

## **BUSINESS ASSOCIATE/NONAFFILIATED THIRD PARTY SERVICE PROVIDER CONTRACT TERMS**

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Purpose: These contract terms satisfy our obligation both under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and its implementing regulations issued by the U.S. Department of Health and Human Services (45 C.F.R. Parts 160-164) that are applicable to Company’s relationship with “business associates,” and under the requirements of all insurance commissioner regulations implementing Title V of the Gramm-Leach-Bliley Act (15 U.S.C. § 6801 *et seq.*) that are applicable to Company’s relationship with “nonaffiliated third party service providers.” These legal provisions are intended to ensure the integrity and confidentiality of protected health information and nonpublic personal financial information that a business associate or nonaffiliated third party may create or receive for or from our Company.

Applicability: **These contract terms must be used with each of entity with which we contract that is both a “business associate” and a “nonaffiliated third party service provider.”** A “business associate” is any person or organization that we engage to perform or assist in performing functions or activities that involve use or disclosure of protected health information created or received for or from our Company. A “business associate” is also any person or organization that provides legal, actuarial, accounting, consulting, data aggregation, management, administration, accreditation or financial services to or for our Company and receives protected health information from our Company or another business associate of our Company. A “nonaffiliated third party service provider” is a person or organization our Company engages to perform services or functions on our behalf, including (a) marketing our products and services, or (b) marketing under a joint agreement we have with another financial institution (including any type of licensed insurance issuer) to jointly offer, endorse or sponsor financial products or services (including insurance products and services). For these contract terms, we use the term “Business Associate” to stand for the entity that is both our “business associate” covered by the HIPAA implementing regulations and our “nonaffiliated third party service provider” covered by applicable GLBA implementing regulations.

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Instructions: Consult our Legal Department to ensure that we bind each Business Associate that may create or receive protected health information or nonpublic personal financial information for or from our Company to the contract terms below either by incorporating them into our written agreement with the Business Associate, or by having the Business Associate execute an agreement containing these terms to be added to that agreement. If these terms are incorporated into the agreement, conform the references to “Company” and “Business Associate” and the section numbering and capitalized or otherwise defined terms to the conventions used by that agreement. Insert the appropriate information for bracketed material.

## AGREEMENT WITH BUSINESS ASSOCIATE

This agreement (“Agreement”) is effective upon execution, by and between {**name of agent/broker/or agency**} (“Business Associate”) and Planned Administrators, Incorporated (“Company”).

Company and Business Associate mutually agree to the terms of this Agreement to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (45 C.F.R. Parts 160-64) and with the requirements of all insurance commissioner regulations implementing Title V of the Gramm-Leach-Bliley Act (15 U.S.C. § 6801 *et seq.*) that are applicable to Company’s relationship with Business Associate.

### **A. Privacy of Protected Health Information and Nonpublic Personal Financial Information.**

**1. Permitted Uses and Disclosures.** Business Associate is permitted or required to use or disclose Protected Health Information (“PHI”) and nonpublic Personal Financial Information (“NPI”) it creates or receives for or from Company or to request PHI and NPI on Company’s behalf only as follows:

a) Functions and Activities on Company’s Behalf. Except as otherwise limited in this Agreement, Business Associate is permitted to request the Minimum Necessary PHI and NPI on Company’s behalf, and to use and to disclose the Minimum Necessary PHI to perform functions, activities, or services for or on behalf of Company, as specified in Agreement.

b) Business Associate’s Operations. Business Associate may use the Minimum Necessary PHI and NPI for Business Associate’s proper management and administration or to carry out Business Associate’s legal responsibilities. Business Associate may disclose the Minimum Necessary PHI, but not such NPI, for Business Associate’s proper management and administration or to carry out Business Associate’s legal responsibilities only if:

- (i) The disclosure is required by law; or
- (ii) Business Associate obtains reasonable assurance, evidenced by written contract, from any person or organization to which Business Associate will disclose PHI that the person or organization will:
  - a. Hold such PHI in confidence and use or further disclose it only for the purpose for which Business Associate disclosed it to the person or organization or as required by law; and
  - b. Promptly notify Business Associate (who will in turn promptly notify Company) of any instance of which the person or organization becomes aware in which the confidentiality of such PHI was breached.

**2. Prohibition on Unauthorized Use or Disclosure.** Business Associate will neither use nor disclose PHI and NPI except as permitted or required by this Agreement, as otherwise permitted in writing by Company, or as required by law. This Agreement does not authorize Business Associate to use or disclose PHI or NPI in a manner that would violate the requirements of the Health Insurance Portability and Accountability Act of 1996 and its

implementing regulations (45 C.F.R. Parts 160-64) if done by Company, except as set forth in Section A(1)(b).

**3. Information Safeguards.** Business Associate will develop, document, implement, maintain, and use appropriate administrative, technical, and physical safeguards, in compliance with Social Security Act § 1173(d) (42 U.S.C. § 1320d-2(d)), 45 C.F.R. § 164.530(c), any other implementing regulations issued by the U.S. Department of Health and Human Services, and any other applicable laws. The safeguards will be designed to preserve the integrity and confidentiality of, and to prevent intentional or unintentional non-permitted or violating use or disclosure of, PHI or NPFI. Business Associate will document and keep these safeguards current. Business Associate agrees to mitigate any harmful effect that is known to the Business Associate resulting from a use or disclosure of PHI or NPFI by the Business Associate or its subcontractors in violation of the requirements of this Agreement.

**4. Subcontractors and Agents.** Business Associate will require any of its subcontractors and agents, to which Business Associate is permitted by this Agreement or in writing by Company to disclose PHI and NPFI, to provide reasonable assurance, evidenced by written contract, that such subcontractor or agent will comply with the same privacy and security obligations as Business Associate with respect to such PHI and NPFI.

**B. Compliance with Standard Transactions.** If Business Associate conducts, in whole or part, Standard Transactions for or on behalf of Company, Business Associate will comply, and will require any subcontractor or agent involved with the conduct of such Standard Transactions to comply, with each applicable requirement of 45 C.F.R. Part 162. Business Associate will not enter into, or permit its subcontractors or agents to enter into, any trading partner agreement in connection with the conduct of Standard Transactions for or on behalf of Company that:

1. Changes the definition, data condition, or use of a data element or segment in a Standard Transaction;
2. Adds any data element or segment to the maximum defined data set;
3. Uses any code or data element that is marked “not used” in the Standard Transaction’s implementation specification or is not in the Standard Transaction’s implementation specification; or
4. Changes the meaning or intent of the Standard Transaction’s implementation specification.

**C. Individual Rights.**

**1. Access.** Business Associate will, within five (5) business days after Company’s request, make available to Company or, at Company’s direction, to the individual (or the individual’s personal representative) for inspection and obtaining copies any PHI and NPFI about the individual that is in Business Associate’s custody or control, so that Company may meet its access obligations under 45 C.F.R. § 164.524.

**2. Amendment.** Business Associate will, upon receipt of notice from Company, promptly amend or permit Company access to amend any portion of the PHI and NPFI, so that Company may meet its amendment obligations under 45 C.F.R. § 164.526.

**3. Disclosure Accounting.** So that Company may meet its disclosure accounting obligations under 45 C.F.R. § 164.528:

a) Disclosure Tracking. Starting April 14, 2003, Business Associate will record information concerning each disclosure of PHI, not excepted from disclosure tracking under Agreement Section C.3(b) below, that Business Associate makes to Company or a third party. The information Business Associate will record includes: (i) the disclosure date; (ii) the name and (if known) address of the person or entity to whom Business Associate made the disclosure; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of the disclosure (items i-iv, collectively, the “disclosure information”). For repetitive disclosures Business Associate makes to the same person or entity for a single purpose, Business Associate may provide (x) the disclosure information for the first of these repetitive disclosures; (y) the frequency, periodicity or number of these repetitive disclosures; and (z) the date of the last of these repetitive disclosures. **{choose either option 1 or 2}**

**{option 1:** Business Associate will make this disclosure information available to Company within ten (10) business days after Company’s request.}

**{option 2:** Business Associate will report this disclosure information to Company monthly.}

b) Exceptions from Disclosure Tracking. Business Associate need not record disclosure information or otherwise account for disclosures of PHI that this Agreement or Company in writing permits or requires (i) for purposes of treating the individual who is the subject of the PHI disclosed, payment for that treatment, or for the health care operations of Business Associate; (ii) to the individual who is the subject of the PHI disclosed or to that individual’s personal representative; (iii) pursuant to a valid authorization by the person who is the subject of the PHI disclosed; (iv) to persons involved in that individual’s health care or payment related to that individual’s health care; (v) for notification for disaster relief purposes; (vi) for national security or intelligence purposes; (vii) as part of a limited data set; or (viii) to law enforcement officials or correctional institutions regarding inmates or other persons in lawful custody.

c) Disclosure Tracking Time Periods. Business Associate must have available for Company the disclosure information required by Agreement Section C.3(a) for the six (6) years preceding Company’s request for the disclosure information (except Business Associate need have no disclosure information for disclosures occurring before April 14, 2003).

**4. Restriction Requests; Confidential Communications.** Business Associate will comply with any requests for restriction requests and confidential communications of which it is aware and to which Company agrees pursuant to 45 C.F.R. § 164.522 (a) and (b).

**5. Inspection of Books and Records.** Business Associate will make its internal practices, books, and records, relating to its use and disclosure of PHI, available to Company and to the U.S. Department of Health and Human Services to determine compliance with 45 C.F.R. Parts 160-64 or this Agreement.

**D. Breach of Privacy Obligations.**

**1. Reporting.** Business Associate will report to Company any use or disclosure of PHI and NPI not permitted by this Agreement or by Company in writing. Business Associate will make the report to Company's Privacy Officer within three (3) business days after Business Associate learns of such non-permitted use or disclosure. Business Associate's report will, at a minimum:

- a) Identify the nature of the non-permitted use or disclosure;
- b) Identify the PHI and NPI used or disclosed;
- c) Identify who made the non-permitted or violating use or disclosure and who received the non-permitted disclosure;
- d) Identify what corrective action Business Associate took or will take to prevent further non-permitted uses or disclosures;
- e) Identify what Business Associate did or will do to mitigate any deleterious effect of the non-permitted use or disclosure; and
- f) Provide such other information, including a written report, as Company may reasonably request.

**2. Termination of Agreement.**

a) Right to Terminate for Breach. Company may terminate Agreement if it determines, in its sole discretion, that Business Associate has breached any provision of this Agreement. Company may exercise this right to terminate Agreement by providing Business Associate written notice of termination, stating the breach of the Agreement that provides the basis for the termination. Any such termination will be effective immediately or at such other date specified in Company's notice of termination.

b) Obligations upon Termination.

(i) Return or Destruction. Upon termination, cancellation, expiration or other conclusion of Agreement, Business Associate will, if feasible, return to Company or destroy all PHI and NPI in whatever form or medium (including any electronic medium) and all copies of any data or compilations derived from and allowing identification of any individual who is a subject of PHI and NPI. Company will determine, in its sole discretion, whether Business Associate will destroy or return such PHI and NPI. Business Associate will complete such return or destruction as promptly as possible, but not later than ten (10) business days after the effective date of the termination, cancellation, expiration or other conclusion of Agreement. All costs related to the Business Associate's return or destruction of PHI and NPI will be paid by the Business Associate. Business Associate will identify any PHI and NPI that cannot feasibly be returned to Company or destroyed. Business Associate will limit its further use or disclosure of that PHI and NPI to those purposes that make return or destruction of that PHI and NPI infeasible. Within ten (10) business days after

the effective date of the termination, cancellation, expiration or other conclusion of Agreement, Business Associate will (a) certify on oath in writing to Company that such return or destruction has been completed, (b) deliver to Company the identification of any PHI and NPI for which return or destruction is infeasible, and (c) certify that it will only use or disclose such PHI and NPI for those purposes that make return or destruction infeasible.

(ii) Continuing Privacy Obligation. Business Associate's obligation to protect the privacy of the PHI and NPI it created or received for or from Company will be continuous and survive termination, cancellation, expiration or other conclusion of Agreement.

(iii) Other Obligations and Rights. Business Associate's other obligations and rights and Company's obligations and rights upon termination, cancellation, expiration or other conclusion of Agreement will be those set out in the Agreement.

**3. Indemnity**. Business Associate will indemnify and hold harmless Company and any Company affiliate, officer, director, employee or agent from and against any claim, cause of action, liability, damage, cost or expense, including attorneys' fees and court or proceeding costs, arising out of or in connection with any non-permitted or violating use or disclosure of PHI and NPI or other breach of this Agreement by Business Associate or any subcontractor, agent, person or entity under Business Associate's control.

a) Right to Tender or Undertake Defense. If Company is named a party in any judicial, administrative or other proceeding arising out of or in connection with any non-permitted or violating use or disclosure of PHI and NPI or other breach of this Agreement by Business Associate or any subcontractor, agent, person or entity under Business Associate's control, Company will have the option at any time to either: (i) tender its defense to Business Associate, in which case Business Associate will provide qualified attorneys, consultants, and other appropriate professionals to represent Company's interests at Business Associate's expense, or (ii) undertake its own defense, choosing the attorneys, consultants, and other appropriate professionals to represent its interests, in which case Business Associate will be responsible for and pay the reasonable fees and expenses of such attorneys, consultants, and other professionals.

b) Right to Control Resolution. Company will have the sole right and discretion to settle, compromise or otherwise resolve any and all claims, causes of actions, liabilities or damages against it, notwithstanding that Company may have tendered its defense to Business Associate. Any such resolution will not relieve Business Associate of its obligation to indemnify Company under this Agreement Section D.3.

## **E. General Provisions**

**1. Definitions**. The capitalized term "Protected Health Information" and "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. § 164.501, limited to the information created or received by Business Associate from or on behalf of Company or another business associate of Company. The capitalized term "Standard Transactions" shall have the meaning set out in 45 C.F.R. § 162.103. The term "Minimum Necessary" shall have

the meaning set out in 45 C.F.R. § 164.502. The capitalized terms “Nonpublic Personal Information,” “Nonpublic Personal Financial Information,” and “NPMI” have the meanings set out in the insurance commissioner regulations implementing of Gramm-Leach-Bliley Act Title V that are applicable to Company’s relationship with Business Associate.

**2. Amendment to Agreement.** Upon the effective date of any final regulation or amendment to final regulations promulgated by the U.S. Department of Health and Human Services with respect to PHI or Standard Transactions or by an insurance commissioner with jurisdiction over Company that implements Gramm-Leach-Bliley Act Title V, this Agreement will automatically amend such that the obligations they impose on Business Associate remain in compliance with these regulations.

**3. Owner of Protected Health Information.** Company is the exclusive owner of PHI and NPMI generated or used under the terms of the Agreement.

**4. Disclosure of De-identified Data.** The process of converting PHI to De-identified Data (“DID”) is set forth in 45 C.F.R. § 164.514. In the event that Company provides Business Associate with DID, Business Associate shall not be given access to, nor shall Business Associate attempt to develop on its own, any keys or codes that can be used to re-identify data.

**5. Creation of De-identified Data.** In the event Business Associate wishes to convert PHI and NPMI to DID, it must first subject its proposed plan for accomplishing the conversion to Company for Company’s approval, which shall not be unreasonably withheld.

**6. Intent.** The parties agree that there are no intended third party beneficiaries under this Agreement.

**F. Conflicts.** The terms and conditions of this Agreement will override and control any conflicting term or condition of Agreement. All nonconflicting terms and conditions of Agreement remain in full force and effect.

**IN WITNESS WHEREOF,** Company and Business Associate execute this Agreement in multiple originals to be effective on the last date written below.

**Business Associate**

**Planned Administrators, Incorporated**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_