



Healthy Direction Administration Agreement

Capital District Physicians' Healthcare Network, Inc.
6 Wellness Way • Latham, NY 12110 • (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: _____

Contact Information

Please provide at least two individuals who are authorized to handle information pertaining to Healthy Direction administration, such as reports, eligibility, and sign-off on final Healthy Direction decisions involving Protected Health Information (PHI). You are responsible for promptly notifying us of any changes to contact information.

Contact Type:

Name _____ Title _____
Email _____ Phone _____

Contact Type:

Name _____ Title _____
Email _____ Phone _____

Contact Type:

Name _____ Title _____
Email _____ Phone _____

Section 2: Healthy Direction

Step 1—Select Plan Healthy Direction

Step 2—Medical Plan ID(s): _____

Step 3—Healthy Direction confirmation

Complete this step if you want to receive Healthy Direction Services for your Participants. Once the selected steps are identified, they may not be changed until the next Plan Year. Full step descriptions can be found on the Healthy Direction flyer.

Please select the healthy steps for Participants to complete.

- Visit a primary care physician
- Take the Personal Health Assessment (PHA)
- Get a biometric screening
- Commit to Quit Tobacco
- Take a free CDPHP community wellness class
- Get a flu shot
- Participate in a workplace health wellness program

Create your own activity (1)
Indicate your custom activity here. (Please limit your response to 60 characters or less).

- Employer reported (*Employer must track employees' completion of this step and send the data to CDPHP in the format outlined in the Report Your Employer-Defined Activity flyer*)
- Employee self-report

(continued on next page)

TERMS AND CONDITIONS

DEFINITIONS

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

ADMINISTRATIVE SERVICES

- 2.1 Scope of Relationship. Employer has sole and final authority to control and manage the operation of the Healthy Direction Service. 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. 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 Service, 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 under the Service. Administrative Agent is providing certain administrative services at the direction of Employer. Nothing herein shall be deemed to constitute Administrative Agent as a party to the Service nor to confer upon Administrative Agent any authority or control respecting management of the Service, independent authority or responsibility in connection with the administration of the Service, or responsibility for the terms or validity of the Service.
- 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 set forth in this Section. The fees to be paid by Employer to Administrative Agent are set forth as Exhibit A. The parties agree that the duties to be performed hereunder by Administrative Agent are non-discretionary duties.
- 2.3 Step Completion and Reporting. Administrative Agent shall operate under the express terms of this Agreement. For each step selected in Step 3 of Section 2, above, Administrative Agent will provide Employer with reporting of completion or non-completion for all Participants identified in Step 4 of Section 2 on a weekly basis. In addition, Administrative Agent will provide Participants access (as designated by Administrative Agent) to track and complete such steps.
- 2.4 Service Delivery. Administrative Agent shall perform necessary and customary administrative and clerical work 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, terrorism, 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.
- 2.5 Privacy Requirements. In accordance with the requirements of HIPAA, the parties shall execute a HIPAA-compliant Business Associate Contract, which will be annexed hereto as **Attachment 1** and incorporated herein. In addition, the Employer will execute HIPAA Certifications as required to release information to the individuals specified in Section 1.
- 2.6 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 Service 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.

EMPLOYER RESPONSIBILITIES

- 3.1 Service. Employer has the sole authority and responsibility for the Service and its operation, including the authority, managing incentives and/or rewards, and responsibility for administering, construing, designing, and interpreting the provisions of the Service and making all final determinations thereunder. Employer confers to Administrative Agent the authority to act on behalf of Employer in connection with the Service, but only as expressly set forth in this Agreement or as mutually agreed upon in writing by Employer and Administrative Agent.

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 Service;
- (b) Decide all questions concerning the Service and the eligibility of any person to participate in the Service and to receive benefits provided by operation of the Service;

- (c) Provide Employees with a reasonable notification of their incentives available by operation of the Service;
- (d) Appoint such agents, counsel, accountants, consultants, and actuaries as may be required to assist in administering the Service; and
- (e) Delegate the execution of Employer's decisions regarding the enforcement of rules, determination of answers to questions, the acceptance or rejection or limit of incentives, 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 Service 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 and duty to ensure ongoing compliance with applicable federal and state 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 by previous or successor administrative agents for Employer and shall indemnify and hold harmless Administrative Agent from any such liability.
- 3.3 Service Materials. Employer shall provide Administrative Agent with all relevant information to perform the services. Employer shall distribute to employees all necessary forms, including but not limited to, Wellness Notice, campaign letters to Participants (including reminders and step completion letters), and any other information or documentation requested by a Participant. Employer shall notify Administrative Agent of any changes to the Service 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 Service. 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 errors 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 Service. 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 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.

ADMINISTRATIVE AGENT COMPENSATION

- 4.1 Service Charges. The amounts of the monthly services charges of Administrative Agent are described in **Exhibit A**. 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 to the Service by Employer.
- 4.2 Payment of Charges. All charges under this Section shall be determined by Administrative Agent and invoiced to Employer on a monthly basis. Invoices will be due within thirty (30) days of receipt.

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.

Employer must have a CDPHP® medical plan with at least one active member enrolled. All Participants who subscribe to this Service will be required to have a CDPHP medical plan. Employer can elect the Service as a new sale in conjunction with the sale of a CDPHP medical plan, on the renewal date of the existing CDPHP medical plan or as an "off-cycle change" to the CDPHP medical plan. "Off-cycle changes" to the Service must be approved by the Administrative Agent. If Employer selects the Service after the CDPHP medical plan effective date (**but prior to the end date**), then the Service start date must be the first of the month following the selection by the Employer.

The Service termination date must correspond to the Employer medical plan termination date.

- 5.2 Automatic Termination. This Agreement shall automatically terminate as of the earliest of the following:
- (i) the effective date of any legislation that makes this Service and/or this Agreement illegal;
 - (ii) the date Employer becomes insolvent, bankrupt, subject to liquidation, receivership, or conservatorship; or
 - (iii) the termination date of the Medical Plan, subject to any agreement between Employer and Administrative Agent regarding payment of benefits after the Service 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. 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; (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.

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 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 Indemnification. 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:
- (i) the acts or omissions of Employer in connection with the Service or any claim, demand, or lawsuit by Participants and beneficiaries against Administrative Agent in connection with the Services performed hereunder;
 - (ii) the acts or omissions of Employer in connection with Employer's obligations specifically set forth in Section 3 of this Agreement; and
 - (iii) 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.
- 7.2 Survival of Obligation. The obligations of Employer pursuant to Section 7.1 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); 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 in the 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.
- 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 Schedules, 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.

Attachments and Exhibits

- Attachment 1:** Business Associate Contract
- Attachment 2:** [Reserved]
- Attachment 3:** Healthy Direction Wellness Notice Template
- Exhibit A:** Schedule of Fees
- Exhibit B:** Definitions

ATTACHMENT 1
CAPITAL DISTRICT PHYSICIANS' HEALTHCARE NETWORK, INC.
BUSINESS ASSOCIATE CONTRACT

**This business associate contract is between _____,
an employee welfare benefit plan sponsored by _____
("Plan"), and CAPITAL DISTRICT PHYSICIANS' HEALTHCARE NETWORK, INC. ("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.

6 Wellness Way

Latham, NY 12110

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.

CAPITAL DISTRICT PHYSICIANS'
HEALTHCARE NETWORK, INC., by

CLIENT PLAN NAME

Signature: Nick Kraft
Chief Sales and Marketing Officer

Signature: _____

Date: _____

Signed by Name: _____

Signed by Title: _____

Date Signed: _____

ATTACHMENT 2

The document that follows is a template disclosure notice provided by Capital District Physicians' Healthcare Network, Inc. (CDPHN) as a courtesy to employers offering the Healthy Direction service. The template is intended to comply with the Equal Employment Opportunity Commission's wellness program notice requirements under the Americans with Disabilities Act. The notice must be provided by employers to their employees and signed by spouses / domestic partners, if applicable, before they participate in a health risk assessment, biometric screening, or any other disability-related inquiry or medical examination.

The notice is intended to be customizable by you, and requires you to insert contact information for human resources at the end of the notice. You may also want to customize the notice so that it describes the particulars of your wellness program rather than the generic terms of the "Healthy Direction." To the extent you sponsor other wellness programs subject to the notice requirements, you could either modify the notice to incorporate those plans as well, or provide a separate notice for those programs. You should have your own employment or employee benefits lawyers review the content of the notice before using.

[EMPLOYER NAME]

NOTICE REGARDING HEALTHY DIRECTION WELLNESS PROGRAM

The "Healthy Direction" service is a voluntary wellness program available to employees and their spouses or domestic partners, if applicable, who are enrolled in the employer's health insurance plan.

The "Healthy Direction" service is administered in compliance with federal laws—including the Americans with Disabilities Act (ADA), the Genetic Information Nondiscrimination Act (GINA), the Health Insurance Portability and Accountability Act (HIPAA), and the Affordable Care Act (ACA), among others—which permit employers to sponsor wellness programs that seek to improve employee health or prevent disease. This notice is intended to comply with requirements of those laws, and to explain your legal rights and how your health information will be protected.

To qualify for the incentive, you will need to complete wellness activities from the list below. You may complete the wellness activities at any point during the plan year to earn that year's incentive.

Not all of the activities listed below are available to you as part of your employer's "Healthy Direction"; your employer has selected activities from the list that follows as the program requirements:

- *Visit your Primary Care Physician for your annual preventive exam.* To demonstrate that you have completed an annual preventive exam, you will be asked to provide the date of your visit on the Healthy Direction Tracker. This will be auto-populated if CDPHP receives a claim for your exam. If your employer sponsored health plan is insured by CDPHP, then an annual in-network preventive exam is covered by your employer sponsored health plan at no charge. If your employer sponsored health plan is self-funded, see the health insurance plan summaries for more information regarding coverage for preventive exams.
- *Complete a Personal Health Assessment (PHA).* The PHA asks a series of questions about your health-related activities and behaviors, household and demographic information, personal satisfaction and stress, physical activity levels, nutritional habits, sleep habits, substance use, health goals, biometric screening results (e.g., blood pressure, heart rate, body fat, cholesterol, glucose, blood sugar, PSA, and triglycerides), as well as whether you have or had certain medical conditions (e.g., heart disease, stroke, diabetes, cancer, lung disease, osteoporosis, chronic back pain, head trauma, arthritis, asthma, high blood pressure, or high cholesterol). The results of the PHA are used to generate a personalized report summarizing your health risks and recommending steps you might take to improve your health. Your PHA report is not shared with your employer or anyone else, but you are encouraged to share your results or concerns with your own doctor.
- *Complete a biometric screening.* You can have the screenings performed at your physician's office, a health fair, or anywhere else that is convenient for you. You will be asked to provide your height, weight, blood pressure, blood glucose level, and total cholesterol (HDL and LDL) on the Healthy Direction Tracker. The results from your biometric screening may be used on a deidentified basis to help CDPHP develop new, targeted wellness program offerings based on identified health risks in the workplace. If your employer sponsored health plan is insured by CDPHP, then these biometric screenings are covered by your employer sponsored health plan at no charge. If your employer sponsored health plan is self-funded, see the health insurance plan summaries for more information regarding coverage for biometric screenings.
- *Commit to Quit Tobacco.* For tobacco users, commit to quit by enrolling in one of the following programs:
 - **CDPHP Smoke-FreeSM:** Employees must participate in a minimum of three sessions with a quit coach.
 - **Pivot:** Employees must earn a minimum of 5,000 points by participating in various quit activities.
 - Non-tobacco users must complete an attestation.

- *Take a free CDPHP Community Wellness Class.* Choose from a variety of free wellness classes in the community and online at www.cdphp.com/classes.
- *Get a flu shot.* A flu shot is the best way to protect yourself and others from the flu. Visit www.cdphp.com/flu to get the facts about flu shots and to stay protected.
- *Participate in a CDPHP Workplace Health wellness program.* Your employer offers CDPHP Workplace Health wellness programs onsite and/or virtually that can help you improve or maintain your health. Ask about one today!
- *Complete an activity offered by your employer.* If your employer has elected this option, your employer will provide the details of this offering.

To see which of these activities are available under the employer’s plan, log in to www.cdphp.com and consult the Healthy Direction Tracker. And you always have the option of calling member services at 1-877-269-2134 for more information.

Participation in the Healthy Direction service is completely voluntary and you are not required by the employer to participate or complete any of the program activities listed above. However, only individuals who complete the wellness program activities selected by the employer will receive the incentive offered by the employer.

Not every activity selected by the employer may be appropriate for every employee. If you are unable to participate in any of the health-related activities or achieve any of the health outcomes required to earn an incentive, you may be entitled to a reasonable accommodation or an alternative standard. You may request a reasonable accommodation or an alternative standard by contacting member services at 1-877-269-2134. Recommendations of your personal physician will also be accommodated.

Protections from Disclosure of Medical Information

We are required by law to maintain the privacy and security of your personally identifiable health information. Although the wellness program and your employer may use aggregate information it collects to design a program based on identified health risks in the workplace, the “Healthy Direction” service will never disclose any of your personal information either publicly or to the employer, except as necessary to respond to a request from you for a reasonable accommodation needed to participate in the wellness program, or as expressly permitted by law. Medical information that personally identifies you that is provided in connection with the wellness program will not be provided to your supervisors or managers and may never be used to make decisions regarding your employment or eligibility for benefit plans. Your employer will only be told whether you qualify for the reward.

Your health information will not be sold, exchanged, transferred, or otherwise disclosed except to the extent permitted by law to carry out specific activities related to the wellness program, and you will not be asked or required to waive the confidentiality of your health information as a condition of participating in the wellness program or receiving an incentive. Anyone who receives your information for purposes of providing you services as part of the wellness program will abide by the same confidentiality requirements. The only individual(s) who will receive your personally identifiable health information is (are) employees of the plan’s third party administrator, CDPHN, who are responsible for administration of the program in order to provide you with services under the wellness program.

[If there are other individuals who may receive the data in connection with an employer’s custom wellness activity, disclose that here.]

In addition, deidentified aggregate data may be shared with CDPHP, CDPHN’s parent company, to enable it to design new wellness programs based on identified health risks in the workplace.

In addition, all medical information obtained through the wellness program will be maintained separate from your personnel records, information stored electronically will be secured when at rest and in transit, and no information you provide as part of the wellness program will be used in making any employment decision. All individuals handling protected health information are trained in HIPAA privacy and security rules and subject to disciplinary action (up to an including termination of employment) if they inappropriately use or disclose your protected health information. Appropriate precautions will be taken to reasonably and appropriately protect your information to avoid any security breach in compliance with HIPAA. In the event a security breach occurs involving information you provide in connection with the wellness program, we will notify you.

You and your spouse or domestic partner, if applicable, may not be discriminated against in employment because of the medical information you provide as part of participating in the wellness program, nor may you be subjected to retaliation if you choose not to participate.

If you have questions or concerns regarding this notice, or about protections against discrimination and retaliation, please contact

[insert name of appropriate employer contact]

at [contact information].

I give my knowing and voluntary consent to participate in the Healthy Direction service, and I have read and understand the important notice of my rights and “Service“ terms described above.

Signature: _____

Name: _____

Spouse/Domestic Partner’s Name: _____

Date: _____

EXHIBIT A
SCHEDULE OF FEES

Fees for Services: \$0

EXHIBIT B
DEFINITIONS

“Administrative Agent” means Capital District Physicians’ Healthcare Network, Inc., a New York corporation, with offices at 6 Wellness Way, Latham, NY 12110

“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 Program.

“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 this Service.

“Effective Date” means the date Administrative Agent and Employer have fully executed this Agreement.

“Wellness Notice Template” intended to comply with the Equal Employment Opportunity Commission’s wellness program notice requirements under the Americans with Disabilities Act.

“Eligibility Reports” means those reports prepared by Employer and furnished to Administrative Agent detailing the individuals eligible to participate in the Service.

“Employee” means the employee of the Employer.

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

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

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

“Healthy Direction Member Tracker” means the online tool furnished to Participants detailing step descriptions and completion status.

“Participant” means those Employees (and spouses or domestic partners, if applicable), covered under the Medical Plan identified in Step 1 of Section 2.

“Service” means the tracking and reporting of steps selected by the Employer in Step 2 of Section 2 above.

“Plan Year” means the 12-month period commencing as of the Effective Date of the Plan.

“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.