

	<p style="text-align: center;"><b>FEE FOR SERVICE AGREEMENT</b></p>	<p style="text-align: center;"><b>FIRST AMERICAN ADMINISTRATORS, INC.</b> <small>A wholly owned subsidiary of EyeMed Vision Care</small></p>
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**CHARLOTTE COUNTY GOVERNMENT**

This Agreement is entered into by and between EyeMed Vision Care, L.L.C. ("EyeMed") and First American Administrators ("FAA"), with their principal place of business at 4000 Luxottica Place, Mason, OH 45040 and Charlotte County Government with its principal place of business at 18500 Murdock Circle, Suite 536, Port Charlotte, Florida 33948, as Employer and Plan Administrator ("Employer").

**RECITALS**

Employer provides benefits for its employees and their qualified dependents and now intends to offer vision benefits to such Participants (as defined herein);

Employer has elected to pay for these vision benefits by self-funding vision benefits under its Plan (the "Plan") and contracting out claims administration and Vision Network administration services;

Employer wishes to engage the services of EyeMed and FAA to provide a vision benefit, claims administration, and Vision Network administration to assist employer in their responsibilities as Employer for self-funded vision benefits;

EyeMed makes its Vision Network of Participating Providers available to Employer's Members who have vision care coverage;

FAA, a wholly owned subsidiary of EyeMed and a duly licensed third-party administrator in required states, provides certain administrative services available to Employer's Members who have vision care coverage.

NOW, THEREFORE, in accordance with the terms and conditions contained herein, the parties agree as follows:

**I. EFFECTIVE DATE, TERM AND RENEWAL**

**A. Effective Date**

This Agreement is effective October 1, 2016 ("Effective Date") and shall continue until terminated pursuant to this Agreement. For purposes of this Agreement: (i) all references to "Business Days" shall mean a day when EyeMed and/or FAA and Employer are open for business, excluding Saturday and Sunday; and (ii) any references to a particular time of the day shall be considered Eastern Time.

**B. Term**

The Agreement shall commence on the Effective Date and have an initial term of forty-eight (48) months and shall renew for two 1 year renewals unless (i) Employer gives written notice to EyeMed at least ninety (90) days prior to the expiration of the initial term or any twelve (12) month renewal term; (ii) EyeMed gives written notice to Employer at least one hundred eighty (180) days prior to the expiration of the initial term or any twelve (12) month renewal term; or (iii) the Agreement is otherwise terminated in accordance with Section XII.

**C. Renewal**

At least one hundred twenty (120) calendar days prior to the end of the current term, EyeMed shall provide Employer with written notice of the Vision Benefits revised rates for the renewal period. If Employer does not agree to the revised rates, this Agreement shall terminate at the end of the current term.

**D. Definitions**

Capitalized terms and otherwise defined terms within the section are defined on Exhibit A.

**II. RESPONSIBILITIES OF EYEMED**

**A. Services**

EyeMed shall provide the following:

1. Vision Benefit

EyeMed shall make available to Members the Vision Benefit as set forth on Exhibit B at Participating Provider locations. EyeMed shall also provide additional services, including but not limited to, responding to questions from Members, Providers and Employer regarding Vision Benefits.

2. Enrollment Information for Participants

EyeMed shall maintain Participant enrollment records based on and in reliance upon data furnished to it by Employer or its agent.

3. Identification Cards/Member Materials

EyeMed shall design, produce and distribute identification cards. In addition, upon request, EyeMed shall make available open enrollment materials and other communication materials. EyeMed agrees to review and advise concerning the description of Vision Benefits within Plan documents, including materials intended for distribution to Participants. Description and other materials intended for distribution to Participants.

4. Customer Service

EyeMed shall train and maintain adequate levels of staff as determined by EyeMed and provide a toll-free telephone number to respond to inquiries from Employer's administrative staff, Members and Participating Providers concerning the Vision Benefit.

5. Web Access

EyeMed will maintain web access to the Vision Benefit and Member's eligibility information.

6. Usage Reporting

EyeMed shall provide standard usage reports annually, as defined by EyeMed, at no charge. All other requested reports shall be produced upon the mutual agreement of the parties, including but not limited to any associated cost(s) for such report(s).

7. Reporting Assistance for Employer

EyeMed shall provide to Employer reports regarding the financial and claims experience of the Plan, and other information the Employer reasonably requires that assists Employer in its compliance with income tax, or other disclosure requirements.

**B. Provider Network Services and Provider Locator Service**

1. Participating Provider Network

EyeMed shall provide a Vision Network of ophthalmologists, optometrists, opticians, and retail optical locations that are contracted with EyeMed to deliver services consisting of vision exams, materials, and contact lenses, at negotiated prices ("Participating Providers"). Any additions or deletions to the Vision Network shall be in EyeMed's sole discretion; provided, however, that EyeMed will make reasonable efforts to provide Employer with reasonable advance notice of significant changes in the Vision Network, which would materially affect the nature or extent of services provided to Members. EyeMed shall reimburse the Participating Provider at the rate contracted between EyeMed and the Participating Provider, which may be an amount different than what is set forth on Exhibit B.

2. Participating Provider Independent Contractor

EyeMed does not employ Participating Providers and such providers are not EyeMed's agents, partners or subcontractors. Participating Providers participate in the Vision Network only as independent contractors. Participating Providers are solely responsible for exercising professional judgment related to a Participant's care.

3. Participating Provider Locator

EyeMed shall maintain a Participating Provider locator service that the Member may access through a toll-free telephone number, the EyeMed website or the mobile app.

4. Credentialing

EyeMed shall credential, contract with, and re-credential each ophthalmologist and optometrist in accordance with EyeMed's credentialing procedures, which meet NCQA standards. EyeMed may contract with a NCQA accredited credentials verification organization of its choice to perform verifications of the credentials.

5. Nondiscrimination

EyeMed's Participating Providers Agreement requires Participating Providers to make its services available to Members on the same basis as those services are provided to all other patients, and that Participating Provider shall not discriminate on the basis of age, sex, race, religion, or color.

6. Balance Billing

EyeMed's Participating Provider Agreement requires providers to not balance bill Members for Vision Benefits; provided, however, a Participating Provider shall collect from Members any copayment or coinsurance amounts for which Members are financially obligated under the Plan and any amounts for non-covered service(s).

**C. Claims Processing Services**

1. Claims Submission

FAA shall process in-network and out-of-network claims for Vision Benefits. In-network claims will be submitted directly to FAA by the Participating Provider. Out-of-network claims must initially be paid by the Member in full; the Member must submit the out-of-network claim (or information) directly to FAA on the appropriate claim form to obtain the appropriate reimbursement as set forth on Exhibit B. EyeMed shall make the out-of-network claim form available to Members through a toll-free telephone number or on the EyeMed website.

2. Claims Delegation

Employer delegates to FAA the discretionary authority to determine the validity of claims and appeals under the Plan.

3. Claims Processing Services

FAA shall: (a) determine the amount of Vision Benefits payable, if any, for each claim; (b) notify the Member its decision concerning the claim; (c) disburse payments to the Participating Provider (per the Participating Provider Agreement) or the Member (per the out-of-network information on Exhibit B), as applicable.

4. Claims Review Services

FAA shall provide for a review of denied claims upon request by the Member. FAA shall notify the Member of its decision upon completion of the review.

5. Run-Out Claims Services

After the termination of this Agreement, FAA shall continue to provide claims processing services and claims review services, but only for those claims incurred prior to the date of termination of the Agreement. FAA shall provide such services for a period of 15 calendar months (the "Run-Out Period") following termination. During the Run-Out Period, FAA will continue to invoice the Employer for the claims cost, and will additionally invoice the Employer for an administrative fee equal to 6% of the claims cost. Employer will be responsible for payment of such invoices. Invoicing and payment procedures applicable during the term of this Agreement shall continue to be applicable during the Run-Out Period. This clause shall survive the termination of this Agreement.

**III. RESPONSIBILITIES OF EMPLOYER**

**A. Responsibility for the Plan**

1. Plan Administrator

Employer is the Plan Administrator of the Plan. Employer may name another entity or individual as Plan Administrator, provided that such Plan Administrator is neither EyeMed nor FAA and is not an EyeMed or FAA employee. EyeMed and FAA expressly decline to accept responsibility for being Plan Administrator.

2. Final Authority for the Plan

Employer retains all final authority and responsibility for the Plan and its operations. Both parties shall be responsible for compliance with any and all applicable laws and regulations.

3. Plan Amendment and Certification from Employer

Employer represents and warrants that: (a) its Plan documents have been amended, in accordance with 45 CFR §164.504(f), so as to allow Employer to receive Protected Health Information; (b) the Employer has received a certification from the Plan in accordance with 45 CFR §164.504(f)(2)(ii), and will provide a copy of such certification to EyeMed prior to the Effective Date; (c) the Plan document amendments permit Employer to receive detailed invoices from FAA; and (d)

Employer has determined, through its own policies and procedures, that the detailed invoice from FAA contains the minimum information necessary for Employer to carry out its payment and health care operations.

**B. Enrollment Services**

**1. Participant Enrollment Information**

Employer will determine Participant's eligibility in the Plan and provide EyeMed with data sufficient to enable EyeMed to maintain accurate Participant enrollment records. In the event benefits under the Plan are made available to an individual who is no longer eligible to receive such benefits resulting from Employer's failure to timely notify FAA of the ineligibility of such individual, Employer shall be liable to FAA for the payment of all benefits provided to such individual.

**2. Membership File.**

Employer will provide EyeMed/FAA with electronic Member enrollment via the EyeMed Group Portal identifying those individuals that the Employer determines is eligible to receive Vision Benefits under the Plan. Employer will update Member enrollment additions, changes or deletions via the EyeMed Group Portal as such information becomes available. Employer represents and warrants that, to the best of its ability, the electronic Member enrollment will be accurate and that EyeMed/FAA may rely on such information to authorize services for such enrolled Members.

**IV. INVOICING ARRANGEMENTS**

**A. Invoice for Vision Benefits**

FAA shall invoice Employer on a monthly basis for eligible claims processed and paid during the previous month ("Claims Invoice"). In addition, FAA shall invoice Employer on a monthly basis administration fee as set forth on Exhibit B ("Administrative Invoice"). The monthly Administrative Invoice shall be determined by multiplying the number of Members identified by Employer's electronic Member enrollment by the applicable rate set forth on Exhibit B. For purposes of the Administrative Invoice, FAA will count the Members who are active and eligible for the applicable billing month as of the 15<sup>th</sup> day of each month prior to the billing month in which the invoice is issued to Employer. For example, FAA will determine the active and eligible Members for the July invoice as of June 15<sup>th</sup>.

**B. Payment of Invoice**

Employer shall pay the entire amount of both the Claims Invoice and Administrative Invoice (excluding only "Disputed Amounts", as defined below) within thirty (30) calendar days from the date of each invoice. If any non-Disputed Amount owed by Employer to EyeMed/FAA is not paid within sixty (60) calendar days of the date of such invoice, EyeMed/FAA may apply interest equal to one and one-half percent (1.5%) per month or the maximum amount of interest allowable by law, whichever is less. In addition, if any Disputed Amount agreed or determined to be owed by Employer to EyeMed/FAA is not paid within fifteen (15) business days from the date of such agreement or determination, EyeMed/FAA may apply interest equal to one and one-half percent (1.5%) per month. Payment shall be considered credited to the account of Employer when received by EyeMed/FAA. As used herein, "Disputed Amounts" shall mean invoice amounts that are subject to a bona fide dispute raised by Employer in a writing received by EyeMed/FAA within fifteen (15) calendar days of the date of an invoice therefore and with respect to which the parties are making reasonable, diligent and good faith efforts to resolve.

**V. RECORDS MAINTENANCE AND AUDIT**

**A. Records Maintenance**

EyeMed owns and shall keep all books and records necessary to reflect accurately the business it transacts with respect to Employer and to determine the respective rights of the parties under this Agreement. Such books and records shall be kept at the principal place of business of EyeMed or at such other location as EyeMed determines in its sole discretion. All records will be maintained for a period of at least seven (7) years after the date they are first prepared or for such longer period as may be required by law.

**B. Audit**

During the term of the Agreement, and at any time within twelve (12) months following its termination, Employer or a mutually agreeable entity or a regulatory authority with jurisdiction over Employer may audit or inspect the records of EyeMed and/or FAA to determine whether EyeMed and/or FAA is fulfilling the terms of this Agreement. Employer must advise EyeMed and/or FAA at least forty-five (45) calendar days in advance of Employer's intent to audit. The place, time, type, duration, and frequency of all audits must be agreed to in writing by EyeMed and/or FAA in advance of the audit, which approval shall not be unreasonably withheld, excluding any information, including but not limited to, reports that EyeMed considers proprietary.

1. All audits shall be on a regular business day, during normal business hours and conducted in such manner as to avoid, to the extent reasonably possible, interference with the normal business functions of EyeMed and/or FAA. Employer shall be solely responsible for all costs of the audit, except for any EyeMed and/or FAA employee

time and office space. In addition, Employer shall have the right to review applicable files, records or other information maintained by EyeMed and/or FAA related to Employer.

2. All audits shall be limited to information relating to the calendar year in which the audit is conducted and/or the immediately preceding calendar year. With respect to EyeMed's and/or FAA's transaction processing services, the audit scope and methodology shall be consistent with generally acceptable auditing standards, including a statistically valid random sample or other acceptable audit technique as approved in writing.

3. Employer will provide EyeMed and/or FAA with a copy of any audit reports.

## **VI. INDEMNIFICATION**

### **A. EyeMed and/or FAA Indemnification to Employer**

EyeMed and/or FAA will indemnify, defend and hold Employer harmless from and against any loss, cost, damage, expense or other liability, including, without limitation, reasonable costs and reasonable attorney fees ("Costs") incurred in connection with any third party claims, suits, investigations or enforcement actions, including claims of infringement of any intellectual property rights ("Claims") which may be asserted against, imposed upon or incurred by Employer and arising as a result of (i) EyeMed's and/or FAA's negligent acts or omissions or willful misconduct, or (ii) EyeMed's and/or FAA's breach of its obligations under this Agreement. EyeMed and/or FAA shall not be liable to Employer for any third party claims, suits, investigations or enforcement actions, arising directly or indirectly from the acts or omissions of a Participating Provider.

### **B. Employer Indemnification to EyeMed and/or FAA**

Employer will indemnify, defend and hold EyeMed and/or FAA harmless from and against any loss, cost, damage, expense or other liability, including, without limitation, reasonable costs and reasonable attorney fees ("Costs") incurred in connection with any third party claims, suits, investigations or enforcement actions, including claims of infringement of any intellectual property rights ("Claims") which may be asserted against, imposed upon or incurred by EyeMed and/or FAA and arising as a result of (i) Employer's negligent acts or omissions or willful misconduct, or (ii) Employer's breach of its obligations under this Agreement.

### **C. Notification of Claim**

The party seeking indemnification shall notify the indemnifying party in writing within thirty (30) calendar days of receipt of any Claim for which indemnification may be sought hereunder, and shall tender the defense of such claim to the indemnifying party thereafter.

### **D. Survival**

This clause shall survive the termination of this Agreement.

## **VII. INSURANCE**

### **A. Commercial General Liability Insurance**

EyeMed and FAA shall maintain Commercial General Liability Insurance, including coverage for contractual liability, public liability, property damage, products-completed operations, cross liability and severability of interest claims, personal injury and advertising injury, with limits of at least:

\$3,000,000 per occurrence  
\$6,000,000 general aggregate

### **B. Workers' Compensation Insurance**

EyeMed and FAA shall maintain Workers' Compensation Insurance with benefits afforded under the laws of any state in which the services are to be performed and Employer's Liability insurance with limits of at least:

\$1,000,000 for Bodily Injury – each accident  
\$1,000,000 for Bodily Injury by disease – policy limits  
\$1,000,000 for Bodily Injury by disease – each employee

In states where Workers' Compensation Insurance is a monopolistic state-run system, EyeMed and FAA shall maintain Stop Gap Employer's Liability insurance with limits not less than One Million Dollars (\$1,000,000) each accident or disease.

### **C. Business Automobile Insurance**

EyeMed and FAA shall maintain Business Automobile Insurance with limits of at least One Million Dollars (\$1,000,000) each accident for bodily injury and property damage, extending to all owned, hired and non-owned vehicles.

**D. Commercial Crime Insurance**

EyeMed and FAA shall maintain Commercial Crime Insurance with a limit of not less than Three Million Dollars (\$3,000,000). The policy shall provide Employee Theft, Premises, Transit, Depositor's Forgery and Computer Theft and Funds Transfer coverages. The Commercial Crime policy shall include a third party customer property coverage endorsement with limits of at least One Million Dollars (\$1,000,000).

**E. Managed Care Error and Omissions Insurance**

EyeMed and FAA shall maintain Managed Care Organization Errors and Omissions Insurance with a policy limit of not less than Three Million Dollars (\$3,000,000) each claim and in the aggregate.

**F. Policies of Insurance--Financial Rating**

All policies of insurance required of EyeMed and FAA herein shall be issued by insurance companies having and maintaining a Financial Strength Rating of "A minus" or better and a Financial Size Category of "VII" or better in the A.M. Best Key Rating Guide for Property and Casualty Insurance Companies, except that, in the case of Workers' Compensation insurance, EyeMed and FAA may procure insurance from the stated fund of the state where services are to be provided.

**G. Proof of Insurance**

Upon Employer's written request, certificates of insurance shall be delivered to Employer upon execution of the Agreement. All policies of insurance will endeavor to provide for at least thirty (30) days prior written notice to Employer of the cancellation or substantial modification thereof. All policies required of EyeMed and FAA herein shall be endorsed to read that such policies are primary policies and any insurance carried by Employer shall be noncontributing with such policies.

**VIII. LICENSE TO USE NAME AND TRADEMARKS**

**A. Employer's Use of EyeMed's Name**

Employer may use the EyeMed name, as provided by EyeMed (the "Licensed Marks") solely in connection with communicating the Vision Benefit to its Members, and shall not use the Licensed Marks or any other trademarks, services marks or trade names of EyeMed (the "Trademarks") for any other purpose. Employer shall not use EyeMed's logo without prior written consent or inconsistent with the attached General Terms of Use for EyeMed Service Marks and Logos related to website linking related to website linking. Employer shall not question, contest or challenge EyeMed's rights in and to the Trademarks, nor seek to register the same. Employer expressly recognizes and acknowledges that the use of the Licensed Marks shall not confer upon Employer any proprietary rights to such marks. Upon termination of this Agreement, Employer shall immediately stop using the Licensed Marks.

**B. EyeMed's Use of Employer's Name**

EyeMed may use Employer's name and logo(s) as provided by Employer (the "Licensed Marks") solely in connection with communicating the Vision Benefit, and shall not use the Licensed Marks or any other trademarks, service marks or trade names of Employer ("Trademarks") for any other purpose. EyeMed shall not question, contest or challenge Employer's rights in and to the Trademarks, nor seek to register the same. EyeMed expressly recognizes and acknowledges that the Licensed Marks shall not confer upon EyeMed any proprietary rights to such marks. Upon termination of this Agreement, EyeMed shall immediately stop using the Licensed Marks.

**C. Remedies**

The parties expressly agree and understand that the remedy at law for any breach by it of the terms of this section would be inadequate and the damages flowing from such breach are not readily susceptible to being measured in monetary terms. Accordingly, it is acknowledged by each party that upon its breach of any provision of this section, the non-breaching party shall be entitled to seek immediate injunctive relief and may seek to obtain a temporary order restraining any threatened or further breach without the necessity of proof of actual damage. Nothing contained herein shall be deemed to limit the non-breaching party's remedy at law or in equity for any breach by the breaching party of the provisions of this section which may be pursued or availed of by the non-breaching party.

**IX. WEBSITE LINKING BY COMPANY**

EyeMed is the owner or operator of a web site located at [www.eyemed.com](http://www.eyemed.com) (the "EyeMed Site"). Employer is the owner or operator of a website (the "Employer Site"). EyeMed and Employer desire to allow users of the Employer Site to link to the EyeMed Site landing on EyeMed's home page.

In the event Employer establishes a hyperlink from Employer's Site to EyeMed's Site the parties hereby agree to the terms and conditions as set forth in the attached General Terms of Use for EyeMed's Service Marks and Logos, Exhibit C.

## **X. PROTECTION OF CONFIDENTIAL INFORMATION**

Except as otherwise may be required by law, Employer and EyeMed shall not disclose to any other person, firm or corporation, or use for its own benefit except as provided herein, the terms of this Agreement, or any information that it receives from the other party that is marked either "Confidential" or "Proprietary" or "Strictly Private" or "Internal Data," or that is any unmarked information in the form of financial information or trade secrets (collectively referred to as "Confidential Information"), without the express written authorization of the other party. Both parties shall take all necessary steps to protect the other party's trade secrets and confidential business information and records. As permitted by law, upon the termination of this Agreement, both parties agree to return any and all materials containing such Confidential Information, plus any and all copies, written or machine made, in whatever medium, that it may have, within ten (10) days of a request from the other party.

Confidential Information shall not include information that:

- A. Was, at the time of receipt, otherwise known to the recipient without restrictions as to use or disclosure;
- B. Was in the public domain at the time of disclosure or thereafter enters into the public domain through no breach of this Agreement by the recipient;
- C. Becomes known to the recipient from a source other than the disclosing party, which source has no duty of confidentiality with respect to the information;
- D. Is independently developed by the recipient without reliance on or access to any of the disclosing party's Confidential Information; or
- E. Is required to be disclosed by a government agency or bureau, by a court of law or equity with competent jurisdiction over the recipient or by a recognized body engaged in professional self-regulation (such as national accounting or auditing associations), provided that the recipient will first have provided the disclosing party with prompt written notice of such required disclosure and will take reasonable steps to allow the disclosing party to seek a protective order with respect to the Confidential Information required to be disclosed. The recipient will promptly cooperate with and assist the disclosing party, at the disclosing party's expense, in connection with obtaining such protective order.

## **XI. BUSINESS ASSOCIATE AGREEMENT/HIPAA PRIVACY**

In order to comply with the Administrative Simplification Provisions of the Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191), 42 U.S.C. Section 1320d, et. seq., and regulations promulgated thereunder, as amended from time to time (statute and regulations hereafter collectively referred to as "HIPAA"), the parties hereby agree to the terms and conditions described in the attached Business Associate Agreement, Exhibit D. Terms used, but not otherwise defined, shall have the same meaning as those terms in HIPAA.

## **XII. TERMINATION**

### **A. Voluntary Termination**

This Agreement may be terminated, without cause: (i) by mutual written agreement of the parties; or (ii) by either party providing one hundred eighty (180) days prior written notice without cause to the other party at any time during the term of the Agreement or any renewal term.

### **B. Termination for Cause or Default**

Either party may terminate this Agreement if the other party is in material breach of this Agreement and fails to cure such breach within thirty (30) calendar days after receiving written notice reasonably detailing such breach. In the event that the breach is not cured within the thirty (30) day cure period, this Agreement shall terminate in accordance with the initial notice of breach. Additionally, either party shall be deemed to have materially breached this Agreement upon the occurrence of any of the following events, which list is not intended to be inclusive of what constitutes a material breach:

1. Either party shall become insolvent or otherwise admit in writing its inability to pay its debts when they become due, becomes bankrupt, seeks protection under any law for the protection of insolvents, or have a receiver or conservator appointed under any law pertaining to such party's insolvency.
2. Either party fails to remit any amounts due (excluding Disputed Amounts) under this Agreement within thirty (30) calendar days of the date such amount is due and payable.
3. Either party shall knowingly commit a material violation of the laws or regulations of any state where this Agreement is performed.
4. Any misrepresentation or falsification of any information supplied by Employer or EyeMed for consideration by the other, except that EyeMed will not be responsible for any misrepresentation or falsification of information provided to it by a Participating Provider.

5. EyeMed or Employer ceases to engage in all business activities.

6. EyeMed substantially fails to perform its obligations under this Agreement, including but not limited to maintaining an adequate Vision Network of Participating Providers, maintaining a Participating Provider locator service for Members to be able to locate Participating Providers, and maintaining sufficient customer service representatives to answer Member and Participating Provider calls.

7. FAA is in default of its payment obligations to any Participating Provider or Members with respect to the services rendered under this Agreement to the Member and fails to cure such default within ten (10) business days of written notice from Employer, so long as FAA does not dispute in good faith the amount that is owed to the Participating Provider or Member. If FAA disputes in good faith that any money is owed or the amount which is owed, FAA is not in default under this Agreement.

### **XIII. GENERAL PROVISIONS**

#### **A. Requirements Imposed by Law**

Each party agrees to adhere to legal requirements imposed by federal, state or other law as of the date such law becomes effective and applicable to this Agreement.

#### **B. Independent Contractor**

In the performance of the work, duties and obligations of the parties pursuant to this Agreement, each of the parties shall at all times be acting and performing as an independent contractor, and nothing in this Agreement shall be construed or deemed to create a relationship of employer and employee or partner or principal and agent.

#### **C. Governing Law**

This Agreement shall be governed by and construed in accordance with federal law, and to the extent not preempted, by the laws of the State of Ohio.

#### **D. Entire Contract**

This Agreement together with all attachments contains all the terms and conditions agreed upon by the parties, and supersedes all other agreements, express or implied regarding the subject matter.

#### **E. Waiver**

The waiver of any party of any breach of this Agreement shall not be construed as a continuing waiver or a waiver of any other breach of this Agreement.

#### **F. Attorney Fees**

If EyeMed or Employer find it necessary to enforce any part of this Agreement through legal proceedings, resulting in final judgment by a court of competent jurisdiction, Employer and EyeMed agree that each party shall pay all of their own costs and attorneys' fees incurred for such purpose.

#### **G. Severability**

In the event that any clause, term, or condition of this Agreement shall be held invalid or contrary to law, this Agreement shall remain in full force and effect as to all other clauses, terms, and conditions.

#### **H. Force Majeure**

No party to this Agreement shall be liable for failure to perform any duty or obligation that such party may have under this Agreement where such failure has been caused by an act of God, fire, flood, strike, unavoidable accident, war or any cause outside the reasonable control of the party who had the duty to perform.

#### **I. Heading**

The section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof.

#### **J. Counterparts**

This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one Agreement.



**K. Assignment**

This Agreement may not be assigned by a party, in whole or in part, without the prior written consent of the other, except that a party may, without the consent of the other, assign this Agreement to an affiliate.

**L. Successor/Survival**

All terms of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective successors and assigns. All rights and obligations of the parties arising out of this Agreement prior to termination which by their nature are designed or intended to continue shall survive the termination of this Agreement.

**M. Amendments**

This Agreement may be amended from time to time by mutual agreement between Employer and EyeMed, which amendment shall be in writing signed by the parties. Notwithstanding any provision contained herein to the contrary, each party shall have the right, for the purpose of complying with the provisions of any law or lawful order of a court or regulatory authority, to amend this Agreement including any Exhibits hereto, to increase, reduce or eliminate any of the Vision Benefits provided under this Agreement. If the parties cannot agree to an amendment, notwithstanding any provision of this Agreement to the contrary, Employer or EyeMed may terminate this Agreement as of the end of any month by the giving of ninety (90) days prior written notice.

**N. No Third Party Beneficiaries.** Nothing express or implied in this Agreement is intended or shall be construed to confer upon or give any person, other than Employer and EyeMed, any right or remedies under or by reason of this Agreement.

**O. Notice**

All notices, requests and demands under this Agreement shall be in writing. They shall be deemed to have been given upon delivery if (i) delivered in person, (ii) mailed by certified mail, postage pre-paid and return receipt requested, and (iii)

deposited with an overnight delivery service by a nationally recognized overnight courier service. Notice shall be effective upon receipt and shall be directed to the individuals below and at the address in the first paragraph.

If to Employer:

Mrs. Kim Corbett

If to EyeMed or FAA

Mr. Jason Rome  
Senior Vice President  
CC: EyeMed Legal

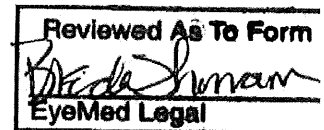
IN WITNESS WHEREOF, the undersigned have executed this Agreement.

EyeMed Vision Care, LLC

First American Administrators, Inc.

By: [Signature]  
Name: Jason M. Rome  
Title: SVP  
Date: 8/24/16

By: [Signature]  
Name: Jason M. Rome  
Title: SVP  
Date: 8/24/16



Employer  
BOARD OF COUNTY COMMISSIONERS  
OF CHARLOTTE COUNTY, FLORIDA

By: [Signature]  
William G. Truex, Chairman  
Date: 8/24/16

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

By: [Signature]  
Janette S. Knowlton, County Attorney  
LR16-0427

ATTEST:

Barbara T. Scott, Clerk of  
Circuit Court and Ex-officio  
Clerk to the Board of County  
Commissioners

By: [Signature]  
Deputy Clerk

## EXHIBIT A- DEFINITIONS

### I. DEFINITIONS

The following terms used in this Agreement shall have the meaning as set forth hereafter:

- A. "Agreement" shall mean the Fee for Service Agreement between EyeMed and/or FAA and Employer
- B. "Business Days" shall mean a day when EyeMed and/or FAA and Employer are open for business, excluding Saturday and Sunday.
- C. "HIPAA" shall mean Health Insurance Portability and Accountability Act of 1996.
- D. "Members" shall mean the Participant and eligible dependents who have health benefits under the Plan.
- E. "PHI" shall mean Protected Health Information.
- F. "Participants" shall mean the individual who has an employment arrangement, contractual arrangement, or affiliation with Employer.
- G. "Participating Provider" shall mean the ophthalmologists, optometrists, opticians, and retail optical locations who are contracted with EyeMed to deliver services consisting of vision exams, materials, and contact lenses, at negotiated prices.
- H. "Plan" shall mean the plan established by the employer or other entity for self-funding vision benefits.
- I. "Plan Administrator" shall mean the employer named in the plan document as responsible for day-to-day operations. Also known as the Employer.
- J. "Employer" shall mean the entity that sponsors the vision plan.
- K. "Vision Benefit" shall mean the vision benefit as set forth on Exhibit B available to Members from Participating Providers.
- L. "Vision Network" shall mean the collection of Participating Providers; the specific network as identified on Exhibit B.

# EXHIBIT B – BENEFIT SCHEDULE



Charlotte County  
Eyemed built Plan M, Fee for Service  
Employer pays 80% or more -OR- Bundled With Group Medical or Dental  
Option 2

Version 9

Vision Care Services	Member Cost In-Network	Member Out-of-Network Reimbursement <sup>1</sup> & Group Charge Out-of-Network
Exam with Dilations as Necessary	\$10 Copay	\$35
Retinal Imaging Benefit	Up to \$39	N/A
Exam Options:		
Standard Contact Lens Fit and Follow-Up:	Up to \$55	N/A
Premium Contact Lens Fit and Follow-Up:	10% off Retail Price	N/A
Frames:		
Any available frame at provider location	\$0 Copay; \$200 Allowance, 20% off balance over \$200	\$45
Standard Plastic Lenses		
Single Vision	\$0 Copay	\$25
Bifocal	\$0 Copay	\$40
Trifocal	\$0 Copay	\$60
Lenticular	\$0 Copay	\$100
Standard Progressive Lens	\$65 Copay	\$40
Premium Progressive Lens	See attached Fixed Premium Progressive price list	\$40
<sup>1</sup> If a member with a Standard Plastic Lens in HI, CA, HI, OR, WA, Group Contracted Rate is \$15 higher.		
Lens Options:		
UV Treatment	\$15	N/A
Tint (Solid and Gradient)	\$15	N/A
Standard Plastic Scratch Coating	\$15	N/A
Standard Polycarbonate - Adult	\$40	N/A
Standard Polycarbonate - Kids under 19	\$40	N/A
Standard Anti-Reflective Coating	\$45	N/A
Polarized	20% off Retail Price	N/A
Photochromatic / Transitions Flexite	\$75	N/A
Premium Anti-Reflective	See attached Fixed Premium Anti-Reflective Coating list	N/A
Other Add-Ons	20% off Retail Price	N/A
Contact Lenses		
(Contact lens allowance includes materials only)		
Conventional	\$0 Copay; \$200 allowance, 15% off balance over \$200	\$200
Disposable	\$0 Copay; \$200 allowance, plus balance over \$200	\$200
Medically Necessary	\$0 Copay, Paid-in-Full	\$210
Laser Vision Correction		
Lasek or PRK from U.S. Laser Network	15% off Retail Price or 5% off promotional price	N/A
Amplifon Hearing Health Care	Hearing Health Care from Amplifon Hearing Health Care Network Members receive a 40% discount off hearing exams and a low price guarantee on discounted hearing aids.	N/A
Additional Pairs Benefit:	Members also receive a 40% discount off complete pair eyeglass purchases and a 15% discount off conventional contact lenses once the funded benefit has been used.	N/A
Frequency:		
Examination	Once every 12 months	
Lenses or Contact Lenses	Once every 12 months	
Frame	Once every 24 months	
Monthly Administrative Fee		
For Subscriber / Per Month (Composites)	\$0.85	
Charlotte County agrees to be financially responsible for (i) the actual Provider Contracted Reimbursement rate per service above less applicable copay and (ii) the Monthly Administrative Fee		

All plans are based on a 48 month contract term and 48 month rate guarantee.

Premium is subject to adjustment even during a rate guarantee period in the event of any of the following events: changes in benefits, employee contributions, the number of eligible employees, or the implementation of any new laws, fees or assessments by Federal or State regulatory agencies.

<sup>1</sup> Member Reimbursement Out-of-Network will be the lesser of the listed amount or the member's actual cost from the out-of-network provider. In certain states members may be required to pay the full retail rate and not the negotiated discount rate with certain participating providers. Please see Eyemed's online provider locator to determine which participating providers have agreed to the discounted rate.

## Additional Discounts:

Member receives a 20% discount on items not covered by the plan at network Providers. Discount does not apply to Eyemed Provider's professional services, or contact lenses. Plan discounts cannot be combined with any other discounts or promotional offers. Services or materials provided by any other group benefit plan providing vision care may not be covered.

Members also receive 10% off retail price or 5% off promotional price for Lasek or PRK from the U.S. Laser Network, owned and operated by LCA Vision.

After initial purchase, replacement contact lenses may be obtained via the Internet at substantial savings and mailed directly to the member. Details are available at [www.eyemedvisioncare.com](http://www.eyemedvisioncare.com).

The contact lens benefit allowance is not applicable to this service.

Benefit Allowances provide no remaining balance for future use within the same benefit frequency.

Certain brand name Vision Materials in which the manufacturer imposes a no discount practice.

Rates are valid only when the quoted plan is the sole stand-alone vision plan offered by the group.

Rates are valid for groups domiciled in the State of FL.

Fees quoted will be valid until the 10/1/2016 plan implementation date. Data quoted: 7/20/2016.

## EXHIBIT C – GENERAL TERMS OF USE FOR EYEMED TRADEMARKS, SERVICE MARKS AND LOGOS

These general terms of use ("General Terms") are for Employer intending to use the EyeMed trademark or service marks (the "Marks"), or logos (the "Logos") (collectively, the "Portfolio") to provide information regarding EyeMed Vision Care, LLC ("EyeMed") or EyeMed vision benefits plan, or for network providers wishing to use the Portfolio to confirm that they accept EyeMed plan members (collectively the "Purposes"). The Marks, Logos or Portfolio is attached hereto as Attachment 1.

EyeMed's Portfolio is therefore extremely valuable because it symbolizes the standards of excellence and consistent quality associated with EyeMed vision plans.

By using any element of the Portfolio, in whole or in part, Employer:

1. agrees to adhere to (i) the Usage Guidelines as set forth on Attachment 2, and (ii) the Logo Principles as set forth on Attachment 3;
2. agree not to use, or to cease using, any EyeMed service mark, trademark or logo other than the marks, trademarks and logos provided as part of this agreement.
3. agree to enter into a non-exclusive, non-transferable, royalty-free license for the limited right to use the Portfolio solely for the Purposes under these General Terms and according to the guidelines provided with the Marks, Logos or Portfolio, which may be unilaterally modified from time to time by EyeMed;
4. acknowledge that EyeMed, its affiliates or their licensors are the sole owners of the Portfolio;
5. acknowledge that the goodwill derived from using any element of the Portfolio inures exclusively to the benefit of and belongs to EyeMed, its affiliates or their licensors, as applicable;
6. agree not to (i) interfere with such ownership rights in the Portfolio, including challenging the use, registration of, or any application to register any element of the Portfolio (alone or in combination with other elements), anywhere in the world, (ii) apply for registration of any element of the Portfolio (alone or in combination with other elements) (iii) do any act that could invalidate the registration of any element of the Portfolio, and (iv) harm, misuse, or bring into disrepute any element of the Portfolio;
7. acknowledge that, except for the limited right to use the Portfolio as expressly permitted under these General Terms, no other rights of any kind are granted hereunder, by implication or otherwise;
8. agree to include in all the uses of the Portfolio the following statement: "EyeMed Vision Care® is a registered trademark of EyeMed Vision Care, LLC." at least once in the document in which the Portfolio is included;
9. agree to submit appropriate samples of the use of the Marks and Logos upon request by EyeMed, for EyeMed's inspection and review; and
10. acknowledge that the limited rights granted under these General Terms can be terminated at any time without cause by EyeMed.

ATTACHMENT 1 – CAMERA READY LOGO

Color



Grayscale



## ATTACHMENT 2 – USAGE GUIDELINES

### A. Authorized Usage

1. **Generic Names:** You must set any element of the Marks apart from the service it is associated with by always using the generic name of the service along with the Marks (e.g. correct: "we offer EyeMed Vision Care® vision wellness plans" incorrect: "we offer EyeMed Vision Care®").
2. **Appropriate Trademark Symbols:** You must use appropriate symbols for any Marks (e.g.: correct: EyeMed Vision Care®, EyeMed<sup>SM</sup>; incorrect: EyeMed Vision Care or EyeMed Vision Care<sup>TM</sup>).
3. **Distinguishing the Marks:** You must set any Marks or Logos apart from the text it is surrounded by. For the Marks you may not use underlining, italic type, or bold type for the name (e.g.: incorrect: EyeMed Vision Care®, *EyeMed Vision Care®*, **EyeMed Vision Care®**).
4. **Displaying the Logos:** See the attached Attachment B for additional requirements, including: color, clear space around the logo, sizing, format, spelling and examples of incorrect usage.
5. **Advertising:** Use of the Portfolio is permitted in all forms of print advertising. Any element of the Portfolio may only be used once in each copy. It can be placed anywhere in the copy, but should never exceed 10% of the size of the ad. The marks may be used in your office window. A window decal will be provided to you by EyeMed.
6. **Link to EyeMed Website:** If expressly authorized in writing by EyeMed, you may place a text link to the EyeMed website ([www.eyemed.com](http://www.eyemed.com)), so long as the link
  - a. is preceded by appropriate wording such as "This way to [eyemed.com](http://www.eyemed.com)"
  - b. delivers users to the EyeMed webpage at [www.eyemed.com](http://www.eyemed.com);
  - c. provides users with "point and click" feature clearly indicating the link will lead to the EyeMed homepage at [www.eyemed.com](http://www.eyemed.com);
  - d. does not suggest or imply any affiliation, endorsement or sponsorship of the linking site by EyeMed; and
  - e. delivers the EyeMed content in its own browser.

### B. Unauthorized Usage

1. **Company, Product, Service and Domain Name:** You may not use or register, in whole or in part, any element of the Portfolio or any potentially confusing variation thereof, as or as part of a company name, trade name, product name, service name, or domain name. You may not place your company name, trademark, service mark, or product name, or that of a third-party, next to, or combine them with any element of the portfolio.
2. **Variations, Takeoffs or Abbreviations:** You cannot use any variation, phonetic equivalent, foreign language equivalent, takeoff, or abbreviation of any element of the Portfolio for any purpose.
3. **Disparaging Manner:** You may not use any element of the Portfolio in a disparaging manner.
4. **Endorsement or Sponsorship:** You may not use any element of the Portfolio in a manner that would imply an unwarranted affiliation with or endorsement, sponsorship, or support of your own services or any non-EyeMed services.
5. **Merchandise Items:** You may not manufacture, sell or give-away merchandise items, including but not limited to T-shirts and mugs, bearing any element of the Portfolio unless expressly authorized in writing by EyeMed.
6. **Advertising:** You may not use the Portfolio in television, radio or billboard advertising.
7. **EyeMed's Trade Dress:** You may not imitate the distinctive website design or trade-dress belonging to EyeMed.
8. **Protected Slogans and Taglines:** You may not use or imitate any EyeMed slogan or tagline.

ATTACHMENT 3 – LOGO PRINCIPLES

# Nice to see you

Our logo principles  
April 2013



## Logo

### Look at me

Designed around owning the idea of the eye, both in emphasizing the word and referencing the eye shape, the logotype balances crisp precision with a friendly attitude. It may even wink at you from time to time.

#### Primary

This stacked, green and gray logo is the greatest representation of our brand personality and should be used as our primary identity on 95% of our materials.

#### Grayscale

Used on grayscale-printed applications.

Primary logo



Grayscale



## Logo

### Give me space

The EyeMed logo should always appear as clearly and consistently as possible. It should never compete with other graphic elements or any sort of visual clutter.

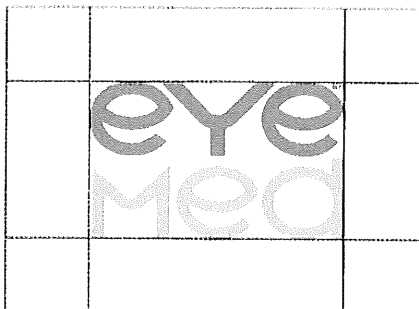
#### Clear space

Shows the exclusion zone around the word mark, it's based on the letter "e" of the word mark – always use this as an absolutely minimal amount of space needed around the logo and any other graphic elements

#### Minimum size

The absolute smallest the word mark should be reproduced is 20mm in width measured from the widest part of the logo. The linear version has a minimum height of 3mm. Reproduction smaller than this compromises legibility.

#### Clear space



#### Minimum size



## Brand name

### Protect our name

The way we treat our brand name "EyeMed" when it's written or set in copy is just as important as the way we treat the logo.

#### Write it right

Here's a set of simple rules that will help to protect the integrity of our brand name. Below are some other considerations for different scenarios.

#### When do I use "EyeMed Vision Care"?

The first time EyeMed is used in copy it should be used as EyeMed Vision Care, all subsequent mentions should just be EyeMed.

#### What about the URL?

When using the website address it should be noted as eyemed.com without "www".

**EyeMed is written as one word.**

#### Always

Use an initial capital for both the "E" and "M"  
Keep EyeMed the same weight as other text

#### Never

Use all lowercase – eyemed  
Use all uppercase – EYEMED  
Make EyeMed bolder than other text  
Use a hyphen – Eye-Med  
Use italicized letters – *EyeMed*



## Logo – sizing

Everything in its right place  
Sizing and placing our logo consistently across like communications helps convey our professional, considered approach.

### How do I size the logotype?

We use 4 widths of the logotype as shown to determine the size of the logotype used (Z)

### Where do I place the logo?

The logotype can be placed in any of the four corners and is placed (Y) from the edge of the page. This is half of the width of the 'e' of the final scaled logo size.

### How close can I get to the edge?

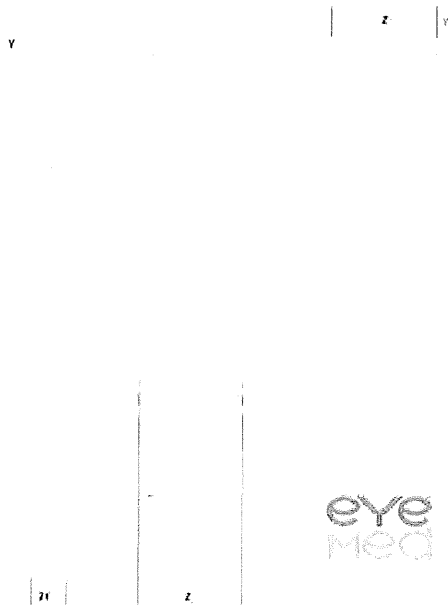
The logotype should be placed at least (Y) from the edge of the page, which is 1/2 the width of the 'e' in the logotype.

### What about landscape formats?

These same principles can be used for landscape formats with the word mark rotated 90° clockwise before being placed.

### Can you be too specific?

The appropriate size and placement of the logo should be determined for type of application. We can't cover every situation here and there may be instances where the logo may need to be adjusted, but start with the guidelines as a baseline. The key is to ensure that similar types of communications are treated similarly. So all sheets follow the same size and placement approach even if there are differences from the approach used for posters, etc.



## Logo – don'ts

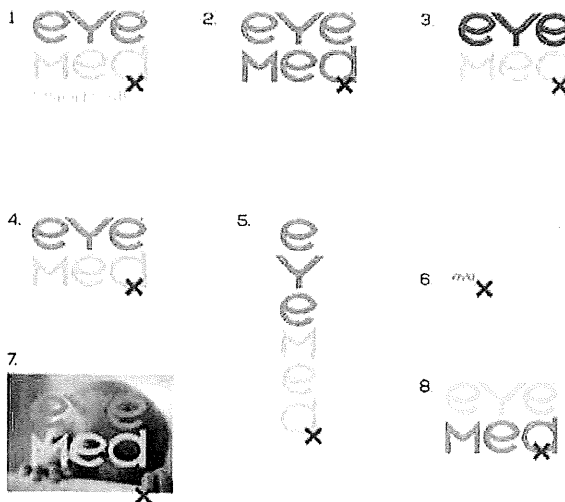
### Let's not, shall we?

We like our logo just the way it is. Altering it or placing in a way that makes it illegible only diminishes its value and makes us look unprofessional, so it's really best not to mess with it.

### What not to do:

This page shows some examples of what not to do with the EyeMed logo. The most important single thing to remember is – never alter or recreate the logo; always use the master artwork.

1. Do not add qualifiers or tag lines
2. Do not make it all leaf green
3. Do not use any other colors from the palette
4. Do not add shadows or effects
5. Do not reconfigure, distort, squash or stretch
6. Do not make it too small
7. Do not place where it cannot be read
8. Do not reverse the colors



## EXHIBIT D – BUSINESS ASSOCIATE AGREEMENT

### I. Definitions

- A. In General. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 CFR §§ 160.103 and 164.501.
- B. Specific Definitions
  - 1. "Applicable Law" shall mean any of the following items, including any amendments to any such item as such may become effective:
    - a. the Health Insurance Portability and Accountability Act of 1996 ("HIPAA");
    - b. the federal regulations regarding privacy and promulgated with respect to HIPAA, found at Title 45 CFR Parts 160 and 164 (the "Privacy Rule");
    - c. the federal regulations regarding electronic data interchange and promulgated with respect to HIPAA, found at Title 45 CFR Parts 160 and 162 (the "Transaction Rule");
    - d. the federal regulations regarding security and promulgated with respect to HIPAA, found at Title 45 CFR Parts 160 and 164 (the "Security Rule"); and
    - e. the Health Information Technology for Economic and Clinical Health Act ("HITECH").
  - 2. "ePHI" means electronic protected health information within the meaning of 45 CFR § 160.103, limited to the information created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity.
  - 3. "HIPAA Breach" shall have the same meaning as the term "breach" in 45 CFR § 164.402.
  - 4. "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 CFR § 160.103, limited to the information created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity.
  - 5. "Service Agreement" shall mean the Fee For Service Agreement or other agreement for the provision of services by Business Associate that is between Covered Entity and/or Employer and Business Associate.
  - 6. "Unsecured PHI" shall have the same meaning as the term "unsecured protected health information" in 45 CFR § 164.402, limited to the information created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity.

### II. Rights and Obligations of Business Associate

- A. General Obligations
  - 1. Compliance with Privacy Rule.
    - a. Business Associate shall not use or further disclose PHI other than as permitted or required by HIPAA, the Privacy Rule, and this Agreement.
    - b. Business Associate shall use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement.
    - c. Business Associate shall report to Covered Entity any use or disclosure of PHI, known to Business Associate, that is not permitted by this Agreement.
  - 2. Compliance with Security Rule.
    - a. Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of ePHI.

- b. Business Associate shall report to Covered Entity any Security Incident of which Business Associate becomes aware.
3. Compliance with HITECH.
- a. Business Associate shall comply with the breach notification requirements provided in Section II.A.4 of the Agreement below.
  - b. Business Associate shall not receive remuneration, either directly or indirectly, in exchange for PHI, except as may be permitted by HITECH § 13405(d) and the Privacy Rule.
  - c. Business Associate shall comply with those portions of the Privacy Rule made applicable to Business Associate by HITECH.
  - d. Business Associate shall comply with those portions of the Security Rule made applicable to Business Associate by HITECH.

4. Breach Notification.

- a. Notice to Covered Entity. Business Associate shall notify Covered Entity without unreasonable delay and within thirty (30) calendar days of Business Associate's discovery of a HIPAA Breach of Unsecured PHI. The notice to Covered Entity shall include the identity of each Individual whose Unsecured PHI was involved in the HIPAA Breach, a brief description of the HIPAA Breach and any mitigation efforts. To the extent that Business Associate does not know the identities of all affected Individuals when it is required to notify Covered Entity, Business Associate shall provide such additional information as soon as administratively practicable after such information becomes available. For purposes of this paragraph, a HIPAA Breach shall be treated as discovered as of the first day on which the HIPAA Breach is known or should reasonably have been known to Business Associate (including any person, other than the one committing the HIPAA Breach, which is an employee, officer, or other agent of Business Associate).
- b. Notice to Individuals. Business Associate will provide written notice of the HIPAA Breach of Unsecured PHI, on behalf of Covered Entity, without unreasonable delay but no later than sixty (60) calendar days following the date the HIPAA Breach of Unsecured PHI is discovered or such later date as is authorized under 45 CFR § 164.412 to each Individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, used, or disclosed as a result of the HIPAA Breach. For purposes of this paragraph, a HIPAA Breach shall be treated as discovered as of the first day on which the HIPAA Breach is known or should reasonably have been known to Business Associate (including any person, other than the one committing the HIPAA Breach, which is an employee, officer, or other agent of Business Associate).

The content, form, and delivery of such written notice shall comply in all respects with 45 CFR § 164.404(c)-(d).

Business Associate and Covered Entity shall cooperate in all respects regarding the drafting and the content of the notice. To that end, before sending any notice to any Individual, Business Associate shall first provide a draft of the notice to Covered Entity. Covered Entity shall have five (5) business days (plus any reasonable extensions) to provide comments on Business Associate's draft of the notice.

- c. Notice to Media. Business Associate will provide written notice of the HIPAA Breach of Unsecured PHI, on behalf of Covered Entity, to the media to the extent required under 45 CFR § 164.406. Business Associate and Covered Entity shall cooperate in all respects regarding the drafting and the content of the notice. To that end, before sending any notice to the Secretary, Business Associate shall first provide a draft of the notice to Covered Entity. Covered Entity shall have five (5) business days (plus any reasonable extensions) to provide comments on Business Associate's draft of the notice.

- d. Notice to Secretary. Business Associate will provide written notice of the HIPAA Breach of Unsecured PHI, on behalf of Covered Entity, to the Secretary to the extent required under 45 CFR § 164.408. Business Associate and Covered Entity shall cooperate in all respects regarding the drafting and the content of the notice. To that end, before sending any notice to the Secretary, Business Associate shall first provide a draft of the notice to Covered Entity. Covered Entity shall have five business days (plus any reasonable extensions) to provide comments on Business Associate's draft of the notice.

If the HIPAA Breach of Unsecured PHI involves less than five hundred (500) individuals, Business Associate will maintain a log or other documentation of the HIPAA Breach of Unsecured PHI which contains such information as would be required to be included if the log were maintained by Covered Entity pursuant to 45 CFR § 164.408, and provide such log to Covered Entity within five (5) business days of Covered Entity's written request.

5. Subcontractors and Agents. Business Associate shall ensure that any agent, including a subcontractor, to whom it provides PHI agrees in writing to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such PHI.
6. Access to Books and Records by Secretary. Business Associate shall make its internal practices, books, and records relating to the use, disclosure, and security of PHI available to the Secretary for purposes of the Secretary determining Covered Entity's compliance with HIPAA. Business Associate shall make its internal practices, books, and records relating to the use, disclosure, and security of PHI available to the Secretary for purposes of the Secretary determining Business Associate's compliance with HIPAA.
7. Mitigation. Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of (a) a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement, or (b) a Security Incident.

B. Obligations Relating to Individual Rights

1. Restrictions on Disclosures. Upon request by an Individual, Covered Entity shall determine whether an Individual shall be granted a restriction on disclosure of the PHI pursuant to 45 CFR § 164.522. Covered Entity will not agree to any such restriction, if such restriction would affect Business Associate's use or disclosure of PHI, without the prior consent of Business Associate, *provided, however*, that Business Associate's consent is not required for requests that must be granted under HITECH § 13405(a). Covered Entity will communicate any grant of a request, made consistent with the foregoing, to Business Associate. Business Associate will restrict its disclosures of the Individual's PHI in the same manner as would be required for Covered Entity. If Business Associate receives an Individual's request for restrictions, Business Associate shall forward such request to Covered Entity within five (5) business days.
2. Access to PHI. Upon request by an Individual, Covered Entity shall determine whether an Individual is entitled to access his or her PHI pursuant to 45 CFR § 164.524. If Covered Entity determines that an Individual is entitled to such access, and that such PHI is under the control of Business Associate, Covered Entity will communicate the decision to Business Associate. Business Associate shall provide access to the PHI in the same manner as would be required for Covered Entity. If Business Associate receives an Individual's request to access his or her PHI, Business Associate shall forward such request to Covered Entity within five (5) business days.
3. Amendment of PHI. Upon request by an Individual, Covered Entity shall determine whether any Individual is entitled to amend his or her PHI pursuant to 45 CFR § 164.526. If Covered Entity determines that an Individual is entitled to such an amendment, and that such PHI is both in a designated record set and under the control of Business Associate, Covered Entity will communicate the decision to Business Associate. Business Associate shall provide an opportunity to amend the PHI in the same manner as would be required for Covered Entity. If Business Associate receives an Individual's request to amend his or her PHI, Business Associate shall forward such request to Covered Entity within five (5) business days.

4. **Accounting of Disclosures.** Upon request by an Individual, Covered Entity shall determine whether any Individual is entitled to an accounting pursuant to 45 CFR § 164.528. If Covered Entity determines that an Individual is entitled to an accounting, Covered Entity will communicate the decision to Business Associate. Business Associate will provide information to Covered Entity that will enable Covered Entity to meet its accounting obligations. If Business Associate receives an Individual's request for an accounting, Business Associate shall forward such request to Covered Entity within five (5) business days.

C. Permitted Uses and Disclosures by Business Associate

Except as otherwise limited in this Agreement or by Applicable Law, Business Associate may:

1. Use or disclose PHI to perform functions, activities, or services for or on behalf of Covered Entity, as specified in the Service Agreement between the Parties and in this Agreement, *provided that* such use or disclosure (i) is consistent with Covered Entity's Notice of Privacy Practices and (ii) would not violate HIPAA or the Privacy Rule if done by Covered Entity;
2. Use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate;
3. Disclose PHI for the proper management and administration of Business Associate, *provided that* (i) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose 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 information has been breached or (ii) the disclosures are Required By Law; and
4. Use PHI to provide Data Aggregation services to Covered Entity as permitted by 42 CFR § 164.504(e)(2)(i)(B).

III. Rights and Obligations of Covered Entity

A. Privacy Practices and Restrictions

1. Upon request, Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR § 164.520. If Covered Entity subsequently revises the notice, Covered Entity shall provide a copy of the revised notice to Business Associate.
2. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.

B. Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

IV. Term and Termination

- A. **Term.** The term of this Agreement shall begin on the later of the Effective Date defined above or the effective date of the Services Agreement, and shall end upon the termination of the Services Agreement or upon termination for cause as set forth in the following Section IV.B, whichever is earlier.
- B. **Termination for Cause.** Upon any Party's knowledge of a material breach of this Agreement by another Party, the nonbreaching Party shall have the following rights:
  1. If the breach is curable, the nonbreaching Party may provide an opportunity for the other Party to cure the breach or end the violation. Alternatively, or if the other Party fails to cure the breach or end the violation, the nonbreaching Party may terminate this Agreement and the Services Agreement.
  2. If the breach is not curable, the nonbreaching Party may immediately terminate this Agreement and the Services Agreement.

3. If termination is not feasible, the nonbreaching Party may report the problem to the Secretary.

C. Effect of Termination.

1. Except as provided in the following paragraph, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI within its possession or control, and all PHI that is in the possession or control of Business Associate's subcontractors or agents. Business Associate shall retain no copies of the PHI.
2. If Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

V. Miscellaneous

- A. Electronic Health Records. The Parties agree that Business Associate shall not maintain any "electronic health record" or "personal health record," as those terms are defined in HITECH, for or on behalf of Covered Entity. As such, Business Associate has no obligation to document disclosures that are exempt from the accounting requirement under 45 CFR § 164.528(1)(i)-(ix), and Covered Entity agrees not to include Business Associate on any list Covered Entity produces pursuant to HITECH § 13405(c)(3).
- B. Regulatory References. A reference in this Agreement to a section in any Applicable Law means the section in effect or as amended, and for which compliance is required.
- C. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of Applicable Law. All amendments to this Agreement, except those occurring by operation of law, shall be in writing and signed by both Parties.
- D. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with Applicable Law.
- E. Effect on Agreement. Except as specifically required to implement the purposes of this Agreement, or to the extent inconsistent with this Agreement, all other terms of the underlying Services Agreement shall remain in force and effect.