

## CONFIDENTIALITY AGREEMENT

**THIS CONFIDENTIALITY AGREEMENT** (“Agreement”) is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, (the “Effective Date”) by and between APS Healthcare Bethesda, Inc., an Iowa corporation having a place of business at 44 South Broadway, Suite 1200, White Plains, NY, 10601 (“APS”), and \_\_\_\_\_, a \_\_\_\_\_ corporation, having a place of business at \_\_\_\_\_ (“Provider”).

**WHEREAS**, pursuant to a provider participation agreement entered into between APS and Provider for the provision by Provider of mental health or substance abuse services to enrollees of the MaineCare Program (the “Services”), APS has agreed to provide access to Provider to APS CareConnection® to enable the Provider to review eligibility, submit authorization and review claims status of members under their care and/or treatment; and

**WHEREAS**, it is understood by Provider that access to APS CareConnection® and the requirements to maintain the Organizational Record for User Accounts on behalf of the providers within the Provider translates into responsibilities for the Provider as outlined below, and

**WHEREAS**, APS and Provider intend to protect the privacy and provide for the security of the Confidential Information (as defined below) disclosed to Provider, including for purposes of complying with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and regulations promulgated thereunder, and other applicable laws and regulations; and

**WHEREAS**, Both APS and Provider are Covered Entities as it relates to the Services provided and therefore do not need to execute a Business Associate Agreement with one another requiring them to abide by the HIPAA Rules and regulations, as they are individually responsible for compliance as a covered entity; and

**WHEREAS**, the parties desire to set forth in comprehensive form their understanding regarding the delivery, use and handling of such Confidential Information as may be provided by one party to the other.

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. Definitions. For the purposes of this Agreement, the following terms have the meanings ascribed to them:
  - (a) “Audit” shall refer to the right of either party to ensure that the terms of this Agreement are met.

(b) “Confidential Information” means any information, whether in written, oral, electronic, or other form provided by APS to Provider at any time prior to or following the execution of this Agreement, including printouts of computer intake screens, provider case records, member files, member lists (including names, addresses, telephone numbers and related information of patients), any Protected Health Information as defined by the HIPAA Privacy Rules and any other information relating to the provision of services by APS or any affiliate of APS, including but not limited to any information whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

(c) “Disclose” or “Disclosure,” with respect to Confidential Information, means the release, transfer, provision of access to or divulging in any other manner of Confidential Information outside the entity or individual permitted to hold the Confidential Information pursuant to this Agreement.

(d) “Organizational Record” means the profile and agency information with regard to the Provider created by APS CareConnection® to maintain User Accounts.

(e) “User Account” means the individual User Accounts to access APS CareConnection® assigned by the Provider to employees managed by the Provider.

## 2. Non-Disclosure. Provider shall:

- (a) hold the Confidential Information in strictest confidence;
- (b) not further disclose Confidential Information other than as permitted or required under this Agreement, HIPAA, and any other applicable federal and state laws, rules and regulations;
- (c) use appropriate safeguards as necessary to prevent the use or disclosure of Confidential Information other than as permitted under this Agreement;
- (d) promptly report to APS any use or disclosure of Confidential Information of which Provider is aware that is not expressly authorized under this Agreement;
- (e) restrict disclosure of the Confidential Information solely to those of its employees, independent contractors, agents or subcontractors with the need to know such Confidential Information in order to conduct the Audit; and
- (f) ensure that any of Provider’s employees, independent contractors, agents or subcontractors (collectively “workforce”) that are provided Confidential Information are aware of and bound to Provider’s obligations under this Agreement. As evidence of this understanding, all members of Provider’s workforce shall be required to execute a copy of this agreement. Provider shall be liable to APS for any failure of its employees, agents, independent contractors, subcontractors, legal representatives and advisors to abide by the terms of this Agreement.

3. Use and Non-Use. Provider shall:

- (a) not use the Confidential Information other than for purposes of conducting the Audit and as permitted or required under this Agreement, HIPAA, and any other applicable federal and state laws, rules and regulations;
- (b) not commercially exploit the Confidential Information for its own benefit or the benefit of any third party or otherwise use the Confidential Information in any manner which may injure or which may be reasonably expected to injure or cause loss, whether directly or indirectly, to APS; and
- (c) not copy the Confidential Information.

4. Non-Confidential Information. Notwithstanding the foregoing, Provider shall not have the obligation to preserve the proprietary nature of any Confidential Information that:

- (a) is or becomes generally known to the public or industry experts through no fault of Provider;
- (b) is disclosed to a third party with the written approval of APS; or
- (c) is required by law to be disclosed, provided that APS is given notice of the requirement and an opportunity to object to or restrict the scope of the disclosure prior to its occurrence.

5. Responsibilities of Provider. Provider understands that in creating and maintaining the User Account, it is responsible for the individual User Accounts. Included in these responsibilities the Provider acknowledges:

- (a) Provider will activate and inactivate the User Accounts within its Organizational Record,
- (b) Provider will use the same degree of care in maintaining User Accounts as it would for its own systems in which PHI is accessed, and
- (c) Provider is liable for the actions of its employees with respect to materials viewed and/or used in connection with their User Account.

6. Survival. The restrictions and obligations of Provider as contained in this Agreement shall survive any expiration, termination or cancellation of this Agreement, and shall continue indefinitely to bind Provider, its successors, heirs and assigns.

7. No License. Nothing contained in this Agreement shall be construed as granting or conferring any rights, by license or otherwise, in regard to any Confidential Information disclosed by APS to Provider.

8. Miscellaneous.

- (a) This Agreement shall be construed in accordance with and governed for all purposes by the laws of the State of Maine, without regard for its conflicts of laws principles;
- (b) This Agreement constitutes the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and undertakings, both written and oral;
- (c) this Agreement may not be modified or discharged in whole or part, except by an agreement in writing signed by each of the parties;



(d) this Agreement may not be assigned or otherwise transferred by Provider without the prior written consent of APS;

(e) in case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of the Agreement but this Agreement shall be construed as if such invalid, illegal or other unenforceable provision had never been contained herein;

(f) this Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement;

(g) any notice or other communication given by any party under this Agreement shall be by certified mail, return receipt requested, at the principle office of the other party;

(h) this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and each party's respective successors and assigns; and

(i) no failure or delay by APS in exercising any right, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other further exercise of any right, power or privilege under this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the Effective Date above written and represent that they have the authority to execute this Agreement on behalf of their respective corporations.

**APS HEALTHCARE OF BETHESDA, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**PROVIDER**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_