect or as amended.
- d. *Survival.* Business Associate's obligations in respect to the use, disclosure and protection of PHI will survive any termination of this Agreement.
- e. *Interpretation.* Any ambiguity in this Agreement will be resolved to permit Covered Entity and/or Business Associate to comply with HIPAA.
- f. *Choice of Law.* This Agreement will be interpreted and enforced in accordance with HIPAA and, to the extent that state law is not preempted by HIPAA, the laws of the state of Florida, without regard to its conflict of law principles. Any legal or administrative proceedings brought to enforce the provisions of this Agreement, or to seek damages or equitable relief for its breach, will be brought in the state of Florida.