



# Ancillary Services Administration Agreement

Capital District Physicians' Healthcare Network, Inc.

500 Patroon Creek Blvd. • Albany, NY 12206-1057 • (518) 641-5000 or 1-800-993-7299

## 1. Employer Information

Company Name \_\_\_\_\_ EIN # \_\_\_\_\_

CDPHP Group Number \_\_\_\_\_ Effective Date \_\_\_\_\_

Business Type:  C Corporation  S Corporation  Limited Liability Corporation  Partnership  
 Sole Proprietor  Other: \_\_\_\_\_

Address 1 \_\_\_\_\_

Address 2 \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

## 2. Contact Information

Please provide details for at least one individual from your company, who is authorized to handle information pertaining to plan administration and decisions involving Protected Health Information (PHI). You are responsible for promptly notifying us of any changes in contact information.

Name \_\_\_\_\_ E-mail \_\_\_\_\_

Title \_\_\_\_\_ Phone number \_\_\_\_\_

Name \_\_\_\_\_ E-mail \_\_\_\_\_

Title \_\_\_\_\_ Phone number \_\_\_\_\_

## 3. Consumer Spending Accounts

Please choose all that apply. List the health plan/plans that will accompany the account and any eligibility guidelines.

Note: Each unique HRA plan will need a separate HRA Plan ID. HRA Plan IDs will be used to enroll participants in the correct plan and will need to be made available to HRA custodian.

### General Purpose Health Flexible Spending Account (FSA)

Medical Plan IDs: \_\_\_\_\_

#### Eligibility (Only complete if eligibility is determined by Class or Subgroup)

Class description (i.e., hourly and salary employees) \_\_\_\_\_ Class # \_\_\_\_\_

Subgroups \_\_\_\_\_

#### Will you be making an employer contribution to the FSA

No  Yes \$ \_\_\_\_\_ (\$500 max)

*Employer contributions cannot exceed the greater of \$500 or the amount of the employee contribution.*

### Limited Purpose Health FSA

Medical Plan Ids: \_\_\_\_\_

#### Eligibility (Only complete if eligibility is determined by Class or Subgroup)

Class description (i.e., hourly and salary employees) \_\_\_\_\_ Class # \_\_\_\_\_

Subgroups \_\_\_\_\_

#### Will you be making an employer contribution to the FSA

No  Yes \$ \_\_\_\_\_ (\$500 max)

*Employer contributions cannot exceed the greater of \$500 or the amount of the employee contribution.*

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**Dependent Care FSA**

Medical Plan Ids: \_\_\_\_\_

**Eligibility (Only complete if eligibility is determined by Class or Subgroup)**

Class description (i.e., hourly and salary employees) \_\_\_\_\_ Class # \_\_\_\_\_

Subgroups \_\_\_\_\_

**Will you be making an employer contribution to the FSA**

No  Yes \$ \_\_\_\_\_ (\$500 max)

*Employer contributions cannot exceed the greater of \$500 or the amount of the employee contribution.*

**Health Reimbursement Arrangement (HRA) Plan ID-HQYHRA01**

Medical Plan Ids: \_\_\_\_\_

**Eligibility (Only complete if eligibility is determined by Class or Subgroup)**

Class description (i.e., hourly and salary employees) \_\_\_\_\_ Class # \_\_\_\_\_

Subgroups \_\_\_\_\_

**Health Reimbursement Arrangement (HRA) Plan ID-HQYHRA02**

Medical Plan Ids: \_\_\_\_\_

**Eligibility (Only complete if eligibility is determined by Class or Subgroup)**

Class description (i.e., hourly and salary employees) \_\_\_\_\_ Class # \_\_\_\_\_

Subgroups \_\_\_\_\_

**Health Reimbursement Arrangement (HRA) Plan ID-HQYHRA03**

Medical Plan Ids: \_\_\_\_\_

**Eligibility (Only complete if eligibility is determined by Class or Subgroup)**

Class description (i.e., hourly and salary employees) \_\_\_\_\_ Class # \_\_\_\_\_

Subgroups \_\_\_\_\_

**Health Reimbursement Arrangement (HRA) Plan ID-HQYHRA04**

Medical Plan Ids: \_\_\_\_\_

**Eligibility (Only complete if eligibility is determined by Class or Subgroup)**

Class description (i.e., hourly and salary employees) \_\_\_\_\_ Class # \_\_\_\_\_

Subgroups \_\_\_\_\_

**Health Savings Account (HSA)**

Medical Plan Ids: \_\_\_\_\_

**Eligibility (Only complete if eligibility is determined by Class or Subgroup)**

Class description (i.e., hourly and salary employees) \_\_\_\_\_ Class # \_\_\_\_\_

Subgroups \_\_\_\_\_

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#### 4. Signature Authorization

Employer represents that the information on this application is true and accurate to the best of its knowledge. Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and shall also be subject to a civil penalty not to exceed \$5,000 and the stated value for the claim for each such violation.

By signing below, Employer and Capital District Physicians' Healthcare Network, Inc. hereby agree to the Terms and Conditions attached hereto and incorporated herein.

Capital District Physicians' Healthcare Network, Inc., by:

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

Print name: Teresa Johnson, CHIE, PMP, Senior Vice President, Consumer Experience Solutions

Employer, by: Signature: \_\_\_\_\_ Date \_\_\_\_\_

Print name: \_\_\_\_\_ Print title: \_\_\_\_\_

Broker's signature: \_\_\_\_\_ Date \_\_\_\_\_

Print name: \_\_\_\_\_

### TERMS AND CONDITIONS

#### DEFINITIONS

- 1.1 Defined terms shall have the meanings set forth in **Exhibit A** annexed hereto and incorporated herein, unless otherwise defined herein.
- 1.2 The Terms and Conditions shall consist of these Terms and Conditions and all Exhibits hereto (collectively, the "Agreement"). If any Exhibit provides terms that conflict with these Terms and Conditions, the terms of these Terms and Conditions shall prevail unless the Exhibit by its wording identifies the terms of these Terms and Conditions to be altered and specifically states an intent to alter such terms.

#### SERVICES

- 2.1 **Scope of Services.** Employer provides its Employees with certain benefits administered by Employer's Administrative Vendor and/or Administrative Vendor Affiliates.
  - a. **Enrollment Vendor.** Administrative Vendor shall act as Employer's vendor in handling enrollment information for Employer's various employee benefit plans and Consumer Spending Accounts. Administrative Vendor may collect electronic or paper enrollment forms and other data on Employer's behalf, and distribute the enrollment information to Employer's various employee benefit plans and their vendor(s), as well as Employer's employees responsible for payroll or benefit administration.
  - b. **Claims Data Transmission for HSA.** Employer would like to offer Employees the ability to have withdrawals made from their HSA using the Card. Administrative Vendor has agreed to facilitate this convenience if the Participant: (1) establishes the HSA at an Eligible Custodian, (2) the Eligible Custodian has issued a Card for HSA benefits, (3) the Participant enters into the appropriate agreement with the Eligible Custodian, and (4) the Participant executes an acceptable HIPAA Authorization and Release to enable Administrative Vendor and/or Administrative Vendor Affiliates to provide requested Claim data to the Eligible Custodian Notwithstanding the foregoing, Administrative Vendor and/or Administrative Vendor Affiliates will not transmit or provide for the transmission of Claim data that is subject to additional protections beyond those of HIPAA, such as the requirements for release of information relating to substance abuse found in 42 CFR Part 2, additional protections for mental health records found in New York Mental Hygiene Law, Section 33.13(c)(9)(i), and additional protections for HIV records provided under applicable state law.
  - c. **Claims Data Transmission for HRA/FSA.** Employer would like to offer Employees the ability to have withdrawals made from their HRA/FSA using the Card. Administrative Vendor has agreed to facilitate this convenience. Notwithstanding the foregoing, Administrative Vendor and/or Administrative Vendor Affiliates will not transmit or provide for the transmission of Claim data that is subject to additional protections beyond those of HIPAA, such as the requirements for release of information relating to substance abuse found in 42 CFR Part 2, additional protections for mental health records found in New York Mental Hygiene Law, Section 33.13(c)(9)(i), and additional protections for HIV records provided under applicable state law.

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(1) If Employer submits all required authorizations and certifications to CDPHP and Administrative Vendor, and where offered to the Employer group type, Administrative Vendor may:

- obtain claims data from the HRA Integrated Medical Plan insured by CDPHP for purposes of claims adjudication and payment under the HRA, as the Integrated Medical Plan is part of the same group health plan or Organized Health Care Arrangement (OHCA) with the HRA.
- obtain claims data from the Medical Plan Option insured by CDPHP for purposes of claims adjudication, substantiation and payment under the FSA, as the Medical Plan Option is part of the same group health plan or OHCA with the FSA.
- share claims data between the HRA and FSA for purposes of claims adjudication, substantiation and payment, as the HRA and FSA are part of the same group health plan or OHCA.

2.2 Benefit Plan or Program Documents. Employer understands and agrees that Administrative Vendor will not provide sample plan or program documents for the HRA, FSA, or Consumer Spending Accounts. Unless and solely to the extent provided otherwise in this Agreement, Employer agrees that it will contract with Eligible Custodian for any sample documents it might desire.

2.3 Services Not Contemplated by This Agreement. Administrative Vendor will not administer the Consumer Spending Accounts, will not engage in any direct contact with Participants regarding the Consumer Spending Accounts and will not engage in activities such as furnishing or otherwise processing custodial agreements for Consumer Spending Accounts, processing of Claims, provision of advice concerning what is an Eligible Expense, conduct any discrimination testing, provide account statements, facilitate account roll-overs, if applicable, or in any way administer the Consumer Spending Accounts. Administrative Vendor agrees only to transfer Claim data to the Eligible Custodian after receiving proper HIPAA Authorization and Release from Participants when required under HIPAA. Administrative Vendor and Administrative Vendor Affiliates are and shall remain independent contractors with respect to the service being performed hereunder and shall not, for any purpose, be deemed an employee of Employer or the Eligible Custodian, or a fiduciary of the Consumer Spending Accounts. Administrative Vendor and Administrative Vendor Affiliates shall not be deemed partners with the Eligible Custodian and/or Employer, nor are they engaging in a joint venture or governed by any legal relationship other than that of independent contractor. Administrative Vendor does not assume any responsibility for the design or administration of the Consumer Spending Accounts, the adequacy of their funding, the selection or competence or compliance of the Eligible Custodian, or any act or omission or breach of duty by Employer or by an Eligible Custodian. Administrative Vendor assumes no risk or obligation with respect to the Consumer Spending Accounts.

#### **EMPLOYER RESPONSIBILITIES**

3.1 Information to Administrative Vendor. Employer shall furnish to Administrative Vendor all information requested by Administrative Vendor to perform Administrative Vendor's duties under this Agreement, including, but not limited to, accurate Eligibility Reports. Such information shall be provided to Administrative Vendor in the time and in the manner agreed to by Employer and Administrative Vendor. Administrative Vendor shall have no responsibility with regard to benefits paid in error due to Employer's failure to timely update such information. From time to time thereafter, Employer shall provide Administrative Vendor with updated Eligibility Reports by electronic medium unless otherwise agreed by the parties in writing. The Eligibility Reports shall specify the information requested by Administrative Vendor which shall include, but not be limited to, the effective date for each Participant who is added to or terminated from participation in the Plan. Employer shall be responsible for ensuring the accuracy of any Eligibility Report. Administrative Vendor shall have no liability to Employer or any Participant as a consequence of an inaccurate Eligibility Report and Administrative Vendor shall not have any obligation to credit Employer for any Claims, expenses or administrative fees incurred or paid to Eligible Custodian as a consequence of an inaccurate Eligibility Report. Administrative Vendor shall presume that all such information is complete and accurate and is under no duty or obligation to question the completeness or accuracy of such information.

a. Employer shall receive all Election of Benefit Forms from Employees and determine eligibility of Employees to participate in the Benefit Options selected by such Employee. Employer shall then prepare and furnish to Administrative Vendor updated and complete Eligibility Reports indicating the Participants of the Plan, the Benefit Options selected, and the Plan Benefit Dollars allocated to such Benefit Options, including detail as to whether the Plan Benefit Dollars are Employer or Employee contributions and the effective date of the coverage. Employer shall submit amended Eligibility Report(s) to Administrative Vendor in advance of a permitted change to either the Employer or Employee contributions to the Plan.

3.2 Liability for Claims and Consumer Spending Account Contributions. Employer is solely responsible for the payment of Claims pursuant to, and the benefits provided by, the Plan. Administrative Vendor does not insure or underwrite the liability of Employer under the Plan. Except for expenses specifically assumed by Administrative Vendor in this Agreement, if any, Employer is responsible for all costs and expenses incident to the Plan. Employer understands and agrees that Administrative Vendor will not make any contributions to Consumer Spending Accounts.

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## CARD PROGRAM

- 4.1 Debit Card. Participants may, through an Eligible Custodian, use Cards for the payment of Eligible Expenses (“Card Program”). Participants shall be subject to the terms and conditions of the cardholder agreement, which shall be distributed with the Card. Employer acknowledges and agrees that Cards will be distributed and administered by Eligible Custodian and Administrative Vendor does not issue or otherwise administer Cards.

## ADMINISTRATIVE VENDOR COMPENSATION

- 5.1 Service Charges. The amounts of any direct service charges owed to Administrative Vendor, if any, are described in **Exhibit B**. Even if no fee is charged directly to Employer by Administrative Vendor under this Agreement, Administrative Vendor may receive a portion of the fee paid by Employer to the Eligible Custodian as compensation for the Services. Administrative Vendor may change the amount of such service charges listed in **Exhibit B** by providing at least thirty (30) days written or electronic notice to Employer. Administrative Vendor may also change the service charges as of the date any change is made to the Consumer Spending Accounts by Employer.
- 5.2 Billing of Charges. All Administrative Vendor service charges, whether provided for in this or any other Section, shall be billed to Employer on a monthly basis. Payment shall be due within thirty (30) days of the date of the monthly invoice.

## TERM AND TERMINATION

- 6.1 Term. The initial term of this Agreement shall begin on the Effective Date and shall continue for the twelve (12)-month period commencing on the Effective Date; thereafter, this Agreement will renew automatically for successive periods of twelve (12) months beginning on the anniversary of the Effective Date unless this Agreement is terminated in accordance with the provisions of this Section 5.
- 6.2 Automatic Termination. This Agreement shall automatically terminate as of the earliest of the following:
- the effective date of any legislation that makes the Consumer Spending Accounts and/or this Agreement illegal;
  - the date Employer becomes insolvent, bankrupt, subject to liquidation, receivership or conservatorship; or
  - the termination date of the Consumer Spending Accounts, subject to any agreement between Employer and Administrative Vendor regarding payment of benefits after the Consumer Spending Accounts is terminated.
- 6.3 Termination Without Cause. Either party shall have the right to terminate the Agreement without cause upon ninety (90) days prior written notice to the other party.
- 6.4 Termination With Cause. If a party fails to perform its obligations in accordance with this Agreement, the non-defaulting party may, if the non-defaulting party so elects, after thirty (30) days have elapsed since the non-defaulting party’s written notice to the defaulting party to cure said default without commencement of a cure by the defaulting party, terminate this Agreement on five (5) days written notice to the defaulting party, and this Agreement shall expire and come to an end on the date fixed in such notice as if the said date were the date originally fixed in this Agreement for the expiration of the term. Such notice may be given by the non-defaulting party to the defaulting party in the manner provided for in this Agreement. Notwithstanding anything contrary in this Section, if Employer fails to pay any charges within ten (10) business days after they are due and payable as provided for in Section 4, Administrative Vendor may terminate this Agreement without allowing Employer an opportunity to cure said default.

## LIMITATION OF LIABILITY

- 7.1 Exclusion of Incidental and Consequential Damages. Independent of, severable from, and to be enforced independently of any other provision of this Agreement, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY (NOR TO ANY PERSON CLAIMING RIGHTS DERIVED FROM THE OTHER PARTY’S RIGHTS) IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND—INCLUDING LOST PROFITS, LOSS OF BUSINESS, OR OTHER ECONOMIC DAMAGE, AND FURTHER INCLUDING INJURY TO PROPERTY, AS A RESULT OF OR RELATING TO THIS AGREEMENT OR THE SERVICES, INCLUDING, WITHOUT LIMITATION, BREACH OF ANY WARRANTY OR OTHER TERM OF THIS AGREEMENT, OR ANY FAILURE OF PERFORMANCE, REGARDLESS OF WHETHER THE PARTY LIABLE OR ALLEGEDLY LIABLE WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF.
- 7.2 Maximum Damages Allowed. Notwithstanding any other provision of this Agreement, and for any reason, including breach of any duty imposed by this Agreement or independent of this Agreement, and regardless of any claim in contract, tort (including negligence) or otherwise, Administrative Vendor’s total, aggregate liability under this Agreement shall in no circumstance exceed payments made to Administrative Vendor by Employer or indirect payments made by the Eligible Custodian to the Administrative Vendor for the Services to which the claim relates during the twelve (12) months prior to the act or event giving rise to such claim.

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7.3 Statute of Limitations. No lawsuit or other action may be brought by either party hereto, or on any claim or controversy based upon or arising in any way out of this Agreement, after one (1) year from the later of the date on which the cause of action arose or the date on which the party learns of or reasonably should have discovered the cause of action, regardless of the nature of the claim or form of action, whether in contract, tort (including negligence) or otherwise; provided, however, the foregoing limitation shall not apply to the collection of any amounts due Administrative Vendor under this Agreement.

#### **INDEMNIFICATION**

8.1 Mutual Indemnification. Employer and Administrative Vendor shall indemnify and hold each other harmless from any and all claims, demands, suits, causes of action, costs and expenses of all kinds which may result or arise out of a material breach of this agreement or the gross negligence or willful misconduct of the indemnifying party, or any of its agents, employees or representatives, in the performance of this Agreement.

8.2 Indemnification by Employer. In addition, Employer hereby indemnifies and holds harmless Administrative Vendor and its Administrative Vendor Affiliates and their officers, employees, and agents from and against any claims, losses, damages, liabilities or expenses (including but not limited to settlement costs and reasonable legal, accounting and other expenses for investigating or defending claims or threatened actions) arising out of or in connection with:

- i. the acts or omissions of Employer, Eligible Custodian and/or other bank, custodian, trustee, or Third Party Administrator in connection with the Consumer Spending Accounts or any claim, demand, or lawsuit by Participants and beneficiaries against Administrative Vendor and/or its Administrative Vendor Affiliates in connection with the Consumer Spending Accounts;
- ii. the acts or omissions of Employer, Eligible Custodian and/or other bank, custodian, trustee, or Third Party Administrator in connection with Employer's Eligible Custodian's and/or other bank or Third Party Administrator's obligations under the Consumer Spending Accounts; and
- iii. the unauthorized use of Confidential Information to commit identity theft and/or financial fraud that occurs as a result of Employer's Eligible Custodian's and/or other bank or Third Party Administrator's breach of its security or confidentiality obligations.
- iv. any legal action or proceeding brought by a Participant or other third party against Administrative Vendor and/or its Administrative Vendor Affiliates to recover an equitable remedy or damages related to the Consumer Spending Accounts.
- v. if a claim is asserted, or litigation, investigation, or other proceedings are commenced against Administrative Vendor and/or its Administrative Vendor Affiliates by a Participant, or by any other party on behalf of itself or a Participant, in connection with the Consumer Spending Accounts, Administrative Vendor shall provide notice to the Plan Sponsor as soon as practicable. Administrative Vendor will select and retain counsel, unless Employer accepts a tender of defense and defends Administrative Vendor and/or its Administrative Vendor Affiliates. Except in cases where Employer and/or the Plan obtain separate counsel, Administrative Vendor's selection of counsel is subject to Employer's approval, which shall not be unreasonably withheld. Employer is liable for payment of attorneys' fees and costs in connection with the litigation, proceeding, or investigation, except: (i) where a conflict of interest necessitates that the Employer obtain separate counsel, (ii) where Administrative Vendor and/or its Administrative Vendor Affiliates retains counsel for which Employer has not given its approval, or (iii) Administrative Vendor is found by a court or administrative tribunal to have been grossly negligent or have engaged in willful misconduct. If the Employer or its employee benefit plans are also named in the legal action or proceeding, Employer reserves the right to retain separate counsel for itself, in its sole discretion and at its own expense, and separate counsel for its employee benefit plans. If during such litigation, investigation or proceedings Employer and Administrative Vendor and/or its Administrative Vendor Affiliates are represented by the same counsel selected by Administrative Vendor and a conflict of interest arises, the selected counsel may continue to represent the interests of Administrative Vendor and/or its Administrative Vendor Affiliates if Employer waives any conflict for such representation and retains its own counsel, or separate counsel for the Plan, at its own expense. Each party will provide the other with reasonable cooperation in the defense of any such matter. Administrative Vendor is authorized on behalf of itself and/or its Administrative Vendor Affiliates to settle or compromise any claim to recover an equitable remedy or damages related to the Consumer Spending Accounts arising out of a course of legal action with the approval of Employer, which approval shall not be unreasonably withheld.

8.3 Survival of Obligation. The obligations of Employer pursuant to Section 7 of this Agreement shall survive termination or expiration of this Agreement.

#### **GENERAL PROVISIONS**

9.1 Severability; Headings. If any term of this Agreement is declared invalid by a court, the same will not affect the validity of any other provision, provided that the basic purposes of this Agreement are achieved through the remaining valid provisions. The headings of sections and subsections contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

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- 9.2 Assignment; Amendment. Neither Employer nor Administrative Vendor can assign this Agreement without the other party's written consent; such consent shall not be unreasonably withheld, provided, however, Administrative Vendor may assign this Agreement to any current or future Administrative Vendor Affiliate without consent of Employer. This Agreement may be amended only by written agreement of duly authorized officers of Employer and Administrative Vendor.
- 9.3 Non-Disclosure of Proprietary Information. Employer and Administrative Vendor each acknowledge that in contemplation of entering into this Agreement and as a result of the contractual relationship created hereby, each party has revealed and disclosed, and shall continue to reveal and disclose to the other, information which is proprietary and/or confidential information of such party ("Confidential Information"). Employer and Administrative Vendor agree that each party shall: (a) keep such Confidential Information of the other party in strict confidence; (b) not disclose Confidential Information of the other party to any third parties or to any of its employees not having a legitimate need to know such information; and (c) not use Confidential Information of the other party for any purpose not directly related to and necessary for the performance of its obligations under this Agreement (unless required to do so by a court of competent jurisdiction or a regulatory body having authority to require such disclosure). Information revealed or disclosed by a party for any purpose not directly related to and necessary for the performance of such party's obligations under this Agreement shall not be considered Confidential Information for purposes hereof: (a) if, when, and to the extent such information is or becomes generally available to the public without the fault or negligence of the party receiving or disclosing the information; or (b) if the unrestricted use of such information by the party receiving or disclosing the information has been expressly authorized in writing and in advance by an authorized representative of the other party. For purposes of this Section, Confidential Information is any information in written, human-readable, machine-readable, or electronically recorded form (and legended as confidential and/or proprietary or words of similar import) and information disclosed orally in connection with this Agreement and identified as confidential and/or proprietary (or words of similar import); and programs, policies, practices, procedures, files, records and correspondence concerning the parties' respective businesses or finances. The terms and conditions of this Section 8.3 shall survive the termination of this Agreement.
- 9.4 Notices and Communications. All notices provided for herein shall be sent by guaranteed overnight mail, with tracing capability, or by first-class United States mail, with postage prepaid, addressed to the other party at their respective addresses set forth **in the Ancillary Services Administration Agreement** or such other addresses as either party may designate in writing to the other from time to time for such purposes. All notices provided for herein shall be deemed given or made when received.
- 9.5 No Waiver. The failure of either party to this Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.
- 9.6 Complete Agreement; Governing Law. This Agreement, including the Exhibits, is the full Agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements and representations between the parties. This Agreement shall be construed, enforced and governed by the laws of the State of New York.

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## **EXHIBITS**

**Exhibit A:** Definitions

**Exhibit B:** Schedule of Fees

**Exhibit C:** HIPPA Busines Associate Contract (BAC)

**Attachment 1:** Plan Sponsor Certification

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## EXHIBIT A

### DEFINITIONS

“Administrative Vendor” means Capital District Physicians’ Healthcare Network, Inc., a New York corporation, with offices at 500 Patroon Creek Blvd., Albany, NY 12206.

“Administrative Vendor Affiliate” means, with respect to Administrative Vendor, each of the Persons that directly or indirectly, through one or more intermediaries, owns or controls, or is controlled by or under common control with, Administrative Vendor. For purposes of this definition, “control” of a Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting interests, by contract or otherwise.

“Card” means the debit card issued by an Eligible Custodian to the Consumer Spending Accounts Participant.

“Claim” means information submitted by a provider or Participant to establish that an Eligible Expense was incurred by Participant, from which processing for payment to the provider or Participant is made.

“Effective Date” means the date as set forth in the Consumer Spending Accounts Services Administration Agreement.

“Eligible Custodian” means the financial institution with which the Administrative Vendor has an agreement in place to facilitate Services for the Employer.

“Eligible Expense” means such expenses that are covered by the Consumer Spending Accounts.

“**Eligibility Reports**” means those reports prepared by Employer and furnished to Administrative Vendor detailing the individuals eligible to participate in the Plan, the Benefit Options selected by the Participants, the Employer Contribution to each Benefit Option selected and the Employee’s Contribution to each Benefit Option selected as amended from time to time.

“Employee” means the employee of the Employer.

“Employer” means \_\_\_\_\_, a \_\_\_\_\_,  
with offices at \_\_\_\_\_

“HIPAA” means the Health Insurance Portability and Accountability Act, as amended from time to time, and any regulatory guidance thereunder.

“HIPAA Authorization and Release” means an authorization compliant with the HIPAA regulations at 45 CFR 164.508. “Participant” means those Employees participating in the Consumer Spending Accounts that are processing claims with the Card.

“Person” shall mean any individual, corporation (including any not-for-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union, or other entity or governmental body.

“Services” means the services provided by Administrative Vendor pursuant to this Agreement as described in Section 2.

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## EXHIBIT B SCHEDULE OF FEES

1. CDPHN is providing notice of fees for the Services requested herein to be billed by HealthEquity.

### 2. FSA/HRA Employer Service Fees

Service	Service Fee
Per employer setup fee (one-time fee)	\$250*
Per Account Per Month (PAPM Fee**):	
• FSA	\$3.45 per account per month
• LPFSA (with HSA)	\$2.45 per account per month
• HRA	\$3.45 per account per month
• Stacked HRA and FSA	\$3.45 per account per month
One round (per plan year) of non-discrimination testing (NDT) and plan documents	No charge
FSA plan document and SPD	No charge
HRA plan document and SPD	No charge
Additional employer costs for services as requested by employer:	
• Amended and Restated Plan Document and SPD	\$100 per plan
• Non-discrimination testing (additional rounds or enhanced testing	\$600 per test

\*Setup fee will be waived for CDPHP administered HRA/FSA plans transitioning to HealthEquity

\*\*In the case of FSA and/or HRA Reimbursement Accounts, HealthEquity charges only one PAPM fee even if an individual member has more than one FSA and /or HRA. This does not apply to an LPFSA coupled with any other product. If a LPFSA is coupled with another product, the monthly PAPM for the LPFSA is an additional \$2.45.

### 3. FSA/HRA Employee Fees

Service	Service Fee	Frequency
Replacement card	5 free: \$5 for each additional card	Per card
Reimbursement check	\$2 for paper check. No fee forelectronic funds transfer	Per check
Payment directed to provider	Free	
Stop payment	\$20	Per request
Paper account statement	\$1 per monthly statement requested (no fee for electronic statements)	Monthly

### 4. HSA Employer Service Fees

Service	Service Fee
Health savings account activation and setup (one-time fee)	No charge
HSA administration	
• Monthly admin fee <sup>1</sup>	\$2.95 per employee per month
• Helpful HealthEquity Member Services support available every hour of every day	
• HealthEquity Visa® Health Account Card <sup>2</sup>	
• Annual tax reporting: 1099-SA and 5498-SA	
• Online contributions (employers and employees)	
• Electronic member statements	
Additional employer costs for services as requested by employer	
• Returned deposited item, employer contribution refund request, manual processing <sup>3</sup>	\$20 per item/request

1. Monthly admin fees are typically paid by the plan sponsor. If an individual account holder changes health plans or employers, the account may be charged up to \$3.95 per month to be billed directly to the account holder.

2. This card is issued by The Bancorp Bank pursuant to a license from Visa U.S.A. Inc. The Bancorp Bank; Member FDIC.

3. Contributions are managed online via the Employer Portal. A \$20.00 fee will apply only if you create and send paper instructions to HealthEquity for allocating contribution payments. There is no fee for paying online or for entering contribution instructions online and sending a paper check.

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5. HSA Employee Fees

Service	Service Fee	Frequency
Monthly admin fee	Paid by plan sponsor*	Monthly
Replacement card	3 free: \$5 for each additional card if original is lost, stolen, or damaged	Per card
Reimbursement check	\$2 for paper check. No fee for electronic funds transfer	Per check
Payment directed to provider	Free	
Return deposited item	\$20	Per transaction
Overdraft	\$20	Per transaction
Stop payment	\$20	Per request
Distribution of excess contribution request	\$20	Per request
Account closing	\$25	One-time
Paper account statement	\$1 per monthly statement requested (no fee for electronic statements)	Monthly

\*If an individual account holder changes health plans or employers, the account may be charged up to \$3.95 per month to be billed directly to the account holder.

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## EXHIBIT C

### CAPITAL DISTRICT PHYSICIANS' HEALTHCARE NETWORK, INC. HIPAA BUSINESS ASSOCIATE CONTRACT

This business associate contract is between CAPITAL DISTRICT PHYSICIANS' HEALTHCARE NETWORK, INC. ("**Business Associate**"), and

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("Plan Sponsor"), on behalf of, as applicable, the employee benefits, consumer spending accounts, and/or group health plan(s) it sponsors that are administered by Business Associate.

#### 1. GENERAL.

- 1.1 Plan Sponsor and Business Associate are parties to an administrative services agreement ("**Service Agreement**") under which Business Associate will provide certain administrative services to Plan Sponsor and/or to plan members for or on behalf of Plan Sponsor ("**Services**").
- 1.2 In providing Services, Business Associate will have access to, or will create or receive from or on behalf of Plan Sponsor, information that is considered Protected Health Information ("**PHI**") as that term is defined under the Health Insurance Portability and Accountability Act of 1996 and the Health Information Technology for Economic and Clinical Health ("**HITECH**") Act of 2009, and under the Privacy and Security Rules contained in 45 CFR Parts 160, 162 and 164 (collectively, "**HIPAA**").
- 1.3 By entering into this Business Associate Contract (the "**Contract**"), Plan Sponsor and Business Associate intend to protect the confidentiality and integrity of PHI used or disclosed under the Service Agreement in compliance with HIPAA.

#### 2. SAFEGUARDS.

- 2.1 Business Associate shall use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this Contract and the Service Agreement.
- 2.2 Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic PHI that Business Associate creates, receives, or transmits on behalf of Plan as required by HIPAA and in the same manner as such requirement applies to the Plan pursuant to 45 C.F.R. §164.504.

#### 3. USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION.

- 3.1 Business Associate will not use or further disclose PHI other than as permitted or required by this Contract and the Service Agreement or as required by law.
- 3.2 Business Associate may use or disclose PHI to perform the Services, provided that such use or disclosures would not violate HIPAA if done by the Plan Sponsor or the minimum necessary policies and procedures of the Plan Sponsor required by 45 C.F.R. §164.514(d).
- 3.3 Business Associate may use and disclose PHI only to the minimum extent necessary to perform its obligations under this Contract and the Service Agreement.
- 3.4 Except as otherwise limited in this Contract, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out legal responsibilities of the Business Associate.
- 3.5 Except as otherwise limited in this Contract, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.
- 3.6 If a use or disclosure occurs in violation of this Contract or the Service Agreement, Business Associate shall mitigate, to the extent practicable, any harmful effect of the use or disclosure reasonably known to Business Associate.
- 3.7 Business Associate shall report to Plan Sponsor any "Security Incident" as defined in 45 CFR 164.304 of which Business Associate becomes aware that may reasonably have compromised the security of plan member PHI. For purposes of this Contract, the parties agree that inconsequential Security Incidents, such as scans and pings that occur on a regular basis and that are unsuccessful in penetrating Business Associate's computer networks or servers need not be reported as described above. Instead, Business Associate shall, upon request from Plan Sponsor, report the occurrence of inconsequential Security Incidents in aggregate over a specified reporting period. Notwithstanding the foregoing, if Business Associate detects a suspicious pattern of inconsequential Security Incidents, Business Associate will promptly report same to Plan Sponsor.
- 3.8 Business Associate shall comply with the reporting and notification requirements applicable to Business Associate in the event of a "breach," as that term is defined in HIPAA. In addition, Business Associate shall promptly report to Plan Sponsor any other use or disclosure of PHI in violation of this Contract of which Business Associate becomes aware.

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- 3.9 Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI concerning an individual unless Business Associate has obtained a valid authorization from the individual or as otherwise permitted under Section 13405(d) of HITECH.
- 3.10 Business Associate agrees that it will not receive remuneration for certain communications that fall within the exceptions to the definition of "Marketing" under 45 C.F.R. §164.501 unless permitted by HITECH.
- 3.11 Business Associate agrees that it will not use or disclose genetic information for underwriting purposes, as such term is defined in 45 C.F.R. §164.502.
- 3.12 Except as otherwise limited in this Contract, Business Associate may use PHI to provide Data Aggregation services to the Plan as permitted by 45 C.F.R. §164.504(e)(2)(i)(B).
- 3.13 Business Associate may use PHI to report violations of law to federal and state authorities, consistent with 45 C.F.R. §164.502(j).

#### **4. ACCESS, AMENDMENT AND ACCOUNTING OBLIGATIONS.**

- 4.1 Business Associate shall make available, not later than the fifteenth business day after a request, such information as may be required to fulfill Plan Sponsor's or Business Associate's obligations to provide access to PHI pursuant to 45 CFR §164.524.
- 4.2 Business Associate shall make available, not later than the fifteenth business day after a request, such information as may be required to fulfill Plan Sponsor's or Business Associate's obligations to amend PHI pursuant to 45 CFR §164.526.
- 4.3 Business Associate shall make available, not later than the thirtieth day after a request, such information as may be required to fulfill Plan Sponsor's or Business Associate's obligations to provide an accounting of uses and disclosures of PHI pursuant to 45 CFR §164.528.

#### **5. ADDITIONAL CONFIDENTIALITY REQUIREMENTS.**

- 5.1 Business Associate shall comply with all other applicable federal and New York State laws and regulations concerning confidentiality of PHI including, for example, rules pertaining to the confidentiality of alcohol and drug abuse records at 42 CFR Part 2, New York State's Public Health Law, Civil Practice Law and Rules, and Mental Hygiene Law, and any regulations or formal guidance issued under these laws.

#### **6. OVERSIGHT.**

- 6.1 Business Associate shall maintain privacy and security policies and procedures in compliance with applicable privacy and security requirements. Business Associate shall provide to Plan Sponsor, upon Plan Sponsor's request, information concerning Business Associate's policies and procedures in the form of a standard security questionnaire. In addition, Business Associate shall make its Privacy Officer and Information Security Officer available to Plan to discuss issues related to Business Associate's privacy and security policies and procedures.
- 6.2 Business Associate shall permit Plan Sponsor, at Plan Sponsor's expense, to audit Business Associate's compliance with the provisions of this Contract upon reasonable notice during the normal business hours of Business Associate.
- 6.3 Business Associate shall make its internal practices, books, and records relating to the use, disclosure and protection of PHI created or received by Business Associate on behalf of Plan Sponsor available to the Secretary of HHS, or the Secretary's designee, for purposes of determining Plan Sponsor's compliance with the requirements of HIPAA.

#### **7. OBLIGATIONS OF PLAN SPONSOR.**

- 7.1 The Plan Sponsor shall notify Business Associate of any limitations(s) in its notice of privacy practices of the Plan in accordance with 45 C.F.R. §164.520, to the extent such limitation may affect Business Associate's use or disclosure of PHI.
- 7.2 The Plan Sponsor shall notify Business Associate of any changes in, or revocation of, permission by an individual to use or disclose PHI to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- 7.3 The Plan Sponsor shall notify Business Associate of any restriction to the use or disclosure of PHI that the Plan has agreed to in accordance with 45 C.F.R. §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- 7.4 The Plan Sponsor shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA if done by the Plan.

#### **8. RETURN OF PROTECTED HEALTH INFORMATION.**

- 8.1 Upon termination of this Contract, Business Associate shall, subject to Section 8.2, return or destroy all PHI created or received by Business Associate under the Service Agreement that Business Associate maintains in any form, and shall retain no copies unless Required by Law.

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8.2 If neither return nor destruction of PHI is feasible, the terms of this Contract are automatically extended and continue to apply with respect to PHI remaining in Business Associate's possession, and Business Associate shall limit further uses and disclosures of the retained PHI to those purposes that make return or destruction of the PHI infeasible.

#### 9. AGENTS.

- 9.1 To the extent that Business Associate uses an agent (including any vendor or subcontractor) to perform Services for or on behalf of Plan Sponsor, or otherwise provides PHI to an agent on behalf of the Plan Sponsor, Business Associate shall cause any such agent to implement reasonable and appropriate safeguards to protect PHI and agree to the same restrictions and conditions that apply to Business Associate under this Contract.
- 9.2 Business Associate shall enter into an agreement with the agent described in Section 9.1 which complies with 45 C.F.R. §164.314.

#### 10. TERM AND TERMINATION.

- 10.1 This Contract is effective upon the effective date of the Service Agreement and, unless earlier terminated as provided herein, terminates upon the later of (a) termination of the Service Agreement or (b) the conclusion of any extension of this Contract under Section 8.2.
- 10.2 This Contract may be terminated upon mutual written agreement if no part of the Services result or could result in access to PHI by Business Associate; or (b) the creating or receiving of PHI by Business Associate from or on behalf of Plan Sponsor.
- 10.3 Upon either party's knowledge of a breach of this Contract by the other party, the non-breaching party shall either provide an opportunity for the breaching party to cure the breach, or immediately terminate this Contract if it has reasonably determined that cure is not possible.

#### 11. MISCELLANEOUS.

- 11.1 **Defined Terms.** Terms used but not otherwise defined in this Contract have the meaning given to those terms under HIPAA, as may be in effect or amended from time to time.
- 11.2 **Waiver.** The failure to insist on the performance of any term of this Contract in any one instance is not a waiver of the right to such performance.

#### 11.3 Notice.

- a. The parties shall provide any notice required under this Contract in the same manner as set forth in the Service Agreement.
- b. If no provision of the Service Agreement governs notice, then a party may effect notice under this subsection (b) by one of the following methods: personal delivery; delivery by U.S. Postal Service Registered or Certified mail; or delivery by overnight courier. No other method of delivery of notice is valid under this subsection. For notice delivered under this subsection: notice delivered personally is deemed given upon delivery; notice delivered by U.S. Postal Service is deemed given on the third day after deposit, postage prepaid, in an official depository of the U.S. Postal Service; notice delivered by overnight courier is deemed given on the next business day after prepaid deposit with a national courier for next day delivery. Notice under this subsection (b) must be in writing and addressed as follows:

**If to Plan Sponsor:**

Client Plan Name: \_\_\_\_\_

Plan Mailing Address: \_\_\_\_\_

Plan City, State, Zip: \_\_\_\_\_

Attn: (Plan Notice Name and Title) \_\_\_\_\_

**If to Business Associate:**

Capital District Physicians' Healthcare Network, Inc.  
500 Patroon Creek Boulevard  
Albany, NY 12206  
Attn: Senior V.P., Legal Affairs and General Counsel

*With an additional copy to the attention of the Chief Compliance Officer, at the same address.*

11.3 **Entire Contract.** This Contract is the entire agreement of the parties regarding the use and disclosure of PHI, and supercedes any other contract, whether oral or in writing, between the parties with respect to such matters. If a provision of this Contract conflicts with the Service Agreement, the provision of this Contract prevails.

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- 11.4 **Amendment.** An intended modification or amendment of this Contract is effective only if in writing and signed by the party to be charged with the modification or amendment.
- 11.5 **Independent Contractors.** The relationship of the parties is that of independent contractors. This Contract does not create a relationship of employment, partnership, agency or joint venture between the parties. Neither party has the authority to enter into contracts or to assume any liabilities or obligations for the other party, or to make any warranties or representations on behalf of the other party, except in accordance with the express terms of this Contract and the Service Agreement, or as otherwise authorized in writing by the other party.
- 11.6 **Authority to Execute Contract.** Each person signing this Contract on behalf of a business entity warrants that he or she has or has obtained the appropriate authority to do so.
- 11.7 **Ambiguity.** Any ambiguity in this Contract shall be resolved to permit the parties to comply with HIPAA.
- 11.8 **Enforceability.** Should any provision of this Contract be found unenforceable, it shall be deemed severable and the balance of the Contract shall continue in full force and effect as if the unenforceable provision had never been made a part hereof.
- 11.9 **Governing Law.** This Contract shall in all respects be governed by, and construed in accordance with, the laws of the State of New York, including all matters of construction, validity and performance.
- 11.10 **Successors.** This Agreement shall be binding upon the parties hereto, and their respective legal representatives, trustees, receivers, successors and permitted assigns.

<b>CAPITAL DISTRICT PHYSICIANS' HEALTHCARE NETWORK, INC.</b>	<b>PLAN SPONSOR NAME:</b>
_____	_____
<b>By:</b> _____	<b>By:</b> _____
<b>Signature:</b> _____	<b>Signature:</b> _____
<b>Signed by Name:</b> _____	<b>Signed by Name:</b> _____
<b>Signed by Title:</b> _____	<b>Signed by Title:</b> _____
<b>Date Signed:</b> _____	<b>Date Signed:</b> _____

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## ATTACHMENT 1

### Plan Sponsor HIPAA Certification

***This certification must be completed in order for claims information from the fully-insured health plan to be released to the employer for purposes of substantiating claims under the HRA and/or FSA plans, and in order for Employer to access claims reports containing HIPAA Protected Health Information (PHI).***

[Employer] (Hereinafter “Plan Sponsor”) is a plan sponsor of a group health plan (the “Plan”) within the meaning of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) regulations at 45 CFR § 160.103. Plan Sponsor hereby requests that Capital District Physicians’ Health Plan, Inc. and/or its affiliates or designees, including but not limited to Capital District Physicians’ Healthcare Network, Inc. (“CDPHN”) and CDPHP Universal Benefits, Inc., (collectively “CDPHP”), provide protected health information (“PHI”) to it and to other group health plans within the same Organized Health Care Arrangement (OHCA) for purposes of payment and health plan operations related to administration of the Plan. In order to receive or share such PHI, Plan Sponsor certifies to the following, as required by the HIPAA regulations at 45 CFR § 164.504(f):

Plan Sponsor hereby certifies that the Plan documents that govern the Plan have been amended to incorporate the following provisions, and the Plan Sponsor will:

- a. not use or further disclose PHI other than as permitted or required by the Plan Documents or as required by law;
- b. ensure that any agents, including subcontractors, to whom it provides PHI received by the Plan is agree to the same restrictions and conditions that apply to the Plan Sponsor with respect to such information;
- c. not use or disclose PHI for employment-related actions and decisions;
- d. not use or disclose PHI in connection with any other benefit or employee benefit plan (except to the extent that Plan Sponsor is permitted to do so because the other employee benefit plan is part of an Organized Health Care Arrangement (OHCA) with the Plan, and the Plan Sponsor has taken all appropriate steps to create and disclose to participants the existence of the OHCA);
- e. report to the Plan or its designee any uses or disclosures of PHI that Plan Sponsor becomes aware of and is inconsistent with the uses or disclosures provided for in this Certification;
- f. make available the PHI available to an individual based on HIPAA’s access requirements in accordance with 45 CFR §164.524;
- g. make available the PHI for amendment and incorporate any PHI amendments based on HIPAA’s amendment requirements in accordance with 45 CFR §164.526;
- h. make available the information required to provide an accounting of disclosures in accordance with HIPAA’s requirements in accordance with 45 CFR § 164.528;
- i. make its internal practices, books, and records relating to the uses and disclosure of PHI received from CDPHP available to the U.S. Department of Health and Human Services for the purpose of determining compliance by the Plan with HIPAA;
- j. ensure adequate separation between the Plan and the Plan Sponsor in accordance with HIPAA’s “firewall” provisions by including the following in the Plan Documents: (1) describing in the Plan document those employees or classes of employees or other persons under control of the Plan Sponsor that will be given access to PHI, provided that any employee or person who receives PHI relating to payment under health care operations of or other matters pertaining to the Plan in the ordinary course of business must be included in such description; (2) restrict access to and use by such employees and other persons to the Plan administration functions that Plan Sponsor performs for the Plan; (3) provide an effective mechanism for resolving any issues of noncompliance with the Plan by persons described in “(1)” above; and (4) any other requirement under HIPAA to ensure adequate separation.
- k. if feasible, return or destroy all PHI received from CDPHP that the Plan Sponsor maintains in any form and retain no copies of such PHI when no longer needed for the specified disclosure purpose. If return or destruction is not feasible, the Plan Sponsor will limit further uses and disclosures to those purposes that make the return of destruction infeasible.

The undersigned certifies that he or she has the authority to sign on behalf of the Plan Sponsor.

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

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

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

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