

END USER SERVICES AGREEMENT

This End User Services Agreement (the “EUSA”) is dated (the “Effective Date”) and is between PlanSource Benefits Administration, Inc., (“PlanSource”) and , (“End User”). The parties agree as follows:

This EUSA sets forth the terms and conditions under which PlanSource Benefits Administration, Inc. (“PlanSource”) agrees to provide certain hosted “software as a service” for its proprietary online, web-based applications and platform (“Platform”) to you and your affiliates, employees, third parties or other authorized users (collectively, “End User”), together with, if applicable, all other implementation services, customization, integration, data import and export, monitoring, technical support, maintenance, and training, as well as certain add-on benefits outsourcing services made available by PlanSource via the Platform or otherwise (each such service and the Platform together are the “Services”). By accepting these terms and conditions you agree to the terms of this EUSA. If you do not agree to the terms and conditions in this EUSA, do not access or use the Services.

This EUSA specifies the general terms under which PlanSource will provide the Services identified in an Order (including any exhibits and statements of work thereunder). Specific terms for the Services, including Service Term, Fees, payment terms, and other applicable terms, are outlined in an ordering document that references this EUSA and is mutually executed by PlanSource and End User or an order form, quote or other ordering document issued by PlanSource and signed by End User (each such ordering document is an “Order” and this EUSA, together with the applicable Order, is the “Agreement”). End User’s Affiliates may engage PlanSource under this EUSA under Orders entered into directly by PlanSource and such Affiliate or PlanSource and End User (on behalf of such Affiliate), provided that End User ensures that each such Affiliate complies with all obligations under the Agreement. End User will be responsible for all acts and omissions of such Affiliate. “Affiliate” means, for either party, any entity controlled by, controlling, or under common control with such party, either now or in the future. An entity “controls” another entity when it owns more than fifty percent (50%) of the voting interests of the controlled entity. The terms of the Order control over any conflicting terms in this EUSA. This EUSA, without waiving or otherwise releasing any right or obligation under any prior agreement or similar document or agreement of PlanSource, including but not limited to its End User License Agreement, Technology and Services Agreement, Platform License and Services Agreement, Software as a Services Agreement, and Statement of Services (collectively, “Prior Agreements”), hereby amends and restates any such Prior Agreement as of the Effective Date.

If you are obtaining or have obtained any Service from a PlanSource authorized reseller of the Services (“Authorized Reseller”), the terms of this EUSA Agreement apply to you only regarding those Services you obtain directly from PlanSource. The terms of the agreement by which you order or obtain any Service from an Authorized Reseller are between you and the Authorized Reseller. Such agreement does not amend or modify any terms of this EUSA. If the Fees you pay under any Order are discounted based on your relationship with Authorized Reseller or with any PlanSource referral partner (“Referral Partner”), or if an Authorized Reseller or Referral Partner pays any Fees on your behalf, the discounted Fees or payment arrangement between you and the Authorized Reseller or Referral Partner will be in effect as long as the relationship remains in effect. If the relationship ends for any reason, PlanSource, upon written notice to you (such notice which PlanSource may send via email), will adjust the Fees in the applicable Order to its current retail Fees or otherwise agreed-upon Fees. This adjustment will be effective on the first day of the month immediately following delivery of notice to you.

1. Restrictions and Responsibilities; Early Adopter Programs; Carrier Programs.

- a. End User will not, and will not permit or assist any third party to: (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Services, the Platform, or any other software, documentation or data related to the Services, or any portion thereof; (ii) modify, translate, or create derivative works based on the Services or Platform (or any portion thereof), or copy, publicly display, sell, sublicense, loan, rent, lease, distribute, pledge, assign, or otherwise transfer or encumber rights to the Services or Platform; (iii) remove, obscure or alter any proprietary notices (including but not limited to trademark and copyright notices) on any of the Services or Platform (or any portion thereof); (iv) use the Services or Platform for any benchmarking purposes, or for application service provider, timesharing or service bureau purposes, or any purpose other than End User’s own internal use as contemplated by this EUSA; (v) use the Services or Platform other than in accordance with this EUSA and in compliance with all applicable documentation and applicable laws and regulations (including but not limited to any applicable privacy, data protection and intellectual property laws); (vi) take any action that imposes, or may impose an unreasonable or disproportionately large load on PlanSource’s infrastructure as determined by PlanSource, in its sole discretion, or otherwise interfere with the proper working of the Services, including conducting any load or penetration testing on the Services; (vii) upload invalid data, viruses, worms, or other software agents through the Services; or (viii) disable or bypass any measures that PlanSource may use to prevent or restrict access to or use of the Services or Platform in excess of service capacity limits or usage restrictions set in this EUSA or otherwise determined by PlanSource. End User acknowledges that the

Services may include features to prevent use after the applicable Term or use inconsistent herewith. End User will keep the Services and Platform strictly confidential and not provide them or otherwise make them or any part thereof available to any third party, including without limitation any third party who provides products or services similar to the Services and Platform without PlanSource's express written consent.

- b. The successful implementation and ongoing use of the Services are contingent upon End User fulfilling its responsibilities in any applicable Service exhibit attached to this EUSA or any Order. PlanSource will not be liable for any delays or failures to provide the Services caused by End User's failure to fulfill such responsibilities or otherwise comply with any requirements outlined in a Service exhibit.
- c. End User will make available such personnel and information as PlanSource may reasonably require and take other actions as PlanSource may reasonably request. End User will also cooperate with PlanSource in establishing a password or other procedures for verifying that only designated employees of End User have access to any administrative functions of the Services. End User will be responsible for maintaining the security of its account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of End User's account.
- d. From time to time, PlanSource may invite clients and partners to try pre-release and/or beta features, functionalities, or modules of the Platform or Services that are made available to clients and partners to use and evaluate ("**Early Adopter Programs**") during a trial period. While completely optional, if End User agrees to participate, End User: (i) agrees to use and test under the applicable Early Adopter Program and to provide Feedback (as defined in the Agreement); and (ii) acknowledges that such features are for evaluation purposes only and not for production use, not considered part of the Platform or Services under the Agreement, not supported, notwithstanding anything set forth in the Agreement, are provided "as is" with no warranties of any kind, and may be subject to additional terms. Any such trial period will expire upon the date that a version of the feature becomes generally available, PlanSource elects to discontinue an Early Adopter Program, or as otherwise set forth in writing. PlanSource may discontinue Early Adopter Programs at any time in our sole discretion and may never make them generally available.
- e. If PlanSource intends to stop offering any Services for sale to End User for any reason, PlanSource will give End User a minimum of 90 days prior written notice prior to the effective date of discontinuation.
- f. If applicable, we confirm your eligibility and acceptance into PlanSource Boost. PlanSource Boost program requirements, including the current program terms and conditions are incorporated into and become a part of the Agreement, available [here](#).

2. End User Data.

- a. End User is solely responsible for the accuracy, quality, content, and legality of any data, information, or material that End User submits, collects, or provides to PlanSource during the Term ("**End User Data**"). PlanSource is under no obligation to review, edit, censor, control, or question the completeness or accuracy of any End User Data, and is not responsible for any losses or expenses that arise from End User's submission of incorrect, incomplete, or untimely End User Data. PlanSource, in its sole discretion, may charge an Out of Scope Fee (as specified in the Order) to fix End User's incorrect, incomplete, or untimely submission of End User Data. PlanSource will not be in breach of the Agreement if it cannot take corrective action because End User does not agree to pay the Out of Scope Fee.
- b. Each party will apply reasonable technical, organizational, and administrative security measures to keep End User Data protected per industry standards as appropriate relative to the Services. Service interaction with End User Data varies depending on the nature of the Service. End User will at all times retain a current copy of End User Data outside the Services for backup and archival purposes. If PlanSource reasonably believes a problem with the Services may be attributable to End User Data, End User will cooperate with PlanSource to identify the source of and resolve the problem. End User will comply with all intellectual property laws and obligations related to the End User Data, as well as all legal duties applicable to End User by using the Services, including providing all required information and notices and obtaining all required consents from its employees, consultants, and agents, as applicable. This EUSA states PlanSource's sole obligations concerning the care of End User Data.
- c. PlanSource has no obligation to maintain or make any determinations regarding any legally required participant or beneficiary documents, whether mandated by the Employee Retirement Income Security Act of 1974 and regulations thereunder, as amended (ERISA) or other applicable law or regulation. Except to the extent PlanSource is required to maintain documents in its provision of the Services, End User or its insurance carrier will, as mandated by applicable law or agreement, be responsible for maintaining required documents regarding employee eligibility for insurance coverage. PlanSource will not be liable for any discrepancies between the End User Data maintained in the Services or otherwise in PlanSource's possession or control and the information maintained by End User or its insurance carrier, except to the extent PlanSource causes such discrepancies.
- d. End User may download its End User Data in a file in PlanSource's standard format at any time during the Term. PlanSource has no obligation to maintain End User Data following expiration or termination of the Agreement or the affected Services.

PlanSource reserves the right, unless required by law or agreement, to delete all End User Data maintained in the Services after the effective termination date. Notwithstanding any of the foregoing, PlanSource will not be responsible or liable under the Agreement for any errors, omissions, or loss of data attributable to End User during the Term, including at any time End User syncs or downloads End User Data.

- e. PlanSource will retain and dispose of all End User Data per its data retention and disposal policies and procedures. PlanSource will retain End User Data only as long as it is necessary to implement, administer, and manage the Services during the Term or comply with applicable legal or regulatory obligations.
- f. PlanSource monitors and collects historical, aggregated, and de-identified data (“**Usage Data**”) about the general use of the Services by all customers. PlanSource uses Usage Data to evaluate improvements and enhancements to the Services and develop additional products and services, and from time to time, may publish Usage Data for informational and other such purposes. Usage Data will not identify End User or any PlanSource customer as the source of any specific data, pattern, or finding, nor will it include any personally identifiable information of any individual users of the Services. PlanSource owns all rights, title and interest in and to Usage Data. To the extent that PlanSource accesses or collects Usage Data, it does so pursuant to its obligations in this EUSA and will maintain the confidentiality of such Usage Data and treat it in accordance with PlanSource’s privacy policies and applicable law.

3. **Acquisition of Non-PlanSource Products; PlanSource Partner Marketplace.**

- a. PlanSource may, from time to time, make available to End User the option to purchase and integrate certain online applications and software products owned and provided by third-party vendors with whom End User separately contracts to provide services, which are not owned or operated by PlanSource (“**Non-PlanSource Products**”). Any such integration will be available only upon request by End User and under a separate written agreement that includes confidentiality and non-disclosure requirements between End User and the third party vendor who provides such Non-PlanSource Product, including but not limited to Marketplace Partners (collectively, “**Non-PlanSource Product Vendors**”). Any acquisition by End User of such Non-PlanSource Products, and any exchange of data or information between End User and the Non-PlanSource Product Vendors, is solely between End User and the applicable Non-PlanSource Product Vendor. Except as otherwise expressly stated in writing, PlanSource does not endorse any Non-PlanSource Products, whether or not PlanSource designates them as “certified” or otherwise. Subject to Section 3.c, End User is not required to purchase any Non-PlanSource Products to use the Services except a supported computing device, operating system, web browser, and Internet connection.
- b. If End User requests the integration of any Non-PlanSource Product for use with the Platform, End User acknowledges that PlanSource may allow the Non-PlanSource Product Vendors to access End User Data to the extent required for the interoperation of such Non-PlanSource Products with the Services. PlanSource will not be responsible for any disclosure, modification, or deletion of any End User Data resulting from any such access by Non-PlanSource Product providers except to the extent PlanSource causes such disclosure, modification, or deletion.
- c. The Services may contain features designed to interoperate with Non-PlanSource Products. End User may be required to obtain access to such Non-PlanSource Products from their providers. If the provider of any Non-PlanSource Product discontinues making the Non-PlanSource Product available for interoperation with any corresponding Service, PlanSource may discontinue providing such Non-PlanSource Product without entitling End User to any refund, credit, or other compensation.
- d. To maximize HR efficiency, employee engagement and plan participation, PlanSource has curated a list of strategic “best-fit” partners within the PlanSource “Partner Marketplace.” For more information and to see a list of selected “Marketplace Partners” who offer value-added products, visit <https://plansource.com/partners/marketplace>. For clarity, any products or services End User procures under any Marketplace Partner agreement is deemed a Non-PlanSource Product under this Agreement.

4. **Privacy and Data Protection; HIPAA and GDPR.**

- a. PlanSource will collect, access, use, and process End User Data per this EUSA, applicable law, and the terms of its Privacy Policy available at <https://plansource.com/privacy-policy/>, which is incorporated into this EUSA by reference. The Privacy Policy is subject to change at PlanSource’s discretion; however, policy changes will not result in a material reduction in the level of protection provided for End User Data.
- b. PlanSource will comply with all applicable data privacy and security laws and regulations that apply to the provision of the Services, including without limitation the Health Insurance Portability and Accountability Act of 1996, and regulations thereunder (HIPAA), and its implementing regulation, the Standards of Privacy of Individually Identifiable Health Information and the Health Information Technology for Economic and Clinical Health Act (HITECH), as amended from time to time, and the EU General Data Protection Regulation (GDPR).

- c. To the extent that PlanSource receives or has access to personally identifiable health information, PlanSource covenants that it will treat, hold, protect and return such information per the terms of its HIPAA Business Associate Agreement available at http://plansource.com/collateral/HIPAA_BAA.PDF, which is incorporated into this EUSA by reference.

5. **ERISA.**

- a. PlanSource may perform certain administrative services under this EUSA for End User's group employee benefits plan(s) (collectively, referred to as the "**Plan(s)**"). Such Services will not include or imply any discretionary authority by PlanSource over the operation of the Plan that would deem PlanSource the "plan administrator," "plan sponsor," or other "fiduciary" as defined under ERISA. Accordingly, to the extent the Services require PlanSource to assist the Plan administrator ("**Plan Administrator**"), the performance of such Services will consist of only those ministerial functions enumerated in the Department of Labor Regulations § 2509.75-8, D-2 (relating to report preparation required by governmental agencies, employee communications material, recommendations regarding plan administration) and PlanSource will perform such Services within the framework of policies, interpretations, rules, practices, and procedures established by End User and Plan Administrator. Consequently, all PlanSource activities for or on behalf of the Plan will be subject to review, modification, or reversal by Plan Administrator or any other fiduciary so authorized by the Plan. PlanSource will have no discretionary or final authority to control or manage the Plan's administration or manage or invest the Plan's assets.
- b. PlanSource will have no responsibility, risk, liability, or obligation for the funding of the Plan or the payment of any benefits of the Plan or other liabilities, whether resulting from the ongoing operations of the Plan, termination of the Plan, a change by the Plan in its funding method from or to full or partial insurance, or the nonpayment by an insurer of amounts due to the Plan or any Plan participant. Such responsibility, risk, liability, and obligation will at all times reside and remain solely with End User, the Plan, the Plan Administrator, or such other persons designated by the Plan.

6. **Proprietary Rights.**

- a. Except as otherwise provided in this EUSA, PlanSource and its suppliers and licensors own and will retain ownership of, and all rights, title, and interest (including without limitation all Intellectual Property Rights) in and to: (i) the Platform and the Services; (ii) any software, applications, inventions or other technology developed by or on behalf of PlanSource in connection with the Services, including but not limited to the Platform; and (iii) Usage Data and Documentation and any improvements or derivative works thereof. End User will have no rights concerning PlanSource Intellectual Property Rights, the Services, Usage Data, or any related guides and other documentation for the Services that PlanSource provides to End User ("**Documentation**") other than those expressly granted under this EUSA and PlanSource expressly reserves all other rights in and to the Platform, the Services, Usage Data, and the Documentation. Notwithstanding the foregoing, as between PlanSource and End User, End User owns all End User Data, and all other electronic data that End User, or any of its respective employees, agents, or representatives, load or enter into the Platform or otherwise provide and all results from processing such data, including compilations and derivative works of such data or information. "**Intellectual Property Rights**" means all registered and unregistered intellectual property rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.
- b. As between PlanSource and End User, End User is and will remain the sole and exclusive owner of all End User Data, including all Intellectual Property Rights relating thereto, subject only to the limited license granted herein. During the Term and subject to this EUSA, End User grants PlanSource a limited, royalty-free, fully paid up, non-exclusive, non-transferable and non-sublicensable license to access, use, and process End User Data solely as necessary to provide the Services.
- c. The Platform consists in whole or in part of software running on servers controlled by PlanSource. End User does not have the right to receive, nor will PlanSource provide End User either an object code or source code version of the Platform. Neither the source code nor object code version of the Platform, nor any related Documentation, will be considered a deliverable under the Agreement. The terms of this EUSA govern End User's usage rights, which are limited to accessing the Services via a designated portal using usernames(s) and password(s).
- d. If End User provides PlanSource with reports of defects in the Services or propose or suggest any changes or modifications (collectively "**Feedback**"), PlanSource will have the right to use and exploit such Feedback including, without limitation, the incorporation of such Feedback into PlanSource's software products and services, including the Services, without any obligation to End User or diminishment of PlanSource's Intellectual Property Rights.

7. Confidentiality.

- a. **"Confidential Information"** means all information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential, or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. PlanSource Confidential Information includes the Platform, the Services and all object code and source code relating to it, the Documentation, all pricing and fees relating to the Services as well as any non-public information or material regarding PlanSource's legal or business affairs, finances, technologies, clients, employees, contractors, Affiliates, properties, or data; and Confidential Information of each party includes the terms and conditions of the Agreement (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that, without breach of any obligation owed by Receiving Party to Disclosing Party: (i) is or becomes generally known to the public; (ii) was lawfully known to Receiving Party before its disclosure by Disclosing Party without any obligations of confidentiality or other restriction on use or disclosure; (iii) is received from a third party that, to Receiving Party's knowledge, is not under any obligation of confidentiality to the Disclosing Party; or (iv) was independently developed by Receiving Party.
- b. Receiving Party will use the same degree of care that it uses to protect the confidentiality of its confidential information of like kind (but not less than reasonable care): (i) not to use any Confidential Information of Disclosing Party for any purpose outside the scope of the Agreement; and (ii) except as otherwise authorized by Disclosing Party in writing, to limit access to Confidential Information of Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with the Agreement and who are bound by obligations of confidentiality no less stringent than those herein. Except as otherwise permitted by the Agreement, neither party will disclose the terms of the Agreement to any third party other than its Affiliates, legal counsel, and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate's, legal counsel's or accountant's compliance hereunder.
- c. Receiving Party may disclose Confidential Information of Disclosing Party to the extent compelled by law to do so, provided Receiving Party gives Disclosing Party prior written notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if Disclosing Party wishes to contest the disclosure. If Receiving Party is compelled by law to disclose Disclosing Party's Confidential Information as part of a civil proceeding to which Disclosing Party is a party, and Disclosing Party is not contesting the disclosure, Disclosing Party will reimburse Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.
- d. Upon the written request of Disclosing Party or termination of the Agreement, Receiving Party will return or destroy all Confidential Information of Disclosing Party, including all copies thereof and materials incorporating such Confidential Information, whether in physical or electronic form. Each party may retain a copy of the other party's Confidential Information to the extent required by applicable law or regulation for archival purposes. To the extent that it is impracticable to return or destroy any Confidential Information, and concerning any copies retained for archival purposes, Receiving Party will continue to maintain the Confidential Information per the terms of this EUSA. The confidentiality obligations outlined in this EUSA survive termination of the Agreement and remain in full force and effect until such Confidential Information, through no act or omission of Receiving Party, ceases to be Confidential Information as defined hereunder.

8. Term and Termination.

- a. This EUSA is effective on the Effective Date and will automatically terminate when all Orders expire or terminate or as otherwise set forth herein.
- b. The "**Initial Term**" of a Service starts on the date specified in the Order and continues for the period stated therein. Except as otherwise outlined in the Order, Services subscriptions will automatically renew for additional periods equal to the original duration of the expiring term (each, a "**Renewal Term**" and together with the Initial Term, the "**Term**"), unless either party gives the other notice of non-renewal at least 120 days before the end of the then-current term.
- c. Upon completion of the Initial Term, PlanSource may terminate this EUSA or any Order by providing End User written notice of termination 60 days before the end of Initial Term or Renewal Term in effect, with such termination to be effective at the end of the current Initial or Renewal Term.
- d. Either party may terminate this EUSA or an Order upon written notice if the other party materially breaches this EUSA or the applicable Order for the affected Service and does not cure the breach within 60 days after receiving written notice thereof from the non-breaching party. Any notice of breach under this Section must be sent to PlanSource Legal by email to legal@plansource.com. Either party may terminate the Agreement upon written notice if the other party becomes the subject of a petition in bankruptcy or any proceeding related to its insolvency, receivership, or liquidation, in any jurisdiction, that is not dismissed within 90 days of its commencement or an assignment for the benefit of creditors.

- e. If End User terminates an Order, or any Service provided hereunder, without cause or proper notice at any time during the current term, or if PlanSource terminates the Agreement at any time for End User's material breach, then End User will pay PlanSource early termination charges for the terminated Services in an amount equal to any unpaid Fees for the remaining term of such terminated Services, plus the balance of any unpaid non-recurring charges associated with such terminated Services. End User agrees the actual damages in the event of such termination would be difficult or impossible to ascertain and that such termination charges are intended to establish liquidated damages for such early termination and are not intended as a penalty.
- f. If requested by End User, upon termination or non-renewal of the Agreement or any Order by either party, provided that PlanSource hasn't terminated the Agreement or any Service due to End User's breach, PlanSource may provide End User with continued Services (as are already being provided to End User and under the same terms and conditions in effect at the time of termination or non-renewal), for a period not to exceed six months, unless otherwise mutually determined in writing by the parties ("**Transition Period**") following the effective date of termination or non-renewal. If requested by End User, PlanSource will provide transition services ("**Transition Services**") under the terms of the Agreement and at up to two times the Fee rates applicable upon the effective termination date. To the extent End User requests Transition Services beyond the scope of the Agreement, the parties will, by mutual written agreement, define the additional scope and pricing. Notwithstanding the foregoing, PlanSource, in its sole discretion, reserves the right to decline to provide or stop providing any Transition Services.
- g. All sections of the Agreement, which by their nature should survive termination, will survive termination, including, without limitation, accrued rights to payment, use restrictions and indemnity obligations, confidentiality obligations, warranty disclaimers, and limitations of liability.

9. Fees and Payment.

- a. End User will pay all Service fees ("**Fees**") as outlined in the Order. End User will provide PlanSource with valid and updated billing and invoicing data or approved purchase order information and complete and accurate billing and contact information. Services purchased under an Order Form are non-cancelable and non-refundable. The parties will execute a subsequent Order(s) for any add-on orders that will supersede the originating Order and co-term all Services. For the avoidance of doubt, "**Minimum Amount Due**" as set out in the Order means before Go-Live, PlanSource will invoice End User based on the quantities (the "**Minimum Count**"). After Go-Live, PlanSource will invoice End User the greater of the actual monthly employee count on the Platform or the Minimum Count. "**Go Live**" means the time when the platform is available for use by End User and its employees. Notwithstanding any of the foregoing, post Go-Live, PlanSource, at its reasonable discretion, may, review, determine, set, or modify the Minimum Count, as outlined herein, based on End User's actual billable lives on the Platform (each a "**Minimum Count Adjustment**"). PlanSource reserves the right to make the Minimum Count Adjustment on an annual basis in January of each contract year, upon reasonable notice to End User. Any modifications to the Minimum Count Adjustment will be effective upon notice to End User and any existing Order will be deemed amended for this purpose as of the notification date.
- b. If PlanSource invoices End User on an annual basis for any Services, End User authorizes PlanSource to bill and invoice: (i) at the time that End User orders any products or services, for all products and services outlined in the Order; (ii) for End User's usage that exceeds the usage limits outlined in the Order; and (iii) at the time of any renewal, for the amount charged for any Renewal Terms. PlanSource will invoice End User at the time of the initial Order and approximately one month in advance of the start of any renewal or subsequent billing period. All amounts invoiced hereunder that are not the subject of a written good faith dispute are due and payable upon receipt of the invoice. Unpaid invoices that are not the subject of a written good faith dispute are subject to a finance charge of one and a half percent per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all reasonable expenses of collection.
- c. If any amount owing by End User is 60 days or more overdue, PlanSource may, without limiting its other rights and remedies, accelerate End User's unpaid Fee obligations so that all such obligations become immediately due and payable, suspend the Services until End User pays such amounts in full, and seek collection of all amounts past due, including reasonable attorney's fees and costs of collections. PlanSource will give End User at least seven days prior notice that its account is overdue before suspending the Services.
- d. During the first year of the Order, the fees will remain fixed. Thereafter, starting at any time during the second year of the Order, the Fees will automatically increase each year by up to eight percent above the prior-year pricing. Notwithstanding the foregoing, PlanSource reserves the right to initially increase the Fees by up to ten percent over the prior-year pricing for any End User that did not receive the automatic increase outlined in the preceding sentence at any time during or after the second year of the Order, this Agreement, or any Prior Agreement. In such cases, PlanSource will automatically increase the Fees one-time by ten percent over the prior-year pricing and reduce the increase to six percent over the prior-year pricing in the following year and annually thereafter. Notwithstanding the foregoing, this Section 9.d shall survive expiration of the Agreement and any Prior Agreement where End User executes a new renewal contract.

Commented [KM1]: This section is currently under review and revision by executive leadership. PlanSource reserves the right to modify and update accordingly.

- e. Notwithstanding anything set forth in Section 9.d or elsewhere in the Agreement, PlanSource reserves the right to modify the Fees (and applicable discounts) at any time, upon notice to End User, as may be necessary to compensate for changes, modifications, or additions to (i) local, state, or federal laws applicable to the Services that impact the administration of the End User's group health plan and that result in new features, functionality, or deliverables designed to comply with changes to applicable laws; (ii) modifications or additions to PlanSource product and service deliverable offerings; (iii) Non-PlanSource Products costs that are necessary to integrate the Non-PlanSource Product purchased by End User within the Platform (e.g., custom API); (iv) changes to carrier products, offerings, credits and discounts exclusive to End User; (v) changes in End User's participation in any applicable carrier program; or (vi) one-time economic adjustments resulting from cost increases for infrastructure, energy, labor, and from PlanSource suppliers. Notwithstanding any of the foregoing, PlanSource reserves the right to increase pricing at any time if the Minimum Amount Due is 10% lower than Minimum Count (as defined in the Order).
- f. If there are discounted fees in an Order based on End User's relationship with a PlanSource partner, the discount will apply so long as the relationship between End User and the partner continues. Upon termination of the relationship, PlanSource will automatically adjust the Fees in the Order to reflect its current retail fees or other agreed-upon fees. The Fee adjustment will be effective on the first day of the month immediately following the effective termination date.
- g. End User acknowledges that it is the user of the Services and bears full and sole payment responsibility under the Agreement. If any third party pays Fees on behalf of End User, it will not in any way relieve End User of any of its payment obligations under the Agreement. If the third party fails to make any payments on behalf of End User, at any time and for any reason, PlanSource will invoice End User for any unpaid amounts, and End User will remit full payment to PlanSource within 15 days of receipt of an invoice. If End User fails to make any overdue payment, PlanSource, without limiting any of its other rights and remedies, may exercise its rights under Section 9.c.
- h. Unless otherwise stated, the Fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, goods and services, harmonized, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "**Taxes**"). End User is responsible for paying all Taxes associated with its purchases under the Agreement, if applicable. If PlanSource has the legal obligation to pay or collect Taxes for which End User is responsible under this section, the appropriate amount will be invoiced to and paid by End User, unless End User provides PlanSource with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, PlanSource is solely responsible for taxes assessable against PlanSource based on its income, property, and employees.
- i. Notwithstanding any of the foregoing or anything outlined in the Agreement, PlanSource reserves the right to audit End User's records to verify the accuracy of End User's subscription quantities, reports, and payments to PlanSource. PlanSource or an independent auditor PlanSource selects will perform such audits at its own expense. If an audit reveals a discrepancy that has resulted in an underpayment to PlanSource, End User will remit the total amount due to PlanSource within 30 days of receipt of an invoice.
- j. If End User makes any payments under the Agreement by electronic funds transfers through the Automated Clearing House network (ACH), End User authorizes PlanSource to (i) initiate debit entries to its account at the depository financial institution identified on an authorization form to be provided by PlanSource; and (ii) debit End User's account in such amounts and at such times as are necessary to pay PlanSource (1) any fees or charges associated with the Services, including, without limitation, finance charges; and (2) any other amount that End User owes under the Agreement. This authorization will remain in full force and effect until PlanSource receives written notice from End User of its intent to terminate the Agreement. At that time, the authorization will continue in such time and such manner as to afford PlanSource and the depository financial institution a reasonable opportunity to act upon the termination. End User will maintain immediately available funds sufficient to cover all transactions initiated by PlanSource under the Agreement. If End User does not have sufficient funds in its account to pay amounts due at the time required, or if End User refuses to pay, PlanSource will attempt to notify End User electronically, by telephone, or in writing. However, in the event of any nonpayment, PlanSource may suspend or refuse to perform the Services as permitted in Section 9.c. PlanSource will charge a fee of \$35.00 for each non-sufficient funds transaction. Should the Services be recommenced following suspension, PlanSource may require End User to pre-pay for the Services and charge a reconnection service fee. The ACH network is controlled and managed by the National Automated Clearinghouse Association (NACHA) and its member organizations. Where submitting charges over the ACH network, End User must comply with NACHA Operating Rules and any additional ACH authorization or electronic funds transfer agreements PlanSource provides to End User.
- k. If End User in good faith disputes any portion of an invoice, End User will pay the undisputed portion of the invoice and submit written notice to PlanSource regarding the disputed amount, which notice will include documentation supporting the alleged billing error (each such notice, a "**Fee Dispute Notice**"). End User must submit a Fee Dispute Notice to PlanSource within 90 days from the date End User receives the invoice at issue. End User waives the right to dispute any Fees not disputed within such 90 day period. The parties will negotiate in good faith to resolve any such disputes within 60

days after End User's delivery of the applicable Fee Dispute Notice. The parties will resolve any unresolved Fee disputes within the dispute resolution procedures outlined in Section 14.

10. Warranties; Disclaimers.

- a. PlanSource represents and warrants that it will perform the Services in a timely, workmanlike, and professional manner and following sound and generally accepted industry standards and practices. PlanSource will comply with all applicable laws, codes, rules, regulations, or other governmental or regulatory requirements relating to its obligations under this EUSA.
- b. End User warrants that: (i) it will not misrepresent any Services in terms of capabilities or usage; and (ii) it will comply with all applicable laws, codes, rules, regulations, or other governmental or regulatory requirements relating to its obligations under this EUSA.
- c. The Platform will be accessible 99.0% of the time, measured monthly (the "**Uptime Guarantee**"). The Uptime Guarantee will not apply where downtime or interruption of the Platform results from: (i) regular planned outages for repairs and upgrades (i.e., monthly maintenance, quarterly software deployment, etc.) scheduled in advance and announced with reasonable advance notice; (ii) occasional unplanned outages scheduled in advance and announced at least two weeks in advance (iii) other emergency, but planned outages we deem necessary to maintain the performance, integrity, security, and availability of the system, and of which we will make commercially reasonable efforts to notify you as soon as practicable (typically 1-3 days in advance), provided that such outages are scheduled after business hours in order to cause minimal disruption to your use of the Platform; (iv) issues or failures with End User's equipment, service providers, software, communications or internet providers; (v) the actions, omissions, or failures of any End User third party providers that are not contracted with PlanSource in order to provide the Services; (vi) the material acts or omissions of End User; (vii) any suspension or termination of End User's access to the Services by PlanSource consistent with the terms of the Agreement; or (viii) a Force Majeure Event.
- d. If PlanSource fails to comply with the Uptime Guarantee, it will use commercially reasonable efforts to provide End User with an error correction or work-around that corrects the reported non-conformity. The remedies outlined in this Section 10.d will be End User's sole remedy for PlanSource's failure to meet the Uptime Guarantee.
- e. Except for those express warranties made in this section or otherwise in the Agreement, the Services are provided "as is" and "as available" and without any representations or warranties of any kind. PlanSource and its licensors make no other representations and give no other warranties or conditions, express, implied, statutory, or otherwise, regarding the Services. PlanSource expressly disclaims all implied representations, warranties, or conditions of merchantability, non-infringement, durability, title, and fitness for a particular purpose. End User acknowledges that, except as expressly stated in the Agreement, PlanSource does not represent or warrant or provide any conditions that the Services will be error-free or work without interruptions.

- 11. Limitation of Liability.** To the fullest extent allowed by law, neither party nor its Affiliates, licensors, or suppliers will be liable for any loss of use, lost data, failure of security mechanism, interruption of business, or any indirect, special, incidental, or consequential damages of any kind (including lost profits), regardless of the form of action, incidental, or consequential damages of any kind (including lost profits), irrespective of the form of action, whether in contract, tort (including negligence), strict liability or otherwise, incurred by such party (or its Affiliates) in connection with the Agreement, including without limitation the API Addendum, if applicable, even if informed of the possibility of those damages in advance. PlanSource's maximum liability for all damages arising out of or related to the Agreement, whether in contract or tort or otherwise, will in no event exceed, in aggregate, the total amounts paid to PlanSource for the Service that is the subject of the claim in the 12 months immediately preceding the event given rise to the claim less any refunds or credits received from End User for the Service. Unless otherwise stated in the Agreement, the remedy under this section is the sole and exclusive remedy for End User for PlanSource's breach of the Agreement.

12. Indemnification.

- a. End User acknowledges that by entering into and performing its obligations under the Agreement, PlanSource does not assume, and End User should not expose PlanSource to the business and operational risks associated with End User's business. Accordingly, End User will indemnify and hold harmless PlanSource, its officers, directors, employees and Affiliates against all liabilities, obligations, losses, costs, damages, and other expenses, including reasonable attorneys' fees (collectively, "**Losses**") incurred by PlanSource that result from a third party claim to the extent such Loss arises from: (i) any material breach by End User of the Agreement; (ii) End User's use of the Services; (iii) a third party's use of the Services authorized or facilitated by End User; (iv) the inaccuracy or incompleteness of Data input into, or modified within the Services by End User; (v) a claim or allegation that the End User Data, or PlanSource's authorized use thereof, infringes a U.S. patent or copyright or misappropriates the Intellectual Property Rights of any third party; (vi) any violation of any law or

- regulation by End User, or any of its officers, directors, employees, contractors or agents; or (vii) or willful misconduct or gross negligence by End User or any of its employees, agents or contractors.
- b. During the Term, and provided that End User is then not in material default of the Agreement, PlanSource will indemnify and hold harmless End User and its Affiliates and each of their employees, officers, directors, and agents against all Losses to the extent such Losses arises from (i) any breach of applicable law or regulation by PlanSource or any of its employees, agents, or contractors; (ii) a claim or an allegation that the Services or any permitted use thereof by End User infringes a U.S. patent or copyright or misappropriates the Intellectual Property Rights of any third party; or (iii) willful misconduct or gross negligence by PlanSource or any of its employees, agents or contractor.
- c. If End User's use of the Services under the terms of the Agreement is enjoined, then PlanSource may, at its sole option and expense, either (i) procure for End User a license to continue using the Services under the terms of the Agreement; (ii) replace or modify the allegedly infringing Service to avoid the infringement; or (iii) terminate the right and access to the corresponding Service and refund any unused prepaid Fees as of the date of termination. This section 12.c states PlanSource's entire liability and the exclusive remedy for infringement for End User.
- d. Notwithstanding the indemnity obligations specified under this paragraph or anything to the contrary under the Agreement, PlanSource will have no defense or indemnification obligation or other liability for any Loss arising from (i) End User's use of the Services other than as permitted under the Agreement; (ii) modification of the Services by any party not under the supervision or control of PlanSource; (iii) the combination of the Services with any materials contributed by End User or any third parties if the Services would not infringe without such combination; (iv) any third-party products, services, hardware, software or other materials; or (v) any obligation of End User to indemnify PlanSource hereunder.
- e. In the event a party seeks indemnification hereunder (the "**Indemnified Party**"), it will inform the other party (the "**Indemnifying Party**") of a Loss as soon as reasonably practicable after it receives notice of the Loss, will permit the Indemnifying Party to assume direction and control of the defense of the Loss (including the right to settle the claim solely for monetary consideration) and will cooperate as requested in defense of the Loss. Any delay or failure by the Indemnified Party to give notice to the Indemnifying Party will not relieve the Indemnifying Party of its obligations hereunder except to the extent, if at all, that it is materially prejudiced because of such delay or failure.
13. **Dispute Resolution.** The parties will attempt in good faith to resolve informally any disputes or disagreements relating to the Agreement. The aggrieved party will notify the other party in writing of the nature of the dispute with as much detail as possible. Each party will designate a representative with full authority to address and resolve the dispute. The designated representatives will meet (in person or by telephone) no later than 15 business days after the date of the written notification to reach an agreement about the nature of the dispute and the corrective action the parties will take. If the designated representatives do not meet or cannot agree on corrective action, the parties will have 30 days to institute a one-day mediation with a third-party mediator mutually agreeable to both parties. The parties will share the cost of the mediation, exclusive of attorneys' fees. Neither party may initiate legal action arising out of or relating to the Agreement until the party initiating legal action has reasonably attempted to comply with this dispute resolution procedure, provided, however, that neither party will be required to comply with this section in the event of the other party's breach of any confidentiality obligations of the Agreement.
14. **Relationship of the Parties.** The parties are independent contractors in the performance of the Agreement. The Agreement does not create or imply any partnership, agency, or joint venture. Neither party will have or hold itself out to third parties as having authority to bind or enter into any agreement on the other party's behalf.
15. **Subcontractors.** PlanSource may use subcontractors, including offshore subcontractors, in its delivery of the Services. PlanSource will ensure its subcontractors comply with the obligations and restrictions in this EUSA and will be solely responsible for such subcontractors' performance under this EUSA.
16. **Press Releases; PlanSource Customer List.** End User may not issue any press release or other public statement regarding the terms or subject matter of any agreement or relationship with PlanSource without PlanSource's prior written consent. End User agrees that PlanSource may use End User's name or logo to identify End User as a customer of PlanSource on PlanSource's website, in a press release, and as a part of a general list of PlanSource's customers for use and reference in PlanSource's corporate and marketing literature. The permissions granted under this section are revocable by a party in its reasonable discretion.
17. **Assignment.** Neither party may assign any of its rights or delegate any of its obligations under the Agreement, whether by operation of law or otherwise, without the other party's prior express written consent, which will not be unreasonably withheld or delayed. Notwithstanding the foregoing, PlanSource may assign the Agreement with notice to End User in connection with any merger or acquisition or sale of all or substantially all of PlanSource's or any of its Affiliate's assets or stock. Such assignment will not, in any event, relieve the assignor of any obligations that accrue under the Agreement before any such assignment.

18. **Force Majeure.** Except for End User's payment obligations under the Agreement, neither party will be in default or otherwise liable for any delay in or failure of its performance under the Agreement if such delay or failure arises by any reason beyond its reasonable control ("**Force Majeure Events**"), including but not limited to: (i) acts of God; (ii) war (or the threat of war), acts of terrorism or other civil disorder or unrest; (iii) government orders, laws, and regulations; (iv) disasters, strikes or other labor disturbances (except those involving the employees or agents of the party seeking the protection of this clause); (v) epidemics, pandemics and quarantines; (vi) national or regional emergencies; or (vii) other similar events beyond the reasonable control of the party impacted by the Force Majeure Event.
19. **Governing Law; Venue.** The Agreement is governed by the laws of the State of Florida without giving effect to its principles of conflicts of law. Venue for any action brought under the Agreement will be exclusively in Orange County, Florida.
20. **Notices.** Except as otherwise stated in this EUSA, all notices and communications required or permitted under the Agreement will be in writing and sent by registered or certified mail, postage prepaid, return receipt requested, facsimile transmission, with confirmed answer back, or electronic mail, with confirmation of receipt, to PlanSource or End User at the respective addresses the parties provide to each other or such other addresses as the parties may from time to time specify by notice given as provided in this paragraph. In the case of PlanSource, the address is 122 W. Pine Street, Ste. 203, Orlando, Florida 32801, Attention: Legal Department and email is Legal@plansource.com.
21. **Modifications and Updates.** PlanSource may, on one or more occasions, modify or update the Agreement. PlanSource will post notices of modifications or updates through links placed on the PlanSource website or login pages or provide notification by other means, including via email. Any changes to EUSA will be in effect as of the "Modification Date" referenced at the top of the online EUSA or otherwise on the notice if sent via email. Please review the Agreement periodically for modifications or updates. If End User uses the Services after PlanSource posts any modifications or updates, End User will be deemed as having accepted them. If End User does not agree to any modified or updated terms of the Agreement or changes to other PlanSource policies, End User should discontinue its use of the Services, and this will be End User's sole and exclusive remedy. If there is a conflict between this EUSA and the most current version of this EUSA posted on the PlanSource website, login pages, or otherwise provided to End User, the most current version will prevail. For questions regarding the Agreement or to request a paper copy of this EUSA or any previous versions, please email PlanSource at Legal@plansource.com.
22. **Severability; Waiver.** If a court of competent jurisdiction finds any provision of the Agreement to be invalid, illegal, or unenforceable for any reason, the remainder of the Agreement will continue in force, and if any such provision may be made enforceable by limitation, then such provision will be deemed to be so limited and will be enforceable to the maximum extent permitted by applicable law. No failure or delay by either party in exercising any right under the Agreement will constitute a waiver of that right. The waiver by a party of compliance by the other party with any provision of the Agreement will not operate or be construed as a waiver of any other provision of the Agreement (whether or not similar), or a continuing waiver or a waiver of any subsequent breach by a party of a provision of the Agreement.
23. **Non-Solicitation.** During the Term and for a period of one year after expiration or termination of the Agreement, End User will not, directly or indirectly, solicit or attempt to solicit, divert, or hire away any person employed by PlanSource without its written consent.
24. **No Legal Advice.** The Services do not include, and PlanSource does not provide, investment, tax, compliance, or legal advice. End User should consult its legal counsel or professional advisor if it requires legal or other expert advice. As applicable, End User will engage appropriate counsel for any legal advice or compliance with labor and employment law matters or any other legal and compliance matters and provide findings to PlanSource as required for system updates or corrections.
25. **Entire Agreement.** The Agreement, including this EUSA, the Order, and any exhibits, schedules, and attachments hereto, constitutes the entire understanding of the parties concerning the subject matter hereof and supersedes and replaces all prior or contemporaneous agreements, proposals, understandings, commitments, or negotiations concerning it, including, without limitation, the Prior Agreements, any confidentiality or non-disclosure agreements, whether written or oral, and any prior click-wrap, shrink-wrap, or browse-wrap agreements between the parties for the terms and conditions hereof. There are no other oral or written understandings, terms, or conditions, and neither party has relied upon any representation, express or implied, not contained in the Agreement.

By signing below, each party acknowledges that it has carefully read and fully understood this EUSA, and each agrees to be bound by the terms of the Agreement.

PLANSOURCE BENEFITS ADMINISTRATION, INC.

By: _____
Douglas Cunningham
Acting Chief Financial Officer

By: _____
Print Name: _____
Title: _____

By: _____
Dave Firestone
Chief Revenue Officer

SAMPLE : PRIVILEGED AND CONFIDENTIAL