



HSA 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. You are responsible for promptly notifying us of any changes in contact information.

Name _____ Title _____

E-mail _____ Phone number _____

3. HSA Custodian

Name of custodian selected for HSA: _____

4. Medical Plan ID

ID: _____

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: _____

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 Administrative Agent and/or Administrative Agent Affiliates.
 - a. Enrollment Agent. Administrative Agent shall act as Employer’s agent in handling enrollment information for Employer’s various employee benefit plans and HSA arrangement. Administrative Agent may collect electronic or paper enrollment forms and other data on Employer’s behalf, and distribute the enrollment information to Employer’s various employer benefit plans and their HIPAA Business Associates, to Employer’s other benefit program or payroll vendors, and to Employer’s employees responsible for payroll or benefit plan administration.
 - b. Claims Data Transmission. Employer would like to offer Employees the ability to have withdrawals made from their HSA using the Card. Administrative Agent 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 Agent and/or Administrative Agent Affiliates to provide requested Claim data to the Eligible Custodian. Notwithstanding the foregoing, Administrative Agent and/or Administrative Agent 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.
- 2.2 Available Sample 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 to allow payroll deductions for employees to contribute to the HSA on a pre-tax basis, including, but not limited to, board resolutions, Summary Plan Descriptions, Flexible Benefits 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.
- 2.3 Services Not Contemplated by This Agreement. Administrative Agent will not administer the HSA, will not engage in any direct contact with Participants regarding the HSA and will not engage in activities such as 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 HSA. Administrative Agent agrees only to provide Employer with a list of Eligible Custodians and to transfer Claim data to the Eligible Custodian after receiving proper HIPAA Authorization and Release from Participants. Administrative Agent and Administrative Agent 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 HSA. Administrative Agent and Administrative Agent 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 Agent does not assume any responsibility for the design or administration of the HSA, the adequacy of its 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 Agent assumes no risk or obligation with respect to the HSA.

CARD PROGRAM

- 3.1 Debit and Credit Cards. 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.

ADMINISTRATIVE AGENT COMPENSATION

- 4.1 Service Charges. The amounts of any direct service charges owed to Administrative Agent, if any, are described in **Exhibit B**. Even if no fee is charged directly to Employer by Administrative Agent under this Agreement, Administrative Agent may receive a portion of the fee paid by Employer to the Eligible Custodian as compensation for the Services. Administrative Agent 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 Agent may also change the service charges as of the date any change is made in the HSA by Employer.
- 4.2 Billing of Charges. All Administrative Agent 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

- 5.1 **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.
- 5.2 **Automatic Termination.** This Agreement shall automatically terminate as of the earliest of the following:
- the effective date of any legislation that makes the HSA and/or this Agreement illegal;
 - the date Employer becomes insolvent, bankrupt, subject to liquidation, receivership or conservatorship; or
 - the termination date of the HSA, subject to any agreement between Employer and Administrative Agent regarding payment of benefits after the HSA is terminated.
- 5.3 **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.
- 5.4 **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 Agent may terminate this Agreement without allowing Employer an opportunity to cure said default.

LIMITATION OF LIABILITY

- 6.1 **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.
- 6.2 **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 or indirect payments made by the Eligible Custodian to the Administrative Agent for the Services to which the claim relates during the twelve (12) months prior to the act or event giving rise to such claim.
- 6.3 **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.

INDEMNIFICATION

- 7.1 **Mutual Indemnification.** Employer 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.
- 7.2 **Indemnification by Employer.** 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:
- the acts or omissions of Employer, Eligible Custodian and/or other bank or custodian in connection with the HSA or any claim, demand, or lawsuit by Participants and beneficiaries against Administrative Agent in connection with the HSA;
 - the acts or omissions of Employer, Eligible Custodian and/or other bank or custodian in connection with Employer's Eligible Custodian's and/or other bank or custodian's obligations under the HSA; and
 - 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 custodian's breach of its security or confidentiality obligations.
 - any legal action or proceeding brought by a Participant or other third party against Administrative Agent to recover an equitable remedy or damages related to the HSA.
 - 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 HSA, Administrative Agent shall provide notice to the Plan Sponsor as soon as practicable. Administrative Agent will select and retain counsel, unless Employer accepts a tender of defense and defends Administrative Agent. Except in cases where Employer and/or

the Plan obtain separate counsel, Administrative Agent'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 Agent retains counsel for which Employer 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 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 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 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 Agent is authorized to settle or compromise any claim to recover an equitable remedy or damages related to the HSA arising out of a course of legal action with the approval of Employer, which approval shall not be unreasonably withheld.

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

GENERAL PROVISIONS

- 8.1 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.
- 8.2 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.
- 8.3 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) 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.
- 8.4 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 below 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.

If to Administrative Agent:

Capital District Physicians' Healthcare Network, Inc.
500 Patroon Creek Blvd.
Albany, NY 12206-1057
ATTN: Chief Marketing Officer
cc: General Counsel

If to Employer:

- 8.5 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.
- 8.6 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

Exhibit A: Definitions

Exhibit B: Schedule of Fees

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.

“Card” means the debit card issued by an Eligible Custodian to the HSA 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 HSA Services Administration Agreement.

“Eligible Custodian” means the following financial institution with which the Administrative Agent has an agreement in place to facilitate Services under this agreement:

_____.

“Eligible Expense” means such expenses that are covered by the HSA.

“Employee” means the employee of the Employer.

“Employer” means _____, a _____, with offices at _____.

“Health Savings Account” (“HSA”) means the custodial account established by Participant to which funds may be deposited by Participant and from which Eligible Expenses may be paid.

“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 HSA 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 Agent pursuant to this Agreement as described in Section 2.

EXHIBIT B
SCHEDULE OF FEES

- I. Benefit Account Administration
 - a. Monthly Account Fees—None.