

## **BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement ("Agreement"), dated as of \_\_\_\_\_, and effective as of \_\_\_\_\_ is entered into by and between \_\_\_\_\_ (hereinafter, "Business Associate") on behalf of itself and its affiliates and First Sun EAP Alliance, Inc. (hereinafter, "Covered Entity").

**1. Definitions.** The federal privacy regulations at 45 C.F.R. parts 160 and 164 are referred to herein as the "Privacy Rule". All capitalized terms used herein that are not otherwise defined have the meanings ascribed in the Privacy Rule.

**2. Purpose.** The purpose of this Agreement is to provide assurances regarding our respective responsibilities to maintain strict confidentiality under applicable federal and state laws and regulations relating to Covered Entity's patient medical information and other patient identifiable health information (collectively "Protected Health Information" or "PHI"). For purposes of this Agreement, PHI shall be defined consistent with the Privacy Rule. The provisions of this Agreement are specifically intended to meet the Business Associate contract requirements of the final Privacy Rule standards. Business Associate and Covered Entity intend that their respective privacy and security policies, procedures and practices shall meet or exceed all applicable federal and state requirements pertaining to the privacy and confidentiality of PHI.

**3. Confidentiality of PHI.** Business Associate shall comply with all applicable federal and state laws and regulations relating to maintaining and safeguarding the confidentiality of PHI. Business Associate shall assure that Business Associate's employees, subcontractors and agents comply with such laws and regulations and the provisions of this Agreement. Neither Business Associate nor any of its employees, subcontractors or agents shall use or further disclose PHI in any manner that would violate the requirements of this Agreement or the final Privacy Rule regulations. Business Associate may use and disclose PHI when necessary for Business Associate's proper management and administration, or to carry out Business Associate's specific legal responsibilities to the extent provided in the Privacy Rule. Business Associate shall not disclose more information than the minimum amount necessary to allow Business Associate to perform its functions on behalf of the Covered Entity. Business Associate shall not use or further disclose PHI in any manner that would violate the final Privacy Rule standards.

**4. Safeguards for PHI.** Business Associate shall use appropriate safeguards to prevent the use or disclosure of PHI other than as expressly provided for in this Agreement. Business Associate shall assure that any agents or subcontractors to whom it provides any PHI under this Agreement shall agree to the same restrictions and conditions as Business Associate under this Agreement to assure that such agent or subcontractor complies in all respects with the provisions of this Agreement and the Privacy Rule standards.

**5. Individual Rights to Access and Amendments.** Business Associate, its agents and subcontractors agree to provide access and incorporate amendments, within the reasonable time limits set by the Privacy Rule Standards, to PHI that is maintained by Business Associate or its agents or subcontractors in a designated record set in order to meet the Privacy Rule requirements.

**6. Accounting for Disclosures of PHI.** Business Associate shall cooperate with Covered Entity by providing appropriate information to Covered Entity to fulfill both parties' responsibilities under the Privacy Rule. Business Associate agrees to provide an accounting of any disclosures of PHI for up to the six-year period preceding the date of the request for an accounting and after April 14, 2003. Such information shall include:

- the date of the disclosure;
- the name and address of the person or entity who received the PHI;
- a brief description of the disclosed PHI; and

- a brief statement of the purpose of the disclosure including an explanation of the basis for such disclosure.

Business Associate must provide all such information to Covered Entity on a timely basis but no later than 10 days after Covered Entity requests such information in writing.

**7. Access to Business Associate's Books and Records.** Business Associate shall make available to the Secretary of the Department of Health and Human Services its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by, Business Associate on behalf of Covered Entity for the purpose of determining Business Associate's compliance with the requirements of this Agreement and the Privacy Rule standards.

**8. Reporting and Auditing of Improper Use of PHI.** Business Associate shall be responsible for promptly reporting to Covered Entity any inappropriate use or disclosure of Covered Entity's PHI not provided for by this Agreement. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or its agents or subcontractors in violation of the requirements of this Agreement.

**9. HIPAA Requirements.** Business Associate and Covered Entity agree to work cooperatively to meet applicable requirements of the final HIPAA regulations.

**10. Termination of Contract.** Covered Entity shall have the right to terminate this Agreement and the underlying Agreement if Covered Entity determines that Business Associate has materially breached this Agreement. Upon termination of this Agreement, Business Associate shall promptly return or destroy all PHI received from Covered Entity. If the return or destruction of PHI is not feasible, Business Associate shall continue the protections required under this Agreement to the PHI consistent with the requirements of this Agreement and the HIPAA privacy standards. For so long as that PHI remains in possession of the Business Associate, the Business Associate shall limit further use of that PHI to the purposes which make return or destruction of that PHI infeasible. In the event that Business Associate ceases to do business or otherwise terminates its relationship with Covered Entity, Business Associate agrees to promptly return or destroy all PHI, received from Covered Entity, in a timely manner.

**11. Business Associate's Privacy and Security Policies and Practices.** Business Associate's privacy and security policies and practices shall meet or exceed current standards set by applicable state and federal law for the protection of PHI.

**12. Indemnification.** Business Associate shall indemnify and hold harmless the Covered Entity for any liability the Covered Entity (or its employees, directors or agents) may incur to the extent such liability is attributable to a use or disclosure of PHI by Business Associate or its agents other than as specifically contemplated by this Agreement.

If the foregoing meets with your understanding and approval, please show your acceptance and agreement by signing and returning one copy of this Agreement to the undersigned.

**Business Associate:**

**Covered Entity: First Sun EAP Alliance, Inc.**

**Name:** \_\_\_\_\_

**Name: Nancy C. Swanson, CEAP**

**Organization:** \_\_\_\_\_

**Title: Director of Provider Relations**

**Signature:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**FEID:** \_\_\_\_\_