

# Exhibit A: Health Reimbursement Arrangement Administrative Services Terms And Conditions



## ARTICLE I. INCORPORATION

These terms and conditions (as may be amended from time-to-time) are incorporated into the Health Reimbursement Arrangement Administrative Services Agreement between Group and Planned Administrators, Inc. (PAI).

## ARTICLE II. DEFINITIONS

Capitalized terms that are used in this Agreement, but are not defined herein, have the meaning ascribed to such terms in the Plan of Benefits.

2.01 “ACA” means the Patient Protection and Affordable Care Act, Pub. L. 111-148, as amended.

2.02 “PAI” means the Planned Administrators, Inc. For purposes of Article VII, the term PAI shall include directors, officers and employees.

2.03 “Administrative Charge” means the amount Group will pay PAI as compensation for administering the Plan of Benefits. The amount of the Administrative Charge is listed on the Schedule A.

2.04 “Agreement” means the Health Reimbursement Arrangement Administrative Services Agreement between Group and Planned Administrator’s Inc., including these terms and conditions, and all exhibits, schedules, attachments, and other documents incorporated therein.

2.05 “Association” and “BCBSA” mean the Blue Cross and Blue Shield Association, an association of independent Blue Cross and Blue Shield Plans.

2.06 “Claims Amount” means the amount paid (or payable) for Members’ claims under the HRA Plan, in accordance with the Plan of Benefits.

2.07 “Confidential Information” means all proprietary, non-public information disclosed to a party to this Agreement by the other party. Confidential Information includes but is not limited to: the terms of this Agreement (including all exhibits); all Member information; all information relating to the disclosing party’s business methods, processes, policies, finances, strategies, budgets, pricing terms or other financial information, records, notes, memoranda, summaries or other materials in whatever form maintained, whether prepared by the disclosing party or others, that contain or otherwise reflect or are based upon, in whole or in part, any of the disclosing party’s proprietary, non-public information.

The term Confidential Information does not include information which:

- A. Is or becomes generally available to the public other than as a result of disclosure by the owner of the Confidential Information;
- B. Becomes available to either party on a non-confidential basis from a third party; provided, that the receiving party under this Agreement is not aware that such third party is bound by a confidentiality agreement with respect to the Confidential Information; or,
- C. Is identified by the disclosing party as not being Confidential Information.

2.08 “Deposit” means the amount paid by Group that shall be used by PAI for the payment of claims, fees and other charges under this Agreement. The amount of the Deposit is listed on the Schedule A.

2.09 “Effective Date” means 12:01 a.m. ET on the date PAI begins to provide Services under this Agreement. The Effective Date is listed on the cover page.

- 2.10 “HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as amended, together with its Administrative Simplification implementing regulations at 45 C.F.R. parts 160-164.
- 2.11 “Marks” means a party’s trade names, commercial symbols, trademarks and service marks, whether presently existing or later established.
- 2.12 “Member” means Group’s employees or employees’ dependents who Group determines are eligible to participate in the HRA Plan and who have elected to participate in the HRA Plan, as specified in the Plan of Benefits.
- 2.13 “MEWA” means a Multiple Employer Welfare Arrangement.
- 2.14 “Plan of Benefits” means the benefit booklet, attached hereto as Exhibit B, which outlines the benefits and processes applicable to the HRA Plan (based on information provided by Group).
- 2.15 “Professional Employer Organization” and “PEO” mean a business organization that as its main business outsources its employees to other businesses on a full-time basis.
- 2.16 “Protected Health Information” or “PHI” has the same meaning as the term “Protected Health Information” in 45 C.F.R. § 160.103, limited to the information created or received by PAI from or on behalf of Group or another business associate of Group.
- 2.17 “Group” means the entity that has established an HRA Plan for its eligible employees and their dependents. Group is the Plan Sponsor of the HRA Plan. Group is identified on the cover page of this Agreement. For purposes of Article VII, the term Group shall include Group’s directors, officers and Employees.
- 2.18 “Retention Services” means those Services provided by PAI to Group following termination or expiration of this Agreement during the period and for the fee set forth in the Schedule A.
- 2.19 “Services” means the services listed in Article IV of this Agreement that are provided to Group by PAI.

- 2.20 “Standard Transactions” has the meaning set out in 45 C.F.R. § 162.103.

### ARTICLE III. GROUP RESPONSIBILITIES

#### 3.01 Group Warranties:

- A. Group represents and warrants that neither Group nor the HRA Plan is a MEWA.
- B. Group represents and warrants that Group is not a PEO.

#### 3.02 Group Obligations:

##### A. Group shall:

1. Develop and amend the terms and conditions of the HRA Plan. Group acknowledges and agrees that the terms and conditions of the HRA Plan shall be consistent with the administration provided by PAI as outlined in the Plan of Benefits.
2. Provide PAI with all information required by PAI (in a format reasonably acceptable to PAI) in order to provide the Services. Such information will include, but not be limited to, Members’ Social Security numbers in order to comply with Medicare secondary payer provisions of federal law.
3. Group will notify PAI as soon as possible of a change in a Member’s eligibility to participate in the HRA Plan (e.g., employment status or a change in coverage). PAI is not responsible for erroneous payments or overpayments of Claims Amounts resulting from the Employer’s untimely reporting to PAI.
4. Provide PAI with all data necessary to ensure PAI can accurately and timely debit and credit the HRA Plan. Group will provide such data electronically where possible.
5. Advise PAI of the amount of Group’s funds to allocate to each Member’s account under the HRA Plan, and the date upon which to make such allocation, in accordance with the Plan of Benefits. Group agrees that PAI is not responsible for ensuring the accuracy of the Group’s payroll or other data.

6. Provide an acceptable bank account (and execute any associated documentation) in the name of Group from which electronic funds transfers can be made for the purpose of paying Claims Amounts, and maintain in that account funds sufficient to satisfy the HRA Plan's obligations.
  7. Comply with federal and state laws and regulations applicable to the HRA Plan, its fiduciaries and Group.
  8. Be responsible for all fiduciary duties associated with the HRA Plan, unless otherwise stated expressly in this Agreement.
  9. Determine and provide PAI with any applicable reimbursement procedures and practices that are not specified in the Plan of Benefits; provided that such reimbursement procedures and practices must be acceptable to and agreed upon by PAI in advance.
  10. Be solely responsible for administration of the HRA Plan and claims pursuant thereto, following termination of the Services, except as otherwise stated expressly in this Agreement.
  11. Provide PAI with written notice of any proposed modification to the HRA Plan at least forty-five (45) days prior to its effective date.
  12. Be solely responsible for paying any negative balances for the HRA Plan, if applicable.
  13. Ensure that the HRA Plan is at all times designed and operated in compliance with applicable law, including but not limited to the ACA, and federal regulations and guidance pertaining to health reimbursement arrangements.
  14. Be solely responsible for determining whether or not the HRA Plan will be "affordable" and provide "minimum value," for purposes of the ACA's shared responsibility provisions (26 C.F.R. § 4980H and the regulations and guidance issued thereunder), and for performing all relevant affordability and minimum value calculations accordingly.
  15. Be solely responsible for providing to Members any notices that are required by law.
  16. Pay the Claims Amounts, Administrative Charge and all other fees and charges under this Agreement as provided in these terms and conditions. PAI will not be responsible for collection of Claims Amounts paid to Providers or Members prior to notification of a Member's termination.
- 3.03 Group retains all authority, responsibility, and liability for the HRA Plan and its operation, and PAI is only authorized to act on behalf of Group as expressly stated in this Agreement or the Plan of Benefits, or as may be mutually agreed to in writing by PAI and Group.
  - 3.04 Group is solely responsible for ensuring that the HRA Plan complies with the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, or other continuation coverage requirements under applicable law.
  - 3.05 Summary of Benefits and Coverage ("SBC"):
    - A. Group is responsible for completion and distribution of SBC(s).
    - B. To the extent that PAI assists with the production of SBC's, the Group agrees:
      1. To promptly provide to PAI the information necessary to complete the SBC;
      2. That Group's failure to provide information in a timely manner may substantially delay and/or jeopardize the timely delivery of the SBC;
      3. To distribute the SBC as required under the ACA to Members;
      4. To provide confirmation to PAI of distribution of the SBC to the Member, upon request;
      5. To ensure that electronic access shall be restricted to a "read-only" or similar basis;
      6. To replace any hard-copy SBC that is modified by PAI;
      7. That the hard-copy SBC on file with PAI shall control in the event of any discrepancy;
      8. That Group remains solely responsible for the content and distribution of the SBC, and all other legal requirements related to the SBC; and,

9. That if Purchaser contracts with a third party to accomplish any of the requirements in this Section, Purchaser shall remain liable for above such actions.

3.06 With respect to any fees and taxes imposed on Group, whether under the ACA or otherwise, calculation and payment of such fees and taxes to the applicable agency shall be the sole responsibility of Group and will not be separately calculated by PAI, paid by PAI on behalf of Group, or otherwise collected by PAI.

#### ARTICLE IV. PAI RESPONSIBILITIES

4.01 Contingent upon Group's fulfillment of all its obligations under this Agreement, PAI shall:

- A. Determine the extent of the benefits (if any) to which any Member is entitled under the Plan of Benefits. PAI shall have no liability for alleged or actual misinterpretations of the Plan of Benefits.
- B. Process claims incurred and timely submitted for reimbursement on or after the Effective Date, in the amount due under and in accordance with the terms of the HRA Plan.
- C. Provide to the Member, in connection with each processed claim under the HRA Plan, a reimbursement explanation along with information regarding remaining benefits available to such Member under the HRA Plan.
- D. Submit to Group a monthly accounting of all reimbursements that summarizes reimbursements by Members.
- E. Upon request, provide information to Group that is necessary for Group to complete Form 5500 filings for the HRA Plan.
- F. Provide reimbursements from the Deposit maintained in the bank account established pursuant to this Agreement, in accordance with the Plan of Benefits.
- G. Make reimbursements to Members, or other parties on the Members' behalf as may be specified in the Plan of Benefits, in the amount due under the HRA Plan according to requests for reimbursements and supplemental material provided by Members in the timeframe provided on Schedule A, during the

period this Agreement is in effect.

- H. Reserve the right to cease reimbursements for Group's failure to timely pay any amounts due to PAI under this Agreement.
- I. Provide reimbursement request and payment direction forms and instructions for use by Members, and maintain records of total contributions and balances with respect to each Member's account.
- J. Provide debit cards for Members to utilize for the payment of claims under the HRA Plan, if applicable, in accordance with the Plan of Benefits.

4.02 Timing of submission of claims:

- A. Claims will be processed in the order received by PAI and will not be reprocessed due to out-of-sequence dates of services. Claims will be processed in the timeframes set forth in the Plan of Benefits.
- B. Group retains the sole discretion to determine whether a claim was timely submitted or whether the timely submission of a claim was reasonably possible.
- C. Claims will be paid in accordance with information supplied by Group and received by PAI. PAI shall be entitled to rely upon information supplied by Group.
- D. PAI shall not pay any claim if:
  1. This Agreement has terminated except for any period in which PAI is providing Retention Services; or,
  2. Group has directed PAI to withhold payment.
- E. Based on the Plan of Benefits' express terms or Group's written authorization, and subject to the terms of this Agreement, PAI shall determine the extent of the benefits (if any) to which any Member is entitled.
  1. In the event that Group determines that PAI has misinterpreted the Plan of Benefits and so informs PAI in writing within two (2) days of making such determination, PAI shall begin processing and paying claims in accordance with Group's interpretation as set forth in such writing thirty (30) days after receipt of such notice. Upon Group's request, in writing, PAI shall reprocess claims submitted prior to

Group's notification.

2. Notwithstanding any determination made by Group under this Section 4.02(E), PAI shall have no liability to a Member or Group (and Group shall indemnify PAI against any such liability pursuant to Article VII) for withholding payments as directed by Group, for alleged or actual misinterpretations of the Plan of Benefits, or for claims that were denied prior to Group's determination and written notification to PAI.

#### 4.03 Recovery Services:

- A. PAI shall not be required to determine the existence of any other plan or amount of benefits payable under any such other plan on behalf of Members, and shall not provide any recovery or subrogation services or processes and procedures on behalf of the HRA Plan. The payment of Claims Amounts under the HRA Plan will be affected by the benefits that were paid or are payable under any other plan, in accordance with the Plan of Benefits, only if and to the extent that PAI receives written information and direction from the Group, in advance, relative to such benefits under such other plan.

#### 4.04 Reporting Services:

- A. On at least a monthly basis, PAI will transmit to Group PAI's standard invoice showing the Claims Amounts paid by PAI since the previous report.
- B. On at least a monthly basis, PAI will transmit to Group PAI's standard invoice showing the amount of the Administrative Charge, and other fees and charges, owed by Group since the previous report.
- C. PAI shall have no duty or obligation to produce or provide any non-standard or other reports or data services that are not specifically set forth in this Section. Other than in the case of an audit conducted pursuant to Section 8.11, PAI shall have no duty or obligation following termination of this Agreement to reproduce, copy or otherwise provide access to Group of any documents or reports which were provided during the term of this Agreement.
- D. Additional reports may be available upon Group's reasonable request, for an additional fee, and

Group shall reimburse PAI for any and all costs (including internal and out-of-pocket costs) incurred by PAI in providing any non-standard data and reporting Services not expressly included under this Section.

#### 4.05 Materials to be furnished by PAI:

PAI will provide the Plan of Benefits to Group. The Plan of Benefits is not a plan document or summary plan description ("SPD"), for purposes of the Employee Retirement Income Security Act of 1974. Group is solely responsible for preparing and furnishing any plan documents or SPDs for the HRA Plan, in accordance with applicable law. Group is responsible for: (i) reviewing the Plan of Benefits, (ii) determining whether the Plan of Benefits meets all of Group's legal and business obligations (and advising PAI of any necessary revisions) and (iii) distributing to Members the Plan of Benefits, the SPD for the HRA Plan, or both.

PAI reserves the right to charge a fee for revisions or amendments to the Plan of Benefits which Group requests after Group has received the original documents.

#### 4.06 Retention Services:

- A. In the event of expiration or termination of this Agreement pursuant to Section 6.01, PAI will provide Retention Services for claims incurred prior to the expiration or termination date. Purchaser may be required to provide the necessary funds for such Retention Services prior to PAI providing them.
- B. If this Agreement is terminated other than pursuant to Section 6.01, PAI shall have no obligation to continue to process claims submitted by Members or to provide Retention Services under this Agreement.

## ARTICLE V. PAYMENT TERMS

5.01 Group shall pay the Administrative Charge, the Claims Amount and other fees and charges paid as provided in this Agreement.

5.02 PAI may change the Administrative Charge (or other fees or charges under this Agreement):

- A. Upon thirty (30) days' notice prior to each anniversary of the Effective Date, to be effective as of such anniversary;
- B. Upon any change in law or regulation (or any interpretation of law or regulation) that imposes materially greater duties, obligations, or costs on PAI than contemplated by this Agreement;
- C. Upon Group modifying the Plan of Benefits where such modification imposes greater duties, obligations or costs on PAI than the duties, obligations or costs originally contemplated by this Agreement.

5.03 If any charge is changed pursuant to Section 5.02(B) or (C) such change is effective thirty (30) days after written notice is provided to Group.

5.04 Group is liable for any tax, assessment or cost based upon the existence of the HRA Plan or the Plan of Benefits, including all fines, penalties, losses, damages, costs, expenses, attorneys' fees and court costs incurred in connection with any assessment.

- A. If PAI pays any taxes, assessments or costs based on the amounts paid into or from the HRA Plan, Group shall reimburse PAI the full amount of such taxes, assessments or costs (including any interest assessed by the entity imposing such tax, assessment or cost) paid.
- B. Group will abide by PAI's disposition of such demands for the payment of any taxes, assessments or costs, whether paid, compromised, settled or litigated.

5.05 The Administrative Charge (and other non-Claims Amount fees and charges) is due within 15 days of the invoice date.

5.06 Pre-Funding and Payment for Claims Amounts:

- A. Group shall pre-fund the entire Deposit amount, prior to the Effective Date, in the bank account established under this Agreement for PAI's payment or reimbursement of all Claims Amounts. The Deposit amount is set forth on Schedule A.
- B. As the Deposit is used to pay or reimburse Claims Amounts, PAI will initiate automated settlement processes, no more frequently than daily, and Group will deposit additional funds, as necessary, within five (5) calendar days to reestablish the Deposit amount.
- C. PAI will set a low funds threshold of 10% of the Deposit amount. PAI reserves right to initiate an ad-hoc ACH to restore the account balance to the Deposit amount if the balance drops below the low funds threshold. Group will be notified as soon as practicable when an ad-hoc ACH process has been initiated.

5.07 PAI may offset any of Group's funds held by PAI against any amounts owed to PAI by Group, including any amounts which may be owed pursuant to Article VII.

5.08 If Group fails to maintain a sufficient Deposit for the advance funding of all Claims Amounts and Administrative Charges, in accordance with this Article V, PAI may immediately and without further notice to Group:

- A. Offset any outstanding amount due against any other Group funds held by PAI;
- B. Stop paying or reimbursing Members' claims;
- C. Terminate this Agreement for non-payment; and/or
- D. Continue providing Services on such terms and conditions as are acceptable in PAI's sole determination.

Notwithstanding the foregoing, PAI is not required to exercise any right to offset and may require that Group make any and all payments due under this Agreement.

5.09 PAI will not pay Group any interest on any Deposit or any other of Group's funds held pursuant to this Agreement.

5.10 If Group fails to make any payment or funds available in a timely manner in accordance with the terms of this Agreement, amounts due may be subject to a late fee as set forth in Schedule A. The late fee will be billed by PAI and paid by Group. Group warrants and represents that the late fee will be paid solely from Group's funds and not from the funds of any employee welfare benefit plan or trust. Late fees on the Administrative Charge (including other fees and charges except for the Claims Amount) are assessed beginning on the 16th day after the invoice process date if the Administrative Charge remains unpaid after the 15th day of the invoice process date. Late fees on the unpaid Claims Amount are assessed beginning on the Friday following the date the Claims Amounts are due if such amounts have not been received.

5.11 Group understands and acknowledges that PAI may deny or otherwise limit or refuse payment for any claims that are processed while any amount is past due or delinquent under this Agreement. PAI will not pay any Claim Amounts unless and until Group has made the associated funds available to PAI for such payment in advance, whether via the Deposit or otherwise. Group assumes sole responsibility if and to the extent that any Member's claims are denied or otherwise unpaid due to Group's failure to make sufficient funds available to PAI, including but not limited to Individual Health Insurance or Medicare premiums.

## ARTICLE VI. TERM AND TERMINATION

### 6.01 Term

A. The term for this Agreement shall be one (1) year from the Effective Date ("Initial Term").

B. After the Initial Term, this Agreement shall automatically renew for successive one (1) year terms unless either party gives the other party notice of its intention to terminate the Agreement at least thirty (30) calendar days prior to the anniversary of the Effective Date.

6.02 This Agreement shall terminate:

A. In accordance with any notice provided pursuant to Section 6.01;

B. Ten (10) calendar days after:

1. Written notice of breach of material obligations under this Agreement (including failure to pay the Administrative Charge or other fees, charges, or non-Claims Amounts due under the terms of this Agreement) has been given by either party to the other; provided that such breach has not been cured within such ten (10) day period. Notwithstanding the foregoing, Group's default in any payment of Claims Amounts under this Agreement shall be subject to immediate termination under Section 6.02(C) and termination for a breach involving PHI shall be exercised in accordance with Section 8.25;

2. Any finding or admission that Group is insolvent;

3. The date that Group files for the protection provided under bankruptcy laws;

4. The date that Group's creditors seek to have Group declared bankrupt or placed under the protection of the Bankruptcy Court;

5. The date that Group or Group's creditors seek to have a receiver appointed to manage Group's business; or,

6. a. Notwithstanding the language contained in this Section, this Agreement shall not terminate if the finding or action described in Section 6.02(B)(3)-(5) is overturned or cured prior to the expiration of the ten (10) day period or PAI waives the termination provisions in writing.

b. Group acknowledges that the necessity of performance by Group of the obligations set forth in this Agreement are essential for the adequate protection of PAI. As further consideration for the Services provided by PAI, Group agrees that in the event of a proceeding under Title 11 of the United States Bankruptcy Code commenced by or against Group, Group will not object to any motion by PAI for relief from the automatic stay of 11 U.S.C. § 362(a).

C. Immediately, upon the occurrence of any of the

following events;

1. If Group fails to pay payments (or payable amounts) including Claims Amounts under the Plan of Benefits, unless otherwise specified in this Agreement;
  2. Upon determination by PAI or PAI that Purchaser is a MEWA or a PEO;
  3. Upon Group's assignment of this Agreement, unless such assignment had PAI's prior approval in writing; or,
  4. Upon the sale or merger (including a sale of substantially all of the assets) of Group, unless such sale or merger had PAI's prior approval in writing.
- D. Upon Group's termination of the HRA Plan or the Plan of Benefits, provided that Group will provide PAI with written notice thirty (30) calendar days prior to such termination; or,
- E. Upon Group's modification of the Plan of Benefits, unless the modification has been approved by PAI prior to the effective date of such modification.
- 6.03 PAI's right to terminate pursuant to this Article VI shall be in addition to all other provisions of this Agreement.
- 6.04 If any law or regulation is enacted which prohibits the continuance of this Agreement, or any existing law or regulation is interpreted to so prohibit the continuance of this Agreement, the Agreement shall terminate automatically as of the effective date of such law, regulation, or interpretation.
- 6.05 At the end of the sixty (60) calendar day period following termination of the Retention Services period, subject to PAI's right to offset under Article V, and upon receipt by PAI of payment in full of all amounts due under this Agreement (including amounts due under this Section
- 6.05 PAI will refund the then remaining balance of any Deposit. Group acknowledges and agrees that PAI has no obligation to refund any amounts or any credit balances that may arise or occur after the end of the sixty (60) day period following termination or the Retention Services period, and Group waives any right to any such

amounts or credit balances, if any.

## ARTICLE VII. INDEMNIFICATION

- 7.01 Group agrees to defend, indemnify and hold harmless PAI from any and all amounts attributable to claims, lawsuits, settlements, judgments, costs, penalties, liabilities and expenses ("Damages"), including a reasonable attorneys' fee (for attorneys chosen by PAI), resulting from, or arising out of, based on or in connection with any third party claim relating to this Agreement, the HRA Plan or the Plan of Benefits unless such Damages are the direct consequence of criminal conduct, fraud, or willful misconduct on the part of PAI.
- 7.02 PAI agrees to indemnify and hold harmless Group from any and all Damages, including a reasonable attorney's fee (for attorneys chosen by Group), arising out of or related to the Plan of Benefits or this Agreement, but only if resulting from PAI's criminal conduct, fraud, or willful misconduct.
- PAI has no liability under the HRA Plan for Claims Amounts. Group is, at all times, liable for the Claims Amounts, even where PAI is otherwise liable to Group for indemnification under Section 7.02 (and PAI's liability under Section 7.02 shall be limited to amounts in excess of Claims Amounts).
- 7.03 Neither party to this Agreement shall be liable to the other party for any consequential (including lost profits), punitive, special or exemplary damages that result from any breach of this Agreement or any party's performance under this Agreement. The limitation on damages contained in this Section 7.03 does not apply to claims by either Group or PAI for indemnification under Section 7.01 or 7.02 which result from claims brought by third parties.
- 7.04 Group agrees to inform PAI of any legal action instituted on a claim for benefits that may involve liability of PAI. Such notification shall be in writing and shall be accompanied by copies of any summons, subpoenas, pleadings, motions, and/or orders concerning the legal action. PAI shall be entitled to appear and



defend any action in which it is named or which may otherwise involve liability of PAI (using attorneys of its choice) and Group shall pay all of PAI's costs associated with such appearance or defense (including PAI's reasonable attorney's fees).

#### **ARTICLE VIII. MISCELLANEOUS PROVISIONS**

8.01 This Agreement constitutes a contract solely between Group and PAI. PAI provides administrative claims payment Services only and does not assume any financial risk or obligation with respect to claims or Claims Amounts;

8.02 PAI is an independent corporation operating under a license with the Association permitting PAI to use the Blue Cross and Blue Shield Mark in the State of South Carolina;

8.03 PAI is not contracting as the agent of the Association nor is PAI authorized to contract on behalf of the Association;

8.04 By entering into this Agreement the parties waive any right to jury trial and any right to maintain claims arising out of this Agreement as a class action. The parties agree that a single judge sitting as finder of fact and law will determine any claims arising out of this Agreement.

8.05 This Agreement may only be changed by a written amendment signed by duly authorized officers of Group and PAI. Notwithstanding the foregoing, the parties agree that future compliance with the requirements of federal or state laws may require an amendment to this Agreement. Accordingly, PAI may unilaterally amend this Agreement to comply with such federal or state laws upon notice to Group.

8.06 Group is responsible for the HRA Plan's compliance with all applicable federal and state laws and regulations, including but not limited to the ACA and federal rules regarding integration of health reimbursement arrangements with individual health insurance coverage and Medicare (29 C.F.R. § 2590.702-2), and will amend the HRA Plan documents as necessary to comply with applicable law changes. Group further acknowledges that PAI is not providing

tax or legal advice and that Group shall be solely responsible for determining the legal and tax status of the HRA Plan.

8.07 The parties will comply with all state and federal laws applicable to the performance of their respective obligations under this Agreement.

8.08 PAI may assign this Agreement (including all obligations and liabilities associated with the Agreement) as well as the right to perform under this Agreement (and to receive payment from Group) to any of its subsidiaries or affiliates without prior consent or notice to Group.

8.09 In fulfilling its obligations under this Agreement, PAI reserves the right to contract with third parties it deems necessary to administer the HRA Plan; therefore, Group hereby authorizes PAI to do all things and to perform all acts which PAI deems necessary or appropriate to properly administer and facilitate claims processing with respect to the HRA Plan and there is no obligation for PAI to obtain prior approval from Group herein as a condition precedent to entering into any such contract. PAI shall remain liable for the performance of any and all such subcontracted duties.

8.10 Group shall not sell, assign, delegate or otherwise transfer its rights or obligations under this Agreement to any third party without first obtaining the prior written consent of PAI, which consent shall be granted or denied in PAI's sole discretion.

8.11 During the term of this Agreement and for a period of six (6) months following its termination, Group, shall have the right to examine records of PAI relating only to the Plan of Benefits and information or claims relating to the calendar year in which the audit is conducted and/or the immediately preceding calendar year. Any such audit shall be conducted during regular business hours at PAI's offices, and following sixty (60) days prior written notice and only upon execution of an audit agreement as specified by PAI. Any examination of individual Member's health Benefit payment records shall be carried out in a manner specifically designed to protect

the confidentiality of the Members' medical information in compliance with all federal and state laws governing confidentiality and privacy of health information and as outlined in the separate audit policy that is executed prior to any audit. Group shall pay all expenses incurred by PAI and Group relating to the audit and shall pay an additional fee, determined by PAI, for each on-site audit. PAI will not pay any amounts based on audit results. The parties agree that Group shall not hire a third party to conduct a contingent fee audit, where the third party's compensation is based on a percentage of errors (or savings, or "uncovered recoveries", etc.) which may be found by the third party in its audit. Should Group contract with a third party to perform such contingent fee audit, PAI has no obligation under the terms of this Agreement to cooperate with said third party in the conduct of such contingent fee audit.

8.12 Group understands and agrees that PAI will rely on any beneficiary contact information supplied by Group to perform PAI's business functions as being accurate and able to be used by PAI or its subcontractors or vendors for services under this Agreement or as otherwise requested by Group. Group agrees to the following:

- A. Group is exclusively responsible for securing any written or other consents or authorizations that may be necessary for PAI or its subcontractors or vendors to perform services under this Agreement or as otherwise requested by Group;
- B. Group is responsible for immediately communicating to PAI in writing any changes in such consents or authorizations that may impact PAI's use of the contact information supplied; and,

C. PAI is not responsible or liable for any losses resulting in any way from failure to contact Members during periods when the Members' consents or authorization to use the contact information has been revoked. Group understands that, among other things, these obligations include all consents or authorizations, if any, that may be required under the Telephone Consumer Protection Act and the CAN-SPAM Act. Group likewise understands that these laws may require any such consents or authorizations to be specific to the uses contemplated, to be in writing, and to specifically mention PAI and its subcontractors and vendors.

8.13 Group, on behalf of itself and its Members, acknowledges and agrees that Group and PAI have not entered into a partnership, joint venture or other joint enterprise for the purpose of providing the Services.

8.14 PAI is acting as an independent contractor. Except as otherwise expressly provided in Article IV, Group agrees that PAI (and its subcontractors, as applicable) is acting only in a ministerial capacity and is not and shall not be designated or deemed a plan administrator, sponsor or fiduciary of any kind with respect to the Plan of Benefits for the purposes of any applicable federal or state law.

8.15 A party's failure or any delay on the part of a party to exercise any right, remedy, power or privilege under this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege with respect to any occurrence or be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No term or provision of this Agreement may be waived or modified unless such waiver or modification is in writing and signed by the party against whom such waiver or modification is sought to be enforced.

8.16 Group may accept the terms and provisions of this Agreement either by returning a signed copy of this Agreement to PAI or by making any of the required payments to PAI. Such acceptance renders all terms and provisions stated in this Agreement binding on PAI and Group.

8.17 Except to the extent preempted by federal law, this Agreement shall be construed in accordance with the laws of the State of South Carolina and the obligations, rights and remedies of the parties hereunder shall be determined in accordance with the laws of the State of South Carolina without giving effect to internal choice of law or conflict of law rules. This Agreement is made in the State of South Carolina.

#### 8.18 Confidential Information

PAI and Group hereby agree to treat any information disclosed to each other pursuant to this Agreement as Confidential Information.

- A. The parties agree that each will keep the other party's Confidential Information confidential and will only use the disclosing party's Confidential Information for purposes contemplated under this Agreement; provided, however, that PAI may use Group's Confidential Information in the ordinary course of its business as long as it maintains the confidentiality of such information.
- B. Confidential Information disclosed pursuant to this Agreement is and shall remain the disclosing party's property.
- C. If, in the opinion of counsel for the receiving party, disclosure of Confidential Information is required by any federal or state law or court order, the receiving party may only make such disclosure after notifying the disclosing party (if allowed by law) of the receiving party's intention to disclose the Confidential Information at least ten (10) calendar days prior to making such disclosure.
- D. The terms of this Section 8.18 shall survive the termination of this Agreement for a period of five (5) years following the date of termination.

8.19 Each party is the sole and exclusive owner of its own Marks. Except as otherwise provided herein and/or in order to perform its obligations under this Agreement, neither party will use the other party's Marks without first obtaining the other party's prior written consent.

8.20 Neither party shall advertise or publicize in any newspaper or periodical any of the transactions contemplated by this Agreement using the other party's name without the prior written consent of the other party which may be withheld in the party's sole discretion, provided that PAI may reference Group as a customer in marketing materials used by PAI in the course of its business operations. Furthermore, neither party shall be restrained, after consultation with the other party, from making such disclosure as it shall be advised by counsel is required by law or by the applicable regulations of any regulatory body.

8.21 This Agreement, together with all exhibits, attachments and schedules, contains the entire agreement between the parties with respect to the subject matter hereof. This Agreement supersedes and replaces all prior oral or written agreements regarding the subject matter hereof and shall constitute the sole agreement between the parties hereto.

8.22 All demands and notices required under this Agreement shall be in writing and shall be delivered by registered or certified mail, return receipt requested or by nationally recognized overnight carrier, to the address contained on the title page, or such other address as may hereafter be furnished to the other party by notice. Notice shall be deemed received when actually received by the other party as evidenced by a receipt signed by the other party or its agent.

8.23 Any part, provision, representation or warranty contained in this Agreement that is prohibited or that is held to be void or unenforceable by a court of competent jurisdiction shall be ineffective to the extent of such prohibition or unenforceable provision without invalidating the remaining provisions hereof.

8.24 The headings of articles and Sections contained in this Agreement are for reference purposes only and should not alter or affect the interpretation of this Agreement.

8.25 HIPAA. The parties acknowledge that in the performance of the Services, PAI is or may be deemed a Business Associate (as that term is defined under HIPAA) of the HRA Plan. For purposes of this Section 8.25, any reference to Group shall include the HRA Plan administered pursuant to this Agreement.

#### A. Privacy of PHI

1. PAI is permitted or required to use or disclose PHI it creates or receives for or from the Group's HRA Plan or to request PHI on the Group's HRA Plan's behalf as follows:

a. PAI is permitted to request the PHI on Group's the HRA Plan's behalf, and to use and to disclose the PHI to perform functions, activities, or Services for or on behalf of Group's the HRA Plan, as specified in this Agreement.

b. PAI may use or disclose PHI it creates for or receives from Group as necessary for data aggregation purposes. PAI may use the PHI for PAI's proper management and administration or to carry out PAI's legal responsibilities. PAI may disclose the PHI for PAI's proper management and administration or to carry out PAI's legal responsibilities only if:

- i. The disclosure is required by law; or,
- ii. PAI obtains reasonable assurances, in the form of a written contract, from any person or organization to which PAI will disclose PHI that the person or organization will hold such PHI in confidence and use or further disclose it only for the purpose for which PAI disclosed it to the person or organization or as required by law, and promptly notify PAI of any instance of which the person or organization becomes aware in which the confidentiality of such PHI was breached.

2. PAI will develop, document, implement, maintain, and use appropriate administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Group's Electronic PHI (e-PHI) that PAI creates, receives, maintains, or transmits on the HRA Plan's Group behalf as required by the HIPAA Security Rule and as required by the Health Information Technology for Economic and Clinical Health Act ("HITECH Act"). PAI also shall develop and implement policies and procedures and meet the HIPAA Security Rule documentation requirements as required by the HITECH Act. PAI agrees to mitigate, to the extent practicable, any harmful effect that is known to PAI of a use or disclosure of PHI by a Business Associate, in violation of the requirements of this Agreement.

3. PAI's use, disclosure or request for PHI shall utilize a limited data set if practicable. Otherwise, PAI will, in its performance of the functions, activities, Services, and operations allowed or required by this Agreement, make reasonable efforts to use, to disclose, and to request of a covered entity only the minimum amount of Group's PHI reasonably necessary to accomplish the intended purpose of the use, disclosure or request.

4. PAI will neither use nor disclose PHI except as permitted or required by this Section 8.25, or as required by law. Except as otherwise allowed by Section 8.25(A)(1)(b) above, PAI will not use or disclose PHI in a manner that would violate the HIPAA Administrative Simplification regulations if done by Group.

5. PAI will abide by any restrictions on the sale of PHI established by Section 13405(b) of the HITECH Act and 45 C.F.R. §§ 164.501, 164.502(a)(5)(ii), and 164.506(a)(4).

6. PAI will abide by any marketing restrictions established by Section 13406 of the HITECH Act and 45 C.F.R. §§ 164.501, 164.506(a)(3).

7. PAI will abide by any fundraising restrictions established by Section 13406 of the HITECH Act.

8. PAI will abide by any restrictions established by 45 C.F.R. § 164.502(a)(5).

9. To the extent that PAI and Group agree that PAI is

to carry out Group's obligations under 45 C.F.R. part 164, Subpart E (the Privacy Rule), PAI shall comply with the requirements of the Privacy Rule that apply to Group in the performance of such obligation. In addition, PAI shall comply with the applicable requirements of 45 C.F.R. part 164, Subpart C.

10. PAI will require any of its subcontractors and agents to provide reasonable assurances that such subcontractor or agent will comply with substantially the same privacy and security obligations as PAI with respect to Group's PHI.
11. PAI is prohibited from releasing alcohol and drug abuse patient information protected under 42 U.S.C. § 290dd-2(a) to Group.

## B. Individual Rights

1. PAI will, within a reasonable time after Group's request, make available to Group or, at Group's direction, to the individual (or the individual's personal representative) for inspection and obtaining copies, any PHI about the individual that is in PAI's custody or control, so that Group may meet its access obligations under 45 C.F.R. § 164.524.
2. PAI will, upon receipt of notice from Group, promptly amend any applicable portion of the PHI under 45 C.F.R. § 164.526.
3. Disclosure Accounting.
  - a. PAI will record information concerning each disclosure of PHI, not excepted from disclosure tracking under Section 8.25(B)(3)(b) below, that PAI makes to Group or a third party. For repetitive disclosures made by PAI to the same person or entity for a single purpose, PAI may provide (i) the disclosure information for the first of these repetitive disclosures; (ii) the frequency, periodicity or number of these repetitive disclosures; and (iii) the date of the last of these repetitive disclosures. PAI will make this disclosure information available to Group within a reasonable time after Group's request.
  - b. PAI need not record disclosure information or otherwise account for disclosures of PHI that this Agreement or Group 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 healthcare operations of PAI; (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 healthcare or payment related to that individual's healthcare; (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. PAI must have available for Group the disclosure information required by Section 8.25(B)(3)(a) above for the six (6) years preceding Group's request for the disclosure information (except PAI need have no disclosure information for disclosures occurring before the Effective Date of this Agreement).
4. PAI will comply with any reasonable requests for restriction requests or confidential communications of which it is aware and to which Group agrees pursuant to 45 C.F.R. § 164.522 (a) or (b).
5. In addition to the obligations described above, PAI will provide such additional individual rights to access and accounting as mandated by and, where applicable, the HITECH Act. Specifically, PAI shall make such access information available in an electronic format where directed by Group. In addition, PAI shall include within its accounting, disclosures of PHI for payment and health care operations purposes where such recording or accounting is required by the HITECH. PAI further shall provide any additional information to the extent required by the HITECH Act and any accompanying regulations.
6. Where PAI is contacted directly by an individual based on information provided to the individual by Group and where so required by the HITECH Act and/or any accompanying regulations, PAI shall make such disclosure information available directly to the individual.
7. PAI will make its internal practices, books, and records, relating to its use and disclosure of PHI,

available to the U.S. Department of Health and Human Services to determine Group's compliance with 45 C.F.R. Parts 160-64 or this Agreement.

#### C. Other Group Responsibilities

1. Group shall promptly provide PAI with Group's health Plan's notice of privacy practices and any changes to such notice.
2. Group shall provide PAI with any changes to, or revocation of, authorization by an individual to use or disclose PHI, to the extent such changes affect PAI's permitted or required uses and disclosures.
3. Group shall obtain from individuals any consents, authorizations or other permissions necessary or required by applicable laws for PAI to fulfill its obligations to Group.
4. Group represents and warrants that PAI shall otherwise have the legal authority to review, disclose, access, use, maintain or transmit PHI as allowed or required by this Agreement or by law.
5. Group shall use appropriate safeguards to maintain the confidentiality, privacy, security, and availability of PHI in transmitting same to PAI.
6. Group shall not agree to any confidentiality restrictions or amendments to PHI without first obtaining the written consent of PAI.
7. Group shall not request or require PAI to use, disclose, maintain, or transmit PHI in a way that violates applicable law or that would not be permissible were the PHI to be so used, disclosed, maintained, or transmitted by Group directly.
8. Group represents and warrants that it has amended its Plan documents to comply with 45 C.F.R. §§164.314(b) and 164.504(f).
9. Group will only use claims information provided by or on behalf of PAI to administer the HRA Plan. This may include auditing, monitoring and evaluating the costs and performance of PAI and the HRA Plan. Group will not use any information provided by or on behalf of PAI for any improper or illegal or unauthorized purpose.
10. If Group accesses the Benefit Coordinator features of the PAI website, it will ensure that PHI is only accessed while the individual whose information is

being accessed is present or such individual has otherwise authorized such access.

#### D. Breach of Privacy Obligations

1. PAI agrees to report to Group any use or disclosure of PHI not provided for by this Agreement, including breaches of unsecured PHI as required by 45 C.F.R. §164.410, within sixty (60) days of when PAI discovered the unauthorized use or disclosure. Unauthorized uses or disclosures shall be treated as discovered when they are known by a member or agent of PAI's workforce other than the workforce member who committed the unauthorized use or disclosure or, by exercising reasonable diligence, would have been known to a member or agent of PAI's workforce other than the workforce member or agent who committed the breach. Agency used in this Section shall be determined in accordance with the federal common law of agency.
2. In the event PAI has materially breached this Section 8.25 of this Agreement and PAI fails to cure the breach within a thirty (30) day period, Group may terminate this Agreement upon thirty (30) days prior written notice to PAI.
3. Upon termination, cancellation, expiration or other conclusion of this Agreement, PAI will, at its sole discretion and if feasible, return to Group or destroy all PHI. If PAI returns Group's PHI, all costs related to the return of such PHI will be paid by Group. PAI may identify any PHI that cannot feasibly be returned to Group or destroyed. PAI will limit its further use or disclosure of that PHI that is not returned or destroyed.
4. If for any reason Group determines that PAI has breached these terms and such breach has not been cured, but termination of the Agreement is not feasible, Group may report such breach to the U.S. Department of Health and Human Services.
5. PAI will have the right to terminate this Agreement if Group has engaged in a pattern of activity or practice that constitutes a material breach or violation of Group's obligations regarding Group's PHI and, on notice of such material breach or violation from PAI, fails to take reasonable steps to cure the breach or end the violation. If Group fails to cure the material breach or end the violation within

thirty (30) days after receipt of PAI's notice, PAI may terminate this Agreement by providing Group written notice of termination, stating the uncured material breach or violation that provides the basis for the termination and specifying the effective date of the termination. If for any reason Group has breached the terms of this Section 8.25 and such breach has not been cured, but termination of this Agreement is not feasible, PAI may report such breach to the U.S. Department of Health and Human Services.

#### E. Security Incident

If PAI becomes aware of any "Security Incident", as defined by HIPAA, PAI shall report the same in writing to Group as provided below. PAI agrees to mitigate, to the extent practicable, any harmful effect resulting from such Security Incident.

1. In determining how and how often PAI shall report to Group in writing the Security Incidents required above, both Group and PAI agree that unsuccessful attempts at unauthorized access or system interference occur frequently and that there is no significant benefit for data security from requiring the documentation and reporting of such unsuccessful intrusion attempts. In addition, both parties agree that the cost of documenting and reporting such unsuccessful attempts as they occur would outweigh any potential benefit gained from reporting them. Consequently, both Group and PAI agree that this Agreement shall constitute the documentation, notice and written report of such unsuccessful attempts at unauthorized access or system interference as required above and by 45 C.F.R. Part 164, Subpart C and that no further documentation, notice or report of such attempts will be required. By way of example (and not limitation in any way), the parties consider the following to be illustrative (but not exhaustive) of such unsuccessful Security Incidents when they do not result in unauthorized access, use, disclosure, modification, or destruction of e-PHI or interference with an information system:

- a. Pings on a party's firewall;
- b. Port scans;
- c. Attempts to log on to a system or enter a

database with an invalid password or username;

d. Denial-of-service attacks that do not result in a server being taken off-line; and,

e. Malware (e.g., worms, viruses).

2. Otherwise, PAI will document as required by 45 C.F.R. Part 164, Subpart C and report to Group any successful unauthorized access, use, disclosure, modification, or destruction of Group's e-PHI in accordance with the timelines stated in Section 8.25(D)(1) above.

F. To the extent any unauthorized use or disclosure reported by PAI under Section 8.25(D)(1) above is a breach of unsecured PHI (as defined by 45 C.F.R. §164.402), PAI shall also report, to the extent possible, the identification (if known) of each individual whose unsecured PHI has been, or is reasonably believed by PAI to have been, accessed, acquired, or disclosed during such breach, along with any other information required to be reported under the HITECH Act and any accompanying regulations.

G. If Group requests that PAI disclose PHI to a third party, Group agrees that it will indemnify and hold PAI harmless from any consequences from such disclosure. Group will not require PAI to disclose information to any third party until such third party has executed PAI's disclosure agreement.

#### 8.26 Compliance with Standard Transactions.

For purposes of this Section, any reference to Group shall include the HRA Plan administrated pursuant to this Agreement. If Group conducts, in whole or part, Standard Transactions for or on behalf of Group or the HRA Plan, Group will comply, and will require any subcontractor or agent involved with the conduct of such Standard Transactions to comply, with 45 C.F.R. Part 162. All Standard Transactions submitted by Group or its subcontractors must be in a format that is acceptable to PAI.