



# HRA/FSA Administration Agreement

Capital District Physicians' Healthcare Network, Inc.  
500 Patroon Creek Blvd. • Albany, NY 12206-1057 • (518) 641-5000 or 1-800-993-7299

## Section 1: Employer Information (required)

Company Name \_\_\_\_\_ EIN # \_\_\_\_\_  
 CDPHP Group Number \_\_\_\_\_ Effective Date \_\_\_\_\_  
 Address 1 \_\_\_\_\_  
 Address 2 \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Business Type:  C Corporation  S Corporation  Limited Liability Corporation  Partnership  
 Sole Proprietor  Other: \_\_\_\_\_

*(In general, self-employed individuals, including partners in a partnership and more-than-2% shareholders in an S corporation, cannot participate. Speak with your legal or tax advisor for further guidance.)*

## Contact Information and Protected Health Information (PHI) Authorization

Please provide at least two individuals who are authorized to handle information and make decisions pertaining to plan administration, such as daily and/or weekly funding requests, monthly reports, plan interpretation/design, and sign-off on final claim decisions involving Protected Health Information (PHI). You are responsible for promptly notifying us of any changes in contact information.

Name _____	Title _____
Email _____	Phone _____
Name _____	Title _____
Email _____	Phone _____
Name _____	Title _____
Email _____	Phone _____

## Section 2: Health Reimbursement Arrangement (Complete this section if you are offering an HRA)

### Step 1—Administrative Information

ERISA Plan Number: \_\_\_\_\_ (three-digit number beginning with 5)

### Step 2—Account Types and Reimbursable Expenses

What type(s) of HRA(s) does the Plan offer, and what expenses are reimbursable from each? (Choose all that apply)

General Purpose HRA (no deductible)

Which Integrated Medical Plan Options can be paired with the General Purpose HRA?

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

Which expenses are reimbursable from the General Purpose HRA?

Medical Plan Expenses (must choose one of the following)

- Medical plan deductible only
- Medical plan deductible then copay
- Medical plan deductible then coinsurance
- Medical plan deductible then coinsurance/copay

Ancillary Expenses (if applicable)

- All 213(d) eligible expenses
- Only the following 213(d) eligible expenses: (choose all that apply)
  - Rx\*
  - Dental
  - Vision\*\*

**Post-Deductible HRA**

**Which Integrated Medical Plan Options can be paired with the Post-Deductible HRA?**

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

**Which expenses are reimbursable from the Post-Deductible HRA?**

**Post-Deductible Medical Plan Expenses** (must choose one of the following)

- Remaining medical plan deductible only
- Remaining medical plan deductible (if any) then copay
- Remaining medical plan deductible (if any) then coinsurance
- Remaining medical plan deductible (if any) then coinsurance/copay

**Ancillary Expenses** (if applicable)

- All 213(d) eligible expenses
- Only the following 213(d) eligible expenses: (choose all that apply)
  - Rx\*
  - Dental
  - Vision\*\*

**Deductible Amount:** (must choose one of the following for Post-Deductible HRAs) \*\*\*

- Full Plan Deductible.* Employee is responsible for satisfying the full deductible under the Integrated Medical Plan before the HRA will pay for medical plan expenses.
- Statutory Deductible Only.* Employee is only responsible for paying the amount of the statutory minimum deductible for high deductible health plans under Code Section 223 (\$1,400 Individual/\$2,800 for all other coverage levels in 2021) toward covered benefits under the Integrated Medical Plan before the HRA will pay for medical plan expenses. The employee does not need to meet the full plan deductible first.
- Other deductible amount.* Employee is responsible for the deductible amount listed below before the HRA will pay for medical plan expenses. Only deductible expenses under the Integrated Medical Plan count toward the HRA deductible. *Note: if deductible amount below is less than the Code Section 223 deductible amount, then the HRA will not be compatible with a Health Savings Account (HSA).*

Amount: \$ \_\_\_\_\_ Individual                      \$ \_\_\_\_\_ Two Person  
                   \$ \_\_\_\_\_ Individual and Children            \$ \_\_\_\_\_ Family

**Limited Purpose HRA** (no deductible)

**Which Integrated Medical Plan Options can be paired with the Limited Purpose HRA?**

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

**Which expenses are reimbursable from the Limited Purpose HRA?**

**Limited Purpose Expenses** (if applicable, choose all that apply; deductible does not apply to these expenses)

- Dental
- Vision\*\*

\*By selecting prescription (Rx) as an eligible expense, claims for IRS-approved expenses at major pharmacies will be approved, regardless of the pharmacy benefit and formulary associated with the health plan.

\*\*By selecting vision as an eligible expense, vision claims for IRS-approved expenses at provider locations will be approved and will not account for any specific vision-related benefits associated with your health plan.

\*\*\*The HRA deductible is an aggregate deductible, regardless of whether the associated medical plan has an aggregate or embedded deductible.

**Step 3—Annual HRA Allocation Amount per Employee**

**What is the annual employer contribution to the HRA?**

**General Purpose HRA:**

\$ \_\_\_\_\_ Individual      \$ \_\_\_\_\_ Two Person      \$ \_\_\_\_\_ Individual and Children      \$ \_\_\_\_\_ Family

**Post-Deductible HRA:**

\$ \_\_\_\_\_ Individual      \$ \_\_\_\_\_ Two Person      \$ \_\_\_\_\_ Individual and Children      \$ \_\_\_\_\_ Family

**Limited Purpose HRA:**

\$ \_\_\_\_\_ Individual      \$ \_\_\_\_\_ Two Person      \$ \_\_\_\_\_ Individual and Children      \$ \_\_\_\_\_ Family



**Step 8—HRA Debit Card** (A debit card may be available with your plan. Talk to your broker or sales representative.)

**Do you want to offer the HRA debit card?** (Please note that, when these services are enabled, the debit card will approve all pharmacy, dental, or vision expenses from applicable merchants, regardless of which expenses are covered by the medical plan you have chosen.)

- Yes, for the following accounts:
  - General Purpose HRA
    - Rx
    - Dental
    - Vision
    - All 213(d) eligible expenses
  - Post-Deductible HRA
    - Rx
    - Dental
    - Vision
    - All 213(d) eligible expenses
  - Limited Purpose HRA
    - Dental
    - Vision
- No

---

**Section 3: Flexible Spending Account (Complete this section if you are offering an FSA)**

**Step 1—Plan Administrative Information**

**ERISA Plan Number:** \_\_\_\_\_ (three-digit number beginning with 5)

**Step 2—Account Types and Reimbursable Expenses**

**What type(s) of FSA(s) does the Plan offer, and what expenses are reimbursable from each?** (Choose all that apply)

**General Purpose Health FSA**

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

**Which expenses are reimbursable from the General Purpose FSA?**

- All 213(d) eligible expenses
- Medical plan expenses, plus only the following additional 213(d) eligible expenses: (choose all that apply )
  - Rx\*
  - Dental
  - Vision\*\*

**Is enrollment in the Employer’s Medical Plan required to be eligible for the General Purpose Health FSA?**

- Yes. Employees can participate in the General Purpose Health FSA only if they are enrolled in the Medical Plan ID(s) listed above.
- No. The employee may still participate even if the employee is not enrolled for a Medical Plan Option.

**Limited Purpose Health FSA**

**Which Medical Plan Options can be paired with the Limited Purpose Health FSA?**

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

**Which expenses are reimbursable from the Limited Purpose FSA?**

Only the following 213(d) eligible expenses: (choose all that apply)

- Dental
- Vision\*\*

**Is enrollment in the Employer’s Medical Plan required to be eligible for the Limited Purpose Health FSA?**

- Yes. Employees can participate in the Limited Purpose Health FSA only if they are enrolled in the Medical Plan ID(s) listed above.
- No. The employee may still participate even if the employee is not enrolled for a Medical Plan Option.

**Dependent Care FSA**

### Step 3—Contributions

	<u>Health FSA</u>	<u>Dependent FSA</u>
<b>Employee Contributions:</b>	Minimum: \$ _____ Maximum: (choose one) <input type="radio"/> Statutory (\$2,750 indexed in 2021) <input type="radio"/> \$ _____	Minimum: \$ _____ Maximum: (choose one) <input type="radio"/> Statutory (\$2,500 Married Filing Separately, \$5,000 all other statuses) <input type="radio"/> \$ _____
<b>Employer Contributions*:</b>	<input type="radio"/> No contribution/matching <input type="radio"/> Match _____% up to \$ _____ <input type="radio"/> \$ _____ (\$500 max)	<input type="radio"/> No contribution/matching <input type="radio"/> Match _____% up to \$ _____ <input type="radio"/> \$ _____ (\$500 max)

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

**Payroll Schedule Frequency:**  Weekly    Bi-Weekly    Monthly    1st and 15th of the Month  
 Other: \_\_\_\_\_

**First Payroll Deduction Date:** \_\_\_\_\_

### Step 4—Carryover Options

	<u>Health FSA</u>	<u>Dependent FSA</u>
<b>77-Day Grace Period Allowed:</b>	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No
<b>Health FSA Statutory (\$550 indexed in 2021) Carryover*:</b>	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> N/A

\*Cannot be combined with Health FSA Grace Period.

### Step 5—FSA Debit Card

#### Do you want to offer the Health FSA debit card?

- Yes, for the following accounts:
  - General Purpose Health FSA
  - Limited Purpose Health FSA
- No

### Step 6—Other Plan Document Provisions

#### Do you want your Plan document to include provisions to pay premiums for insured benefits on a pre-tax basis?

- Yes.
- No. We do not allow employees to pay insurance premiums on a pre-tax basis.
- No. We have a separate cafeteria plan/premium conversion plan document that addresses this.

#### Do you want your Plan document to include provisions for employees to make HSA contributions through payroll on a pre-tax basis?

- Yes.
- No. We do not allow employees to make HSA contributions through payroll on a pre-tax basis.
- No. We have a separate cafeteria plan/premium conversion plan document that addresses this.

---

### Section 4: Order Rule (Complete this section only if you are offering both an HRA and Health FSA)

Specify which account should pay first in instances where an expense is eligible under both an HRA and FSA. If you have chosen to include an HRA deductible, it is most common to have the HRA pay first. This allows your employees to use their FSA funds for eligible expenses while the HRA deductible is being met.

Please note: If the FSA is set up to pay first (an uncommon setup), employees' entire annual election will need to be spent before they can access any HRA funds. Please speak with your broker or CDPHP representative to determine how the HRA and health FSA work together.

- HRA
- FSA

---

**Section 5: 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: \_\_\_\_\_

Employer, by:

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

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

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

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

Account Rep'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.
- 1.3 There may be other documents attached to this document for administrative convenience (“Attachments”). Such Attachments do not comprise part of the Agreement.

### ADMINISTRATIVE SERVICES

- 2.1 **Scope of Relationship.** Employer has sole and final authority to control and manage the operation of the Plan. Administrative Agent is and shall remain an independent contractor with respect to the service being performed hereunder and shall not, for any purpose, be deemed an employee of Employer or a fiduciary of the Plan. Administrative Agent and Employer shall not be deemed partners, nor are they engaging in a joint venture or governed by any legal relationship other than that of independent contractor. Administrative Agent does not assume any responsibility for the general policy design of the Plan, the adequacy of its funding, discretionary interpretation of the Plan, or any act or omission or breach of duty by Employer. Nor is Administrative Agent, under the terms of this Agreement, to be deemed an insurer, underwriter or guarantor with respect to any benefits payable under the Plan. Administrative Agent is providing certain ministerial administrative services at the direction of Employer only and does not assume any final risk or obligation with respect to Claims payable by Employer under the Plan or discretionary authority to interpret the terms of the Plan. Nothing herein shall be deemed to constitute Administrative Agent as a party to the Plan nor to confer upon Administrative Agent any authority or control respecting management of the Plan, independent authority or responsibility in connection with the administration of the Plan except as explicitly provided herein or responsibility for the terms or validity of the Plan.
- 2.2 **Scope of Services.** Commencing on the Effective Date and thereafter for the term of this Agreement, Administrative Agent shall provide certain administrative services in connection with the administration of the Plan. The duties to be performed by Administrative Agent and the fees to be paid by Employer to Administrative Agent are set forth as **Exhibit B**. The parties agree that the duties to be performed hereunder by Administrative Agent are non-discretionary ministerial duties with respect to claims administration in accordance with the express terms of the Plan. To the extent discretionary interpretation of the Plan is required, Administrative Agent shall defer to the Employer and/or its Plan Administrator to make such discretionary decisions. The parties may agree to additional duties in writing as may be specified in a Statement of Work (SOW), a template of which is attached hereto at **Exhibit C**. Unless otherwise negotiated by the employer in an SOW, Administrative Agent shall apply the following administrative rules that are not specified as Employer options in this Agreement:
  - (a) The Run-Out Period varies depending on employment status and Benefit Options, as follows:
    - (1) With respect to active Employees, the Run-Out Period for the HRA, Dependent Care FSA and Health FSA begins on the first day of the following Plan Year and ends at the end of the 90-day period after the end of the Plan Year or Grace Period, if applicable.
    - (2) With respect to terminated or deceased employees who participated in the HRA or Health FSA, or employees on leave of absence who revoked their Health FSA contribution election during leave, the Run-Out Period is the 90-day period immediately following termination, death, or revocation of the contribution election.
    - (3) With respect to terminated employees who participated in the Dependent Care FSA, or employees on leave of absence who revoked their Dependent Care FSA contribution election during leave, the Run-Out Period is the same as for active Employees.
  - (b) Only current employees are eligible for the HRA, Health FSA or Dependent Care FSA. There is no continuation (or separate plan) for retired or terminated employees other than COBRA.
  - (c) The effective date of coverage (“Entry Date”) varies depending on employment status and Benefit Options, as follows:
    - (1) For the HRA, Dependent Care FSA and Health FSA, with respect to new enrollees during an Employer’s annual election period for the Medical Plan, the entry date is the first day of the new Plan Year.
    - (2) For the HRA, with respect to newly hired Employees, or those Employees who enroll mid-year, the Entry Date is the effective date of coverage under the Integrated Medical Plan.
    - (3) For the Health FSA and Dependent Care FSA, with respect to newly hired Employees, the Entry Date is the date the Eligible Employee becomes eligible for Medical Plan coverage, so long as coverage is elected within 30 days of the date of hire.
  - (d) A COBRA Qualified Beneficiary may elect COBRA continuation for the HRA only if the Qualified Beneficiary also elects COBRA coverage for the Integrated Medical Plan.

- (e) For the HRA and Health FSA, domestic partners and their children do not have independent COBRA rights as Qualified Beneficiaries, and are eligible for COBRA only as dependents of an employee who is a Qualified Beneficiary with a COBRA right.
- (f) For the HRA, the Integrated Medical Plan must be insured or administered by CDPHP (i.e., the HRA cannot be integrated with another employer's plan, a spouse's employer's plan, an Employer plan insured by another carrier, a self-funded plan administered by another third party administrator, or Medicare, nor can it be stand-alone without Integrated Medical Plan enrollment, even in the case of a Limited Purpose HRA).
- (g) For the HRA, all enrolled dependents in the Integrated Medical Plan are eligible for the HRA, including domestic partners and their children. As required by law, Employers must impute income with respect to domestic partner HRA coverage, unless the domestic partner and/or domestic partner's child is the Participant's tax dependent, or the Participant waives coverage for the domestic partner and/or domestic partner's child.
- (h) For the HRA, Participants may opt-out and waive coverage only at open enrollment and termination, but not midyear.
- (i) Participants have the option to waive HRA coverage with respect to any dependent without waiving HRA coverage for themselves or for other dependents.
- (j) If Employer submits all required authorizations and certifications to CDPHP and Administrative Agent, and where offered to the Employer group type, Administrative Agent may:
  - obtain claims data from the HRA Integrated Medical Plan insured by CDPHP for purposes of claims adjudication and payment under the HRA, if 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, if 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, if the HRA and FSA are part of the same group health plan or OHCA.

**2.3 Benefits Payment and Account Statements.** Administrative Agent shall operate under the express terms of this Agreement and in accordance with the Plan Documents. 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 Agent 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. Administrative Agent shall, based upon the Eligibility Reports prepared by Employer, pay Claims in its usual and customary manner to Participants from the Plan Account(s) established by Employer. In the event there is a question requiring discretionary decision-making concerning coverage of a Claim, Administrative Agent shall forward such question to Employer or its Plan Administrator, who shall make a coverage determination. Administrative Agent will, at Employer's direction, either pay or not pay the Claim and communicate that decision to Participant.

Employer shall submit amended Eligibility Report(s) to Administrative Agent in advance of a permitted change to either the Employer or Employee contributions to the Plan. Employer shall be responsible for funding its contribution and assuring that the contribution committed to by Employees are funded at the level committed to in the Plan Documents. In the event that the funds in the Plan Account are inconsistent with the funding commitments set forth in the Plan Documents, Administrative Agent will notify Employer by facsimile transmission, electronic mail, or in writing. Immediately upon such notification, Employer shall wire additional funds into the Plan Account as necessary to fund all current payable Claims or shall immediately amend the Eligibility Report and submit the amended Eligibility Report to Administrative Agent. Administrative Agent shall cease to pay any Claims until Employer has deposited sufficient funds in the Plan Account to cover all current payable Claims.

Administrative Agent shall make available to Employer on a quarterly basis, a master report showing the payment history and status of Participant Claims and the amounts and transactions of Participant accounts during the preceding months. Administrative Agent shall furnish Individual Benefit Statements to Participants on a quarterly basis. Within 90 days of the end of the Plan Year or Grace Period, if applicable, Administrative Agent shall return any Unclaimed Funds remaining in Employer's Plan Account to Employer and will furnish to Employer a final report detailing the amounts of any unpaid Claims. It shall be Employer's sole responsibility and obligation, and not that of Administrative Agent, to reconcile Employer's Plan Account and to dispose of any excess Plan Account assets in accordance with relevant state and federal laws, rules and regulations, and the terms of the Plan.

**2.4 Prior Reimbursement Claims.** Administrative Agent shall have no duty or obligation with respect to Prior Reimbursement Claims, or services, if any, related thereto and/or Plan administration or any other services relating to the Plan arising prior to the Effective Date. Employer or its predecessor administrator shall be responsible for processing Prior Reimbursement Claims, including any run-off claims submitted after the Effective Date and Employer shall maintain legally required records of all Prior Reimbursement Claims and Prior Administration sufficient to comply with all applicable legal requirements. Employer shall indemnify and hold Administrative Agent harmless for any liability, costs and expenses associated with or relating to Prior Reimbursement Claims and/or Prior Administration.



**2.5 Service Delivery.** Administrative Agent shall perform necessary and customary administrative and clerical work in connection with each Claim and shall provide personnel, computer services and office and related services needed to perform Administrative Agent's obligations under this Agreement. Administrative Agent shall not be deemed in default of this Agreement, nor held responsible for, any cessation, interruption or delay in the performance of its obligations hereunder due to causes beyond its control, including, but not limited to, natural disaster, act of God, labor controversy, civil disturbance, disruption of the public markets, or armed conflict, or the inability to obtain sufficient materials or services required in the conduct of its business, including Internet access, or any change in or the adoption of any law, judgment or decree.

**2.6 Additional Documents.** Upon Employer's request, Administrative Agent shall furnish to Employer: (a) sample documents to be reviewed by Employer with its legal counsel, for creation of customized documentation for the Plan to be approved and executed by Employer, including, but not limited to, board resolutions, Summary Plan Descriptions, Plan Documents and Plan amendments (if any); and (b) sample administrative forms needed for Administrative Agent to perform its duties under this Agreement. By providing such documents, Administrative Agent is not providing legal advice or warranting the legal compliance of the templates; such compliance can only be assured by competent legal counsel after taking into account the Employer's specific facts and circumstances.

**2.7 Privacy Notices.** Administrative Agent shall provide to Employer notices reflecting Administrative Agent's privacy policies and practices as required by State and/or federal law and regulation. Administrative Agent shall also provide Employer with a model HIPAA Notice of Privacy Practices template, which shall describe the existence of the Organized Health Care Arrangement permitting the sharing of PHI between the Medical Plan and the HRA plan and Health FSA. The Employer shall be responsible for customizing and finalizing and distributing such HIPAA Notice of Privacy Practices to participants. The parties agree to amend this Agreement as is necessary, from time to time, to comply with the requirements of the privacy rules under HIPAA and other applicable laws. In accordance with the requirements of HIPAA, the parties shall execute a HIPAA Business Associate Contract (BAC), which will be annexed hereto as **Exhibit D** and incorporated herein.

**2.8 Recordkeeping.** Administrative Agent shall maintain, for the duration of this Agreement, the usual and customary books, records and documents, including electronic records, (collectively the "Records") that relate to the Plan and its Participants that Administrative Agent has prepared or that has otherwise come within its possession in furtherance of this Agreement. Upon termination of this Agreement, Administrative Agent, at Employer's request, will deliver the Records to Employer, subject to Administrative Agent's right to retain copies of the Records, as it deems appropriate. Employer shall be required to pay Administrative Agent reasonable charges for transportation or duplication of the Records.

**2.9 Claims Appeals.** Administrative Agent shall refer to Employer or its Plan Administrator or other designee, for final determination, any Claim for benefits or coverage that is appealed after initial rejection by Administrative Agent or any class of Claims that Employer may specify, including:

- (a) any question of eligibility or entitlement of the Participant for coverage under the Plan;
- (b) any question with respect to the amount due;
- (c) any claim requiring a discretionary determination with respect to coverage or
- (d) any other appeal.

#### **EMPLOYER RESPONSIBILITIES**

**3.1 Plan.** Employer has the sole authority and responsibility for the Plan and its operation, including the authority and responsibility for administering, construing, designing and interpreting the provisions of the Plan and making all final determinations thereunder. Employer confers to Administrative Agent the authority to act on behalf of Employer in connection with the Plan, but only as expressly set forth in this Agreement or as mutually agreed upon in writing by Employer and Administrative Agent. Unless Employer has delegated authority in the Plan document, SPD, or other documents governing the Plan to another committee or Person, Employer is considered the Plan Administrator and "Named Fiduciary" of the Plan and the benefits thereunder for purposes of ERISA.

Employer retains the authority and responsibility to:

- (a) Make and enforce such rules and regulations as the Employer deems necessary or proper for the efficient administration of the Plan;
- (b) Decide all questions concerning the Plan and the eligibility of any person to participate in the Plan and to receive benefits provided by operation of the Plan;
- (c) Reject elections or to limit contributions or benefits for certain highly compensated participants if it deems such to be desirable in order to avoid discrimination under the Plan in violation of applicable provisions of the Code;
- (d) Provide Employees with a reasonable notification of their Benefit Options available by operation of the Plan;
- (e) Appoint such agents, counsel, accountants, consultants, and actuaries as may be required to assist in administering the Plan; and
- (f) Delegate the execution of Employer's decisions regarding the enforcement of rules, determination of answers to questions, the acceptance or rejection or limit of contributions or Benefit Options, provision of notice, or such other tasks as Employer shall see fit, to the Administrative Agent or others.

Employer further agrees that any procedure, discretionary act, interpretation or construction taken by the Employer shall be done in a nondiscriminatory manner based upon uniform principles consistently applied and shall be consistent with the intent that the Plan shall continue to comply with the terms of the Code and the Treasury Regulations thereunder.

- 3.2 Compliance with Law.** Without limiting Employer's responsibilities described herein, it shall be Employer's sole responsibility (as Plan Sponsor and Plan Administrator) and duty to ensure compliance with COBRA; amend the Plan and Plan Documents as necessary to ensure ongoing compliance with applicable federal and state law, regulations and rules; prepare and file any required tax or governmental returns relating to the Plan, including, but not limited to, Form 5500; determine if and when a valid election change has occurred; execute and retain required Plan and Claims documentation; and take all other steps reasonable and necessary to maintain and operate the Plan in compliance with applicable provisions of the Plan, this Agreement, ERISA, the Code and other applicable state and federal law, regulations and rules. Employer shall be solely responsible for any fines or penalties assessed by any governmental agency due to the acts and/or omissions of Employer or the Plan or by previous or successor administrative agents for Employer and shall indemnify and hold harmless Administrative Agent from any such liability.
- 3.3 Plan Documents.** Employer shall provide Administrative Agent with all relevant information, including but not limited to, the final Plan Documents, any Plan amendments, Eligibility Reports, and Eligibility Report amendments. Employer shall distribute to employees all necessary forms, including but not limited to, Summary Plan Description, Summary of Material Modifications to the Plan, if any, Claim forms, the Summary Annual Report, and any other Plan information or Plan documentation requested by a Participant. Employer shall notify Administrative Agent of any changes to the Plan at least thirty (30) days before the effective date of such changes. Employer acknowledges that Administrative Agent is not providing tax or legal advice or representation and that Employer shall be solely responsible for determining the legal and tax status and implications of the Plan. Employer shall be solely responsible for filing any required documentation to relevant governmental agencies and authorities.
- 3.4 Information to Administrative Agent.** Employer shall furnish to Administrative Agent all information requested by Administrative Agent to perform Administrative Agent's duties under this Agreement, including, but not limited to, accurate Eligibility Reports. Such information shall be provided to Administrative Agent in the time and in the manner agreed to by Employer and Administrative Agent. Administrative Agent 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 Agent with updated Eligibility Reports by electronic medium unless otherwise agreed by the parties. The Eligibility Reports shall specify the information requested by Administrative Agent 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 Agent shall have no liability to Employer or any Participant as a consequence of an inaccurate Eligibility Report and Administrative Agent shall not have any obligation to credit Employer for any Claims, expenses or administrative fees incurred or paid to Administrative Agent as a consequence of an inaccurate Eligibility Report. Administrative Agent 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.
- 3.5 Liability for Claims.** Employer is solely responsible for the payment of Claims pursuant to, and the benefits provided by, the Plan. Administrative Agent does not insure or underwrite the liability of Employer under the Plan. Except for expenses specifically assumed by Administrative Agent in this Agreement, Employer is responsible for all costs and expenses incident to the Plan.

#### **BENEFIT PLAN PAYMENT: EMPLOYER'S FUNDING RESPONSIBILITY**

- 4.1 Plan Account.** Upon execution of this Agreement, Employer shall establish, maintain and fund a Plan Account. All benefits shall be paid from the Plan Account and Employer shall ensure that the Plan Account is and remains adequately funded to satisfy the payment of all Benefit Options. As Plan Fiduciary, Employer shall be responsible for the Plan Account, including but not limited to, any and all reporting requirements associated therewith, as well as the disposition of excess Plan Account assets in accordance with relevant state and federal laws, rules, and regulations.
- 4.2 Reimbursement of Claims.** In accordance with this Agreement and the Plan Document, Employer authorizes Administrative Agent to reimburse the Participant or the service provider, if applicable, for Eligible Expenses submitted to Administrative Agent by Participant pursuant to the Plan Document. Employer shall execute the ACH authorization form attached hereto as **Exhibit E**. Administrative Agent may pay such Claims via a direct ACH from the Plan Account, and/or may pay such Claims by issuing checks from Administrative Agent's own accounts and withdrawing sufficient funds from the Plan Account via a direct ACH to cover the expenses. See the document titled A Guide to Reports & Funding for additional information regarding the funding process. In the event Administrative Agent determines that a Claim does not qualify for payment or reimbursement or in the event that a Claim is paid but then later the Claim is determined to be unsubstantiated or otherwise made in error, Administrative Agent shall assist Employer in making the Plan whole by making a reasonable number of attempts requesting repayment of the improper amount by the Participant and/or the service provider, and/or by offsetting future claims made to the Participant until the amount is repaid. Alternatively, Employer may, in its discretion, withhold the improper payment from the Participant's wages or other compensation to the extent consistent with applicable state or federal law. If attempts by Administrative Agent and/or Employer fail to recover the improper payment, Employer may, consistent with Employer's

business practices, treat the amount as any other business indebtedness. In the event recovery is unsuccessful, Administrative Agent shall have no liability or obligation to fund or reimburse claims that were unsubstantiated, made in error, or otherwise do not qualify for payment, unless the mistaken payment was made due to Administrative Agent's own gross negligence.

**4.3 Debit and Credit Cards.** Participants may, subject to a procedure established by Administrative Agent and applied in a uniform and nondiscriminatory manner, use debit and/or credit cards ("Cards") provided by Administrative Agent and supported by the Administrative Agent Designee for the payment of Eligible Expenses ("Card Program"). If Employer elects to participate in the Card Program, Employer shall execute the ACH authorization form attached hereto as **Exhibit F**. Participants shall be subject to the terms and conditions of the cardholder agreement, which shall be distributed with the Card. The Benefits Approved for Card Use are those set forth in the Adoption Agreement.

**4.4 Funding of Benefits.** Funding for any payment on behalf of the Participants under the Plan, including but not limited to, all benefits to Participants in accordance with the Plan, whether by reimbursement or participation in the Card Program, is the sole responsibility of Employer. Employer agrees to accept liability for, and provide sufficient funds to satisfy, all payments to Participants under the Plan, and all Card Transactions, including payment and reimbursement of Claims for Eligible Expenses, where such expenses are incurred and the Claim is presented for payment or reimbursement during the term of this Agreement. Administrative Agent and/or the Administrative Agent Designee reserve the right to perform an initial and/or intermittent credit review of Employer to determine Employer's credit status. Should Employer fail to meet the criteria as established by Administrative Agent and/or the Administrative Agent Designee, in its sole discretion, Administrative Agent and/or the Administrative Agent Designee may suspend Employer and Employer's Participants' access to the Card Plan until such time as Employer has met Administrative Agent and/or the Administrative Agent Designee criteria or has provided Administrative Agent and/or the Administrative Agent Designee with either a letter of credit or an advance deposit in an amount acceptable to Administrative Agent and/or the Administrative Agent Designee.

In the event there are insufficient funds in the Plan Account to cover the payment of Card Transactions, Employer shall be assessed the Transaction Charge for each ACH returned due to insufficient funds. In addition, Administrative Agent and the Administrative Agent Designee each reserve the right to terminate access by Employer to the Card Plan by its Participants. Liability for payment of any Claim shall be the sole responsibility of Employer and in no event shall Administrative Agent or the Administrative Agent Designee be responsible for any Claims or any costs associated with Employer's failure to meet its funding obligations under this Agreement.

#### **ADMINISTRATIVE AGENT COMPENSATION**

**5.1 Service Charges.** The amounts of the monthly services charges of Administrative Agent are described in **Exhibit B**. Administrative Agent may change the amount of such charges by providing at least thirty (30) days written or electronic notice to Employer. Administrative Agent may also change the monthly service charges as of the date any change is made in the Plan by Employer.

**5.2 Billing of Charges.** All Administrative Agent service charges, whether provided for in this or any other Section, shall be billed separately from statement for payment of Claims so that proper accounting can be made by Employer of the respective amounts paid for Claims and for administrative expenses.

**5.3 Payment of Charges.** All charges under this Section 5 shall be determined by Administrative Agent and billed electronically to Employer on a monthly basis. Administrative Agent shall withdraw its service charges by ACH transfer from Employer's designated bank account within 40 hours after the invoice is provided, but no sooner than the first of each month for which the service charges relate.

#### **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 6.

**6.2 Automatic Termination.** This Agreement shall automatically terminate as of the earliest of the following:

- (a) the effective date of any legislation that makes the Plan and/or this Agreement illegal;
- (b) the date Employer becomes insolvent, bankrupt, subject to liquidation, receivership or conservatorship; or
- (c) the termination date of the Plan, subject to any agreement between Employer and Administrative Agent regarding payment of benefits after the Plan 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.** Administrative Agent may terminate the Agreement ten (10) business days following the occurrence of any of the following events: (i) Employer's failure to pay any charges after they are due and payable as provided for in Section 5; (ii) Employer's failure to fund the Plan Account; (iii) the failure of Employer to perform its obligations in accordance with this Agreement. Employer may terminate this Agreement upon the material failure of Administrative Agent to perform its obligations in accordance with this Agreement following Employer's thirty (30)-day written notice of such material failure and Administrative Agent's failure to cure such material failure.

**6.5 Limited Continuation After Termination.** If the Plan is terminated, Employer and Administrative Agent may mutually agree in writing that this Agreement shall continue for the purpose of payment of any Plan benefit, expense or Claim incurred prior to the date of Plan termination. In addition, if this Agreement is terminated while the Plan continues in effect, Employer and Administrative Agent may mutually agree in writing that this Agreement shall continue for the purpose of payment of any Claims for which requests for reimbursements have been received by Administrative Agent before the date of such termination. For at least one hundred eighty (180) days following the effective date of Termination, Employer shall maintain a settlement account with Administrative Agent and Alegeus, LLC by which both Administrative Agent and Alegeus, LLC may charge to settle any run-off activity which accrues prior to the effective date of Termination. If this Agreement is terminated and Administrative Agent continues to perform in accordance with this Section 6.5, Employer shall pay the monthly service charges incurred during the period that this Agreement is so continued and a final termination fee equal to the final month's service charge. The obligations of Employer under this Section 6.5 shall survive expiration or termination of this Agreement.

#### **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 Agent's total, aggregate liability under this Agreement shall in no circumstance exceed payments made to Administrative Agent by Employer for the services to which the claim relates during the twelve (12) months prior to the act or event giving rise to such claim.

**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 Agent under this Agreement.

**7.4 Standard of Care.** In the provision of services, Administrative Agent shall use that degree of ordinary and reasonable skill, care and diligence in the exercise of its duties hereunder, taking into account all relevant factors, including the complexity of the Plan and its benefit package, nature and volume of claims, and the cooperation of Plan Sponsor and Participants, that a prudent claims administrator under a like plan familiar with such matters would exercise in like circumstances.

#### **INDEMNIFICATION**

**8.1 Mutual Indemnification.** Plan Sponsor and Administrative Agent 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 Plan Sponsor.** In addition, Employer hereby indemnifies and holds harmless Administrative Agent and its 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:

- (a) the acts or omissions of Employer in connection with the Plan, or any claim, demand, or lawsuit by Participants and beneficiaries against Administrative Agent in connection with benefit payments or services performed hereunder;
- (b) the acts or omissions of Employer in connection with Employer's obligations specifically set forth in Section 3 of this Agreement;
- (c) Prior Reimbursement Claims and/or Prior Administration as well as from any premium charge, tax or similar assessment (federal or State) for which the Plan or Employer is liable;
- (d) the unauthorized use of Confidential Information to commit identity theft and/or financial fraud that occurs as a result of Employer's breach of its security or confidentiality obligations set forth in this Agreement; and
- (e) any legal action or proceeding brought by a Participant or other third party against Administrative Agent to recover a claim for benefits under the Plan.
- (f) If a claim is asserted, or litigation, investigation, or other proceedings are commenced against Administrative Agent by a Participant, or by any other party on behalf of itself or a Participant, in connection with the Plan, Administrative Agent shall provide notice to the Plan Sponsor as soon as practicable. Administrative Agent will select and retain counsel,

unless Plan Sponsor accepts a tender of defense and defends Administrative Agent. Except in cases where Plan Sponsor and/or the Plan obtain separate counsel, Administrative Agent's selection of counsel is subject to Plan Sponsor's approval, which shall not be unreasonably withheld. Plan Sponsor 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 Plan or Plan Sponsor obtain separate counsel, (ii) where Administrative Agent retains counsel for which Plan Sponsor has not given its approval, or (iii) Administrative Agent is found by a court or administrative tribunal to have been grossly negligent or have engaged in willful misconduct. If the Plan Sponsor or Plan are also named in the legal action or proceeding, Plan Sponsor reserves the right to retain separate counsel for itself, in its sole discretion and at its own expense, and separate counsel for the Plan. If during such litigation, investigation or proceedings Plan Sponsor and Administrative Agent are both represented by the same counsel selected by Administrative Agent and a conflict of interest arises, the selected counsel may continue to represent Administrative Agent's interests if Plan Sponsor 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 Agent is authorized to settle or compromise any claim to recover benefits under the Plan arising out of a course of legal action with the approval of Plan Sponsor, which approval shall not be unreasonably withheld.

**8.3 Survival of Obligation.** The obligations of Employer pursuant to Section 8.1 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.

**9.2 Assignment; Amendment.** Neither Employer nor Administrative Agent can assign this Agreement without the other party's written consent; such consent shall not be unreasonably withheld, provided however, Administrative Agent may assign this Agreement to any current or future Administrative Agent Affiliate without consent of Employer. This Agreement may be amended only by written agreement of duly authorized officers of Employer and Administrative Agent.

**9.3 Non-Disclosure of Proprietary Information.** Employer and Administrative Agent 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 Agent 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); 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 9.3 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 Health Funding Arrangements Administration Agreement Form 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.

## EXHIBITS AND ATTACHMENTS

- Exhibit A:** Definitions
  - Exhibit B:** Schedule of Fees
  - Exhibit C:** Statement of Work Template (SOW)
  - Exhibit D:** HIPAA Business Associate Contract (BAC)
  - Exhibit E:** CDPHN ACH Authorization
  - Exhibit F:** Administrative Agent Designee ACH Authorization
- Attachment 1:** Plan Sponsor Certification

## EXHIBIT A

### DEFINITIONS

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

**“Administrative Agent Affiliate”** means, with respect to Administrative Agent, 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 Agent. 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.

**“Administrative Agent Designee”** means the individual or entity appointed by the Administrative Agent from time to time to assist the Administrative Agent with the implementation and support of the Card Program. The current Administrative Agent Designee is Alegeus, LLC, the company responsible for the development of the Alegeus Wealthcare Portal Administration System, a software system used to support the Plan’s Card Program. Alegeus is hereby a third-party beneficiary of Sections 4.3 and 4.4 of this Agreement.

**“Adoption Agreement”** means the first seven pages (Sections 1-5) of the Administration Agreement, which describes employer-specific plan terms.

**“Benefits Approved for Card Use”** means the benefits selected by the Employer in the Adoption Agreement for which a debit card will be provided to Participants.

**“Benefit Options”** means any of the optional benefit choices selected by Employer as being available to its Employees, as described in the Adoption Agreement, SPD, the Employer’s employee handbook, enrollment materials, or other documents describing which Benefit Options are available under the Plan.

**“Card Transaction”** means a transaction that occurs when the Plan-issued debit card is presented to a merchant or provider for payment of Eligible Expenses.

**“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.

**“COBRA”** means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended or replaced from time to time.

**“Code”** means the Internal Revenue Code of 1986, as amended or replaced from time to time. **“Compensation”** means the amounts received by the Participant from the Employer during a Plan Year. **“Dependent”** means any individual who qualifies as a dependent under the Plan.

**“Effective Date”** means the date set forth in the Health Funding Arrangements Administration Agreement Form. **“Election of Benefit Forms”** means the forms provided to Employees by Employer pursuant to the Plan Document. **“Eligible Expenses”** means such expenses that are covered by the Plan.

**“Eligibility Reports”** means those reports prepared by Employer and furnished to Administrative Agent 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 common law employees of the Employer.

**“Eligible Employee”** means the Employees who satisfy the Plan’s eligibility criteria as described in the Plan document, the SPD, the Employer’s employee handbook, enrollment materials, or other documents describing the terms of the Plan.

**“Employer”** means the Employer/Plan Sponsor listed in Section 1 of the Adoption Agreement.

**“Employer Contributions”** means the financial contributions by Employer to the Benefit Options as described in the Adoption Agreement, and/or the SPD, the Employer’s employee handbook, enrollment materials, or other documents describing which Benefit Options are available under the Plan.

**“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended from time to time.

**“Grace Period”** means, with respect to any Plan Year, the additional time selected by the Employer following the end of the Plan Year, during which Participants may continue to incur Claims for Eligible Expenses.

**“HIPAA”** means the Health Insurance Portability and Accountability Act of 1996, as amended from time to time.

**“Individual Benefit Statement”** means the statement furnished to Participants detailing information about Participants’ account balances and benefits.

**“Participant”** means those Eligible Employees enrolled in the Plan as set forth on the Eligibility Reports as amended from time to time.

**“Plan”** means the benefit plan or plans that Employer has established and sponsors for the benefit of Employees, as described in the Adoption Agreement, which is/are administered by the Administrative Agent pursuant to this Agreement.

**“Plan Account”** means the bank account(s) that Employer establishes, maintains and funds in connection with the funding of Benefit Options under the Plan and in accordance with this Agreement and the Plan Document, and which the Administrative Agent may draw on to process claims. Plan Accounts shall be funded by the Employer’s general assets.

**“Plan Administrator”** means the Plan Administrator as defined in ERISA Section 3(16) (A). Unless Employer has delegated authority in the Plan document, SPD, or other documents governing the Plan to another committee, person or entity, Employer shall be the Plan Administrator.

**“Plan Benefit Dollars”** shall mean the cash contributions by Employer and Employee to the Benefit Options selected by Employee and verified for eligibility by Employer.

**“Plan Document(s)”** means the instrument(s), including all amendments thereto and other documents incorporated by reference, which sets forth the details of the Plan(s) selected by Employer, and the Eligibility Reports prepared by Employer, which are incorporated herein by reference.

**“Plan Sponsor”** shall be the Employer.

**“Plan Year”** means the 12-month period commencing as of the Medical Plan’s renewal date each year.

**“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.

**“Prior Reimbursement Claims”** means those Claims incurred prior to the Effective Date.

**“Prior Administration”** means the administration of Claims prior to the Effective Date.

**“Run-Out Period”** means the 90-day period after the end of the Plan Year, or Grace Period, during which Participants may submit claims for Eligible Expenses incurred during the Plan Year..

**“Summary of Material Modifications”** or **“SMM”** means the summary of changes to the Plan and its SPD.

**“Summary Plan Description”** or **“SPD”** means the summary of the Plan required by ERISA to be distributed to Participants.

**“Transaction Charge”** shall mean a charge of thirty dollars (\$30.00) for each ACH returned due to insufficient funds.

**“Unclaimed Funds”** means any funds remaining in any accounts held by Administrative Agent as of 30 days after the end of the Run-Out Period.



## EXHIBIT B

### SCHEDULE OF FEES

**Terms not specifically defined in this Schedule of Fees shall have the same meaning as those definitions set forth in the Plan Document.**

#### I. Documentation

- a. Sample Plan Document: Outlines the Plan’s establishment, operation, and duration.
- b. Sample Summary Plan Description (SPD): Explains the terms, conditions, and operation of the Plan in easy-to-understand language.
- c. Sample Plan Highlights: A short outline of the customized features of the Plan (e.g., Plan effective date, amount available for medical reimbursement per Plan Year).

#### II. Benefit Account Administration

##### a. Monthly Service Charges

One offering—FSA or HRA	\$5.25 PEPM
Two offerings—FSA and HRA	\$5.75 PEPM*

\* Applies per total number of plan participants where the plan sponsor offers two (2) offerings irrespective of whether each participant participates in each offering.

##### i. Services for Monthly Service Charges include the following:

1. Individual Benefit Statements sent to all Participants;
2. Web support at [www.cdphp.com](http://www.cdphp.com) with secure information regarding Participant accounts;
3. Standard Employer reporting as described in Section 2.3 of the Agreement.

##### ii. PEPM refers to a monthly fee charged based on the number of Participants enrolled. PEPM includes all Participants whether or not they have been issued a debit card.

iii. In the event that an Employee becomes a Participant on or before the 15th day of the month, the monthly fee is due for that Participant for that month. In the event that an Employee becomes a Participant after the 15th day of the month, no monthly fee is due with respect to that Participant for the partial month. In the event that a Participant is disenrolled on or before the 15th day of the month, then no monthly fee is due for that Participant for that month. In the event that a Participant is disenrolled after the 15th day of the month, the monthly fee is due with respect to that Participant for the partial month.

##### iv. The monthly service charge will continue to apply for the following Plan Year regardless of whether or not the Health FSA is elected for that Plan Year in the event a Participant has a balance to carry over.

#### III. Debit Card Fees

##### a. Individual Card Issuance—No Additional Charge

- i. Allows HRA and Medical FSA Participants to access Plan Account funds at the point of sale using a debit card to pay for eligible medical expenses.
- ii. Card is valid for 36 months.

##### b. Card Reissuance—\$10 per card

#### IV. Bank Account

##### a. Set-Up Fees—\$1.00 per account

- i. A \$1.00 ACH debit is charged to each new bank account created or for any material change to an existing bank account linked to an employer as a means to test the accuracy of the account set-up.

##### b. ACH Return/Rejection Fee—\$30 per transaction

- i. Fee assessed for each failed, returned, or rejected ACH settlement request per account per failure. Examples of conditions resulting in ACH failures, returns, or rejections include, but are not limited to: insufficient funds, invalid account information, and filter restrictions.

# EXHIBIT C

## STATEMENT OF WORK TEMPLATE

This Statement of Work (“SOW”) is made as of \_\_\_\_\_ (the “Effective Date”) and describes the services to be provided to Employer under the Third-Party Administrative Agent Services Agreement dated \_\_\_\_\_, by and between Administrative Agent and Employer. Capitalized terms not defined in this SOW have the meanings set forth in the Third-Party Administrative Agent Services Agreement. Except as expressly modified herein, the Third-Party Administrative Agent Services Agreement shall remain in full force and effect.

1. **Project Name (if any):** \_\_\_\_\_

2. **Project Coordinators for this SOW:**

**Employer:**

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

Address: \_\_\_\_\_  
\_\_\_\_\_

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

Phone: \_\_\_\_\_

Cell: \_\_\_\_\_

Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

**Administrative Agent:**

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

Address: \_\_\_\_\_  
\_\_\_\_\_

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

Phone: \_\_\_\_\_

Cell: \_\_\_\_\_

Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

3. **Term**

Services under this SOW will begin on \_\_\_\_\_ and are estimated to continue until \_\_\_\_\_ (“Term”). Either party may terminate this SOW for its convenience upon 15 days prior written notice.

4. **Description of Work**

5. **Timing of Work (Breakout of Due Dates by Deliverable)**

Project Milestone	Estimated Begin Date	Estimated End Date

	Primary	Secondary
1.		
2.		
3.		
4.		

**6. Estimated Resources and Rates**

<b>Project Role</b>	<b>Resource Name</b>	<b>Resource Title/Skill Category</b>	<b>Negotiated Hourly Rate</b>	<b>Estimated Resource Hours</b>	<b>Estimated Fees (\$)</b>
<b>ESTIMATED TOTALS</b>					

**7. Additional Requirements (If none, state "none")**

**8. Related Services and Software (If none, state "none")**

**Employer**

**CAPITAL DISTRICT PHYSICIANS' HEALTHCARE NETWORK, INC.**

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

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

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

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

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

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

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

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

**EXHIBIT D**  
**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 \_\_\_\_\_ ("**Plan Sponsor**"), on behalf of the group health plan(s) it sponsors that are administered by Business Associate.

**1. GENERAL.**

- 1.1** Plan and Business Associate are parties to an administrative services agreement ("**Service Agreement**") under which Business Associate will provide certain administrative services to Plan and/or to Plan members for or on behalf of Plan ("**Services**").
- 1.2** In providing Services, Business Associate will have access to, or will create or receive from or on behalf of Plan, 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 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 or the minimum necessary policies and procedures of the Plan 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 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, 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.
- 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 any other use or disclosure of PHI in violation of this Contract of which Business Associate becomes aware.
- 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’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’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’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, upon Plan’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, at Plan’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 available to the Secretary of HHS, or the Secretary’s designee, for purposes of determining Plan’s compliance with the requirements of HIPAA.

**7. OBLIGATIONS OF PLAN.**

- 7.1 The Plan 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 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 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 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.
- 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, or otherwise provides PHI to an agent on behalf of the Plan, 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 (a) access to PHI by Business Associate; or (b) the creating or receiving of PHI by Business Associate from or on behalf of Plan.

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:

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.

11.4 **Entire Contract.** This Contract is the entire agreement of the parties regarding the use and disclosure of PHI, and supersedes 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.

11.5 **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.

11.6 **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.

11.7 **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.

11.8 **Ambiguity.** Any ambiguity in this Contract shall be resolved to permit the parties to comply with HIPAA.

11.9 **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.

**11.10 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.

**11.11 Successors.** This Agreement shall be binding upon the parties hereto, and their respective legal representatives, trustees, receivers, successors and permitted assigns.

**PLAN SPONSOR NAME:**

\_\_\_\_\_

**CAPITAL DISTRICT PHYSICIANS'  
HEALTHCARE NETWORK, INC.**

**By:**  
**Signature:** \_\_\_\_\_  
**Signed by Name:** \_\_\_\_\_  
**Signed by Title:** \_\_\_\_\_  
**Date Signed:** \_\_\_\_\_

**By:**  
**Signature:** \_\_\_\_\_  
**Signed by Name:** \_\_\_\_\_  
**Signed by Title:** \_\_\_\_\_  
**Date Signed:** \_\_\_\_\_

**EXHIBIT E**

**CDPHN ACH AUTHORIZATION**

The undersigned (“Customer”) hereby authorizes Capital District Physicians’ Healthcare Network, Inc. (CDPHN), to initiate debit entries and to initiate, if necessary, credit entries and adjustments for any excess debit entries or debit entries made in error, to Customer’s account indicated below and the depository named below, to debit and/or credit the same such accounts.

This authority is to remain in full force and effect until terminated by mutual agreement of the parties.

COMPANY NAME \_\_\_\_\_

GROUP NUMBER \_\_\_\_\_

TYPE OF ACCOUNT     checking     savings

INITIATE ACH FOR NEW PLAN

UPDATE ACH UPON RECIEPT

UPDATE ACH EFFECTIVE \_\_\_\_\_ (Date)

NO CHANGE (*Renew plan with same banking information*)

DEPOSITORY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY/STATE/ZIP: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

ROUTING TRANSIT NUMBER: \_\_\_\_\_

ACCOUNT NUMBER: \_\_\_\_\_

(“CUSTOMER”)

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

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

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



**EXHIBIT F**

**ALEGEUS ACH AUTHORIZATION**

The undersigned (“Customer”) hereby authorizes Alegeus, LLC (“Alegeus”), to initiate debit entries and to initiate, if necessary, credit entries and adjustments for any excess debit entries or debit entries made in error, to Customer’s account indicated below and the depository named below, to debit and/or credit the same such accounts.

This authority is to remain in full force and effect until terminated by mutual agreement of the parties.

DEPOSITORY COMPANY NAME \_\_\_\_\_

GROUP NUMBER \_\_\_\_\_

TYPE OF ACCOUNT     checking     savings

INITIATE ACH FOR NEW PLAN

UPDATE ACH UPON RECIEPT

UPDATE ACH EFFECTIVE \_\_\_\_\_ (Date)

NO CHANGE (*Renew plan with same banking information*)

DEPOSITORY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY/STATE/ZIP: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

ROUTING TRANSIT NUMBER: \_\_\_\_\_

ACCOUNT NUMBER: \_\_\_\_\_

(“CUSTOMER”)

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

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

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

# 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:** \_\_\_\_\_