

Customer Name: Highlands County  
Group Plan Number: 00514206  
Administrative Services Only Agreement

Administrative Services Only Agreement

By and Between

Highlands County  
"Employer"

And

Guardian Life Insurance Company of America  
"Guardian"

Effective Date: 10/01/2015

THIS AGREEMENT AND ITS TERMS ARE PROPRIETARY AND CANNOT BE DISCLOSED  
WITHOUT THE PERMISSION OF EACH OF THE PARTIES

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## Schedule of Financial Charges

The service fees for administering your self-funded benefit payment Plan are:

### Dental ASO

- |                                     |   |                          |   |
|-------------------------------------|---|--------------------------|---|
| <input checked="" type="checkbox"/> | \$4.27 per employee per month             | <input type="checkbox"/> | \$ per employee per month                 |
|                                     | \$ per dependent unit per month           |                          | \$ per dependent unit per month           |
|                                     | \$ per employee plus child(ren) per month |                          | \$ per employee plus child(ren) per month |
|                                     | \$ per employee plus spouse per month     |                          | \$ per employee plus spouse per month     |
|                                     | \$ per employee plus family per month     |                          | \$ per employee plus family per month     |
- 
- |                                     |                                |                          |                      |
|-------------------------------------|--------------------------------|--------------------------|----------------------|
| <input type="checkbox"/>            | For first Plan year            | <input type="checkbox"/> | For second Plan year |
| <input checked="" type="checkbox"/> | For first and second Plan year | <input type="checkbox"/> | For third Plan year  |
| <input type="checkbox"/>            | For first three Plan years     | <input type="checkbox"/> | For fourth Plan year |

### Vision ASO

- |                          |   |                          |   |
|--------------------------|---|--------------------------|---|
| <input type="checkbox"/> | \$ per employee per month                 | <input type="checkbox"/> | \$ per employee per month                 |
|                          | \$ per dependent unit per month           |                          | \$ per dependent unit per month           |
|                          | \$ per employee plus child(ren) per month |                          | \$ per employee plus child(ren) per month |
|                          | \$ per employee plus spouse per month     |                          | \$ per employee plus spouse per month     |
|                          | \$ per employee plus family per month     |                          | \$ per employee plus family per month     |
- 
- |                          |                                |                          |                      |
|--------------------------|--------------------------------|--------------------------|----------------------|
| <input type="checkbox"/> | For first Plan year            | <input type="checkbox"/> | For second Plan year |
| <input type="checkbox"/> | For first and second Plan year | <input type="checkbox"/> | For third Plan year  |
| <input type="checkbox"/> | For first three Plan years     | <input type="checkbox"/> | For fourth Plan year |

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**Optional fees:**

Run-in claim processing \$ fee

THIS AGREEMENT, effective 10/01/2015 (the "Effective Date") is by and between Highlands County, Inc. ("Employer") and The Guardian Life Insurance Company of America, ("Guardian"). This Agreement replaces any and all prior agreements between the parties with respect to the subject matter hereof.

RECITALS:

WHEREAS, Employer, as Plan sponsor, has adopted the self funded benefit payment Plan described in Exhibit A, as may be amended, ("Plan") for certain of its employees/Members and their eligible dependents (collectively "Members"); and

WHEREAS, Employer has requested Guardian to furnish certain administration services in connection with the Plan; and

WHEREAS, Employer acknowledges that it is the designated fiduciary of the Plan and Employer shall retain final discretionary authority to determine eligibility for benefits and to construe the terms of the Plan; and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, including incorporation of the above WHEREAS provisions, it is hereby agreed as follows:

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Section 1. Term and Termination of Agreement

This Agreement is effective on the Effective Date and shall remain in effect until the earliest of the following dates:

- i. The date which is at least sixty (60) days from the date that either Party provides written notice to the other party of termination of the Agreement;
- ii. The effective date of any applicable law or governmental action which prohibits the continuation of the Agreement or performance of the activities required by this Agreement;
- iii. The date upon which Employer fails to fund the Claims as required by this Agreement or fails to pay Guardian any charges identified in this Agreement when due provided Guardian notifies Employer of its election to terminate;
- iv. The date Employer violates any of its material obligations under this Agreement;
- v. Employer’s adjudication of bankruptcy;
- vi. Any other date mutually agreed upon Parties.
- vii. In addition to i,ii,iii,iv,v and vi, Guardian reserves the right to terminate this Agreement immediately if Employer has a group insurance Plan or policy underwritten by Guardian and such Plan or policy ends for any reason whatsoever.

Section 2. Definitions

Agreement – this entire document including the Schedule of Financial Charges and all Exhibits.

Bank Account – a benefit Plan account with a bank designated by Guardian. Established and maintained by Employer in it’s or a nominee’s name.

Benefit Description Booklet – A booklet provided to the employee that contains a general explanation of the benefits and related provisions of the Plan.

Employer – “you” and “your” mean the Employer named above.

ERISA – the Employee Retirement Income Security Act of 1974, as amended and related regulations.

Extra-Contractual Benefits – Payments which Employer has instructed Guardian to make for health care services and/or products that Guardian has advised are not covered under the Plan.

Member – a person eligible for and enrolled in the Plan as an employee or dependent.

Participant/Participating Members – Member(s) who is (are) participating in a specific program and/or product available to the Members covered under this Plan.

Participating Providers – providers of health care services and/or products who/which contract directly or indirectly with Guardian to provide services and/or products to Members.

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**Plan Benefits** – Amounts payable for covered services and products under the terms of the Plan.

**Party/Parties** – refers to Employer and Guardian, each a “Party” and collectively “Parties”.

**Plan Year** – the 12 month period beginning on the Effective Date and, thereafter, each subsequent 12 month period.

**Run-In Period** – means the period immediately preceding the effective date of the Agreement as specified in Appendix I, under the section labeled Run In Program.

**Run-In Program** – means the Plan of benefits, which is funded by the Employer, which is in effect during the Run-In period. If this Agreement provides any administrative services for the Run-In program, they will be specified in the Schedule of Financial Charges and Appendix II.

**Run-Out Claims** – claims for Plan Benefits that are incurred prior to termination of this Agreement or termination of a Plan benefit option, as applicable.

**Run-Out Period** – means the period immediately following the termination of this Agreement whereby Guardian continues to process claims incurred before the termination of this Agreement.

**Self Funded Benefit Payment Plan** – means the Plan of benefits, which is funded by the Employer which is in effect while this Agreement is in force. It is described in Appendix I.

Section 3. Claim Administration and Additional Services

- a. While this Agreement is in effect, Guardian shall at the direction of the Employer:(i) receive and review claims for Plan Benefits; (ii) recommend the determination of the Plan Benefits, if any, payable applicable for such claims; (iii) disburse payments of Plan Benefits to claimants from Employer’s funds; and (iv) provide in the manner and within the time limits required by applicable law, notification to claimants of (a) the coverage determination or (b) any anticipated delay in making a coverage determination beyond the time required by applicable law, and (c) the right to request an administrative review or appeal in accordance with the Plan procedures if required by the Plan.
- b. Following (i) termination of this Agreement, except pursuant to Section 1.iii. or (ii) termination of eligibility of a Member, if the required fees have been paid in full, Guardian shall process, on an EOB basis only (additional fees would apply) , Run-Out Claims for the applicable Run-Out Period. Guardian may furnish Checkwriting services during the Run-out Period provided financial requirements acceptable to Guardian are met. (See Schedule of Financial Charges for applicable fees and Run-Out Period). At the termination of any applicable Run-Out Period, Guardian shall cease processing Run-Out Claims and make all relevant records in its possession relating to such claims reasonably available to Employer or Employer's designee. Guardian is not required to provide proprietary information to Employer or any other party.

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- c. Employer hereby retains the authority, responsibility and sole discretion to (i) determine all matters concerning eligibility and enrollment for coverage under the Plan (ii) determine eligibility for benefits and to construe and interpret the provisions of the Plan , (iii) make all factual determinations, (iv) conduct a full and fair review of each claim which has been denied as required by applicable law, and (v) conduct both mandatory levels of appeal determinations for all "Concurrent", "Pre-service" and "Post-service" claims (as those terms are defined under ERISA) and notify the Member or the Member's authorized representative of its decision. Employer will confirm that all summary Plan description materials provided to Members reflect this delegation.
- d. In addition to the basic claim administrative duties described above, Guardian shall also perform the Plan-related administrative duties agreed upon by the Parties and specified in Exhibit B

Section 4. Funding and Payment of Claims

- a. Guardian shall make Payments directly in the amount Guardian reasonably determines to be proper under the Plan and/or under this Agreement.
- b. Guardian has various options available for the funding and payment of claims. These options are fully described in Appendix III.
- c. Guardian will promptly adjust any underpayment of Plan Benefits. In the event Guardian overpays a claim for Plan Benefits or pays Plan Benefits to the wrong party, it shall take all reasonable steps to recover the overpayment; however, Guardian shall limit the collection efforts of any overpayment to the immediate 12 month prior period. Guardian will not be required to initiate court, mediation, arbitration or other administrative proceedings to recover any overpayment. Guardian shall not be responsible for reimbursing any unrecovered payments of Plan Benefits unless made as a result of its gross negligence or intentional wrongdoing.
- d. Following termination of this Agreement, Employer shall remain liable for payment of all due Payments and for all reimbursements due Members under the Plan. Employer shall promptly reimburse Guardian for any Payments paid by Guardian with its own funds and no such payment by Guardian shall be construed as an assumption of any of Employer's liability.
- e. Notwithstanding anything to the contrary, if the Plan requests the payment of Extra-Contractual Benefits then if authorized by a Letter of Agreement attached to this Administrative Services Only Agreement Guardian will, pursuant to that Letter of Agreement, pay Extra-Contractual Benefits at the direction of the Plan.

This provision shall survive termination of this Agreement.

**Section 5 NO FIDUCIARY OR TRUSTEE OBLIGATIONS OR STATUS**

Under no circumstances can we be required to perform any services which could cause us to be deemed a trustee or fiduciary, or which would constitute the practice of law, accounting or any other profession regulated by the laws of any State or Federal government. However, Guardian shall use that degree of ordinary care and reasonable diligence in the exercise of its non-fiduciary powers and duties hereunder that an administrator of claims under an insured employee benefit Plan would use acting in like circumstances and familiar with such matters.

We are not the administrator or Fiduciary of the Plan under ERISA. You are the administrator and the Fiduciary of the Plan, unless you, by action of your Board of Directors or an equivalent authority, designate an individual or committee to act as administrator.

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#### Section 6. Charges

- a. Charges.** Guardian shall provide to Employer a monthly statement of all charges Employer is obligated to pay under this Agreement other than Funding of Claims. Payment of all billed charges shall be due on the first day of the month, as indicated on the monthly statement. Payments received after the last day of the month in which they are due, shall be subject to late payment charges, from the due date at a rate calculated as follows: the one (1) year Treasury constant maturities rate for the first week ending in January plus five percent (5%). For purposes of calculating late payment charges, payments received will be applied first to the oldest outstanding amount due.
- b. Member Changes - Additions and Terminations.** If an employee becomes a Member on or before the fifteenth (15th) day of the month, full charges applicable to that Member shall be due for that Member for that month. If coverage ceases on or before the fifteenth (15th) day of the month for a Member, no charges shall be due for that Member for that month. No charges are due for Members for the month when they become covered after the fifteenth of the month or for when their coverage is terminated before the fifteenth of the month.
- c. Retroactive Member Changes and Terminations.** Employer shall remain responsible for all charges and Bank Account Payments incurred or charged through the date Guardian processes Employer's notice of a retroactive change or termination of Membership. However, if the change or termination would result in a reduction in charges, Guardian shall credit to Employer the reduction in charges charged for the shorter of (a) the ninety (90) day period preceding the date Guardian processes the notice, or (b) the period from the date of the change or termination to the date Guardian processes the notice.

This provision shall survive termination of this Agreement.

#### Section 7. Enrollment and Determination of Eligibility

- a. Eligibility Determinations and Information.** Employer is responsible for administering Plan enrollment. In recommending any person's right to benefits under the Plan, Guardian shall rely upon enrollment and eligibility information furnished by the Employer. Such information shall identify the effective date of eligibility and the termination date of eligibility and shall be provided promptly to Guardian in a form and with such other information as reasonably may be required by Guardian for the proper administration of the Plan.
- b. Release of Liability.** Notwithstanding any inconsistent provision of this Agreement to the contrary, if Employer, or its designee, fails to provide Guardian with accurate enrollment and eligibility information, benefit design requirements, or other agreed-upon information in Guardian's standard timeframe and format, Guardian shall have no liability under this Agreement for any act or omission by Guardian, or its employees, affiliates, subcontractors, agents or representatives, directly or indirectly caused by such failure.

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c. Reconciliation of Eligibility Information and Default Terminations.

Guardian will periodically share potential discrepancies in eligibility information with Employer. Employer will review and reconcile any discrepancies within thirty (30) days of receipt. If Employer fails to timely do so, Guardian may terminate coverage for any Member not listed as eligible in Employer's submitted eligibility information.

Section 8. Special Eligibility for Self-Funded Vision Plans

a. VSP: VSP benefit authorizations are a guarantee of coverage and are valid 60 days from the date of issue. If services for any self-funded VSP benefits are rendered after the Member's eligibility ends and while the benefit authorization is valid, all of the obligations under this Agreement continue.

b. Davis: Davis benefit authorizations are a guarantee of coverage and are valid 45 days from the date of issue. If services for any self-funded VSP benefits are rendered after the Member's eligibility ends and while the benefit authorization is valid, all of the obligations under this Agreement continue.

Section 9. Claim Audits and Confidentiality

a. Employer may, in accordance with the following requirements and at no additional charge while this Agreement is in effect, audit Guardian's payment of Plan Benefits:

- i. Employer shall provide Guardian 30 days advance written request for audit. Employer and Guardian will agree on an independent, third party auditor to conduct the audit (the "Auditor") as well as the date and offsite location. Employer shall be responsible for its Auditor's costs. The audit shall be conducted in accordance with the terms of Guardian's Claim Audit Agreement attached hereto as Appendix V, which is hereby agreed to by Employer and which shall be signed by the Auditor prior to the start of the audit.
- ii. If Employer has 5,000 or more employees, Employer may conduct one such audit every Plan Year (but not within 6 months of a prior audit). If Employer has less than 5,000 employees, Employer may conduct one such audit every two Plan Years (but not within 18 months of a prior audit). Unless employer has reasonable belief there is a problem.
- iii. Auditor will review payment documents relating to a random, statistically valid sample of 225 claims paid during the two prior Plan years and not previously audited (the "Audit") subject to any contrary terms in participating Provider agreements. The scope of the Audit may include types of claims prone to overpayment recovery opportunities provided types of claims prone to underpayments are equally included. Audit findings and recommendations shall be based upon the actual claims reviewed and not upon statistical projections or extrapolations.

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- b.** Subject to the requirements of applicable law, the terms of this Agreement and the Privacy Addendum in Appendix VI, a signed Business Associate Agreement between Employer and designee, and a signed Confidentiality Agreement by applicable designee, Guardian shall release copies of confidential claims and Plan Benefit payment information in Guardian's claims system ("Confidential Information") and may release copies of proprietary information relating to the Plan in Guardian's claims system ("Proprietary Information") to the Employer and/or its designees. Employer agrees that Employer and its designees will keep Confidential Information and Proprietary Information confidential and will use Confidential Information and Proprietary Information solely for the purpose of administering the Plan or as otherwise required by law. Employer is solely responsible for the consequences of any use, misuse, or disclosure of Confidential Information provided by Guardian pursuant to this paragraph b.
- c.** Guardian will maintain the confidentiality of all Protected Health Information in its possession in accordance with the Privacy Addendum in Appendix VI.
- d.** Upon termination of this Agreement, Guardian shall make information available to the extent administratively feasible if the Parties agree upon the charge to be paid by Employer.

The obligations set forth in this section shall survive termination of the Agreement.

#### Section 10. Plan Benefit Liability

- a. Employer Liability for Plan Benefits.** Employer is responsible for all Plan Benefits including any Plan Benefits paid as a result of any legal action. Employer shall indemnify and hold harmless Guardian, its directors, officers and employees for any reasonable expense incurred (including reasonable attorneys fees) by them in the defense of any action or proceeding involving a claim for Plan Benefits. Guardian shall reasonably cooperate with Employer in its defense of such actions.

If Guardian pays a claim for Extra-Contractual Benefits, Employer is responsible for funding the payment and such payments shall not be considered in determining reimbursements or payments under stop loss insurance or in determining any risk-sharing or performance guarantee reimbursements. Employer shall indemnify Guardian and hold it harmless from and against all claims, liabilities, and/or expenses (including attorney's fees and court costs) which Guardian may incur in connection with making such payments.

- b. Employer Liability for Plan Related Expenses.** Employer shall reimburse Guardian for any amounts Guardian may be required to pay (i) as state premium tax or any similar Plan-related tax, charge, surcharge or assessment, or (ii) under any unclaimed or abandoned property, or escheat law, with respect to Plan Benefits and any penalties and/or interest thereon. You must make payment within 31 days after written notification to you by us of any such payment.

These indemnification/reimbursement obligations shall survive termination of this Agreement.

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Section 11. Modification of Plan and Administrative Duties and Charges

- a. Guardian shall have the right to revise the charges identified in this Agreement (i) on each anniversary of this Agreement, (ii) at any time by giving Employer at least sixty (60) days' prior written notice, but not more frequently than once in a six (6) month period, (iii) upon any modification or amendment of the benefits under the Plan or Guardian's administrative duties, (iv) upon any variation of fifteen percent (15%) or more in the number of Members used by Guardian to calculate its charges under the Agreement, and/or (v) upon any change in law or regulation that materially impacts Guardian's liabilities and/or responsibilities under this Agreement.
- b. Employer shall provide Guardian written notice of any modification or amendment to the Plan sufficiently in advance of any such change as to allow Guardian to implement the modification or amendment. Employer and Guardian shall agree upon the manner and timing of the implementation subject to Guardian's system and operational capabilities.
- c. Modification of Guardians' duties shall be by mutual agreement. The parties shall reflect such modification and any revised charges (if applicable) in a letter of agreement which shall become part of this Agreement.

Section 12. Modification of Agreement

This Agreement constitutes the entire contract between the parties regarding the subject matter herein. Except as otherwise provided herein, the provisions of this Agreement shall control in the event of a conflict with the terms of any other agreements. No modification or amendment hereto shall be valid unless in writing and signed by an authorized person of each of the parties, except that modification of fees pursuant to Section 8 above may be made by written notice to Employer by Guardian. If Employer pays such revised fees or fails to object to such revision in writing within fifteen (30) days of receipt, the Agreement shall be deemed modified to reflect the fees as communicated by Guardian.

Section 13. Laws Governing Contract

This Agreement shall be construed in accordance with the laws of the State of New York without regard to conflict of law rules, and both parties consent to the venue and jurisdiction of its courts.

Section 14. Information in Guardian's Processing Systems

Guardian may retain and use all Plan related claim and Plan Benefit payment information recorded for or otherwise integrated into Guardian's business records including claim processing systems during the ordinary course of business (provided, however, that claim or payment information will be available to Employer pursuant to Section 6). Guardian will retain claim and payment information as required by applicable law.

Section 15. Third Party Beneficiaries

This Agreement is solely for the benefit of Employer and Guardian. It shall not be construed to create any legal relationship between Guardian and any other party.

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Section 16. Waivers

No course of dealing or failure of either Party to strictly enforce any term, right or condition of this Agreement shall be construed as a waiver of such term, right or condition. Waiver by either Party of any default shall not be deemed a waiver of any other default.

Section 17. Headings

Article, section, or paragraph headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

Section 18. Severability

If any provision or any part of a provision of this Agreement is held invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable any other portion of this Agreement.

Section 19. Force Maieure

Guardian shall not be liable for any failure to meet any of the obligations required under this Agreement where such failure to perform is due to any contingency beyond the reasonable control of Guardian, its employees, officers, or directors. Such contingencies include, but are not limited to, acts or omissions of any person or entity not employed or reasonably controlled by Guardian, its employees, officers, or directors, acts of God, fires, wars, accidents, labor disputes or shortages, and governmental laws, ordinances, rules or regulations.

Section 20. Assignment and Subcontracting

Neither Party may assign any right, interest, or obligation hereunder without the express written consent of the other Party; provided, however that Guardian may assign any right, interest, or responsibility under this Agreement to its affiliates and/or subcontract specific obligations under the Agreement provided that Guardian shall not be relieved of its obligations under the Agreement when doing so.

Section 21. Limitations

You will indemnify and hold us harmless from any claims, liability, loss or damage arising out of our performance of the services specified under the terms of this Agreement, as long as such services are performed in accordance with the terms of this Agreement.

We reserve the right but we shall be under no obligation to defend any action brought against the Plan respecting claims for benefits under the Plan. Plan shall use best efforts to cooperate with us in defense of any action including our information requests to defend the action. Notice of any action shall be provided within five (5) calendar days.

Guardian Life Insurance Company of America  
7 Hanover Square  
New York, New York 10004  
Attention: General Counsel-Law Department.

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We will indemnify and hold you harmless from any and all loss, liability, damage, expense, cost or obligation (including reasonable attorney's fee) with respect to this Agreement resulting from or arising out of the dishonest, fraudulent, negligent or criminal acts of The Guardian's employees, acting alone or in collusion with others.

Section 22. Notices

Except as otherwise provided, all notices or other communications hereunder shall be in writing and shall be deemed to have been duly made when (a) delivered in person, (b) delivered to an agent, such as an overnight or similar delivery service, (c) delivered electronically, or (d) deposited in the United States mail, postage prepaid, and addressed as follows:

To Guardian:  
Guardian Life Insurance Company of America  
Address

Attention:

To Employer:  
Customer Name:  
Address:

Attention:

The address to which notices or communications may be given by either party may be changed by written notice given by one party to the other pursuant to this Section.

Section 23. Identifying Information and Internet Usage

Neither party may use the other's name, logo, service marks, trademarks or other identifying information or to establish a link to the other's World Wide Web site without its prior written approval.

Section 24. No Representation

We make no representation to you concerning Federal, State or local tax status of the Plan, nor do we make any representation to you concerning the status of self-funded Plans under state law. All such questions should be referred to your counsel or tax accountant.

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Section 25, NY HCRA

NEW YORK HEALTH CARE REFORM ACT ("HCRA") PUBLIC GOODS POOL: Employer acknowledges that, under its Self-Funded Benefit Payment Program, it provides dental coverage to its employees on an expense-incurred basis and is therefore subject to payment of a percentage surcharge on certain services. By entering into this Agreement with Guardian, Employer elects to have Guardian make any surcharge payments owed by the Employer directly to the New York State Department of Health's Office of Pool Administration (DOH-OPA) and file any reports related to such payments on behalf of Employer. Employer understands that this election applies to all its lines of business and will remain in effect unless rescinded in writing or revoked by the Department of Health. As part of this election, Employer authorizes the DOH-OPA to assign it an electronic filing user ID and password, which will be kept secure.

Employer also agrees (1) to assist Guardian in the preparation of any required reports, if such assistance is needed; (2) to provide certification of and access to data requested for audit verification purposes; (3) to the jurisdiction of New York State courts to maintain an action in New York to enforce any provision of HCRA; and (4) to the use of its FEIN by the Department of Health to identify the election status by a posting on the Department's secure website. Guardian agrees (1) to timely submit any surcharge payments and any covered lives payments and any required reports on behalf of employer to the DOH -OPA; and (2) to notify the DOH-OPA of any change in employer's contact names and addresses.

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## SIGNATURES

IN WITNESS WHEREOF, the parties have caused this Agreement, and all Exhibits and Addenda to this Agreement, to be executed in duplicate and signed by their respective officers duly authorized to do so as of the dates given below. Employer executes as the authorized representative of the Plan with respect to the Privacy Addendum to this Agreement.

Dated at \_\_\_\_\_, Customer Name:

This \_\_\_\_\_ day of \_\_\_\_\_, By  
Name  
Its  
Duly Authorized

Dated at Bethlehem, Pennsylvania GUARDIAN LIFE INSURANCE COMPANY of America

This \_\_\_\_\_ day of \_\_\_\_\_, By \_\_\_\_\_  
Name:  
Its  
Duly Authorized

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## **Appendix II – Administrative Services**

We agree to provide the administrative services listed below for your Self-Funded Benefit Payment Plan (described in Appendix I).

In addition, if specified in the Schedule of Financial Charges and Appendix I, we agree to provide "Claims Administration", "Checkwriting", "Billing", "Reports", "Underwriting" and "Actuarial Services", as explained below, for claims incurred during the Run-In period, which are paid after the effective date of this Agreement. Such claims will be administered according to the terms of your Run-In Program.

**PLAN DESIGN:** We will help structure or make suggestions in the benefit design of your Self-funded Benefit Payment Plan.

**CLAIMS ADMINISTRATION:** We will conduct Claims Administration in accordance with section 3 of the Administrative Services Only Agreement

We will undertake any communications, which are necessary with physicians, hospitals, and other individuals or firms to verify and certify claims as submitted. We will communicate with Participants in the Plan regarding benefits and claims administration.

With respect to any person who submits a claim for Plan benefits which is denied, we will notify said person of the reason for the denial and of his/her right to a review of the denial, in a method designed to satisfy the requirements of the Employee Retirement Income Security Act of 1974 (ERISA).

**CHECKWRITING:** We will provide checkwriting services, as specified in Appendix III.

**BILLING:** Unless you have elected self-administered billing, we will prepare and send you a monthly billing statement.

**REPORTS:** We will provide you with; (a) the monthly reports provided for all Plans, as described in Appendix III; (b) a copy of the reports of payments made to providers which we have sent to the United States Internal Revenue Service on your behalf; (c) reports of claims information for annual reporting to the United States Internal Revenue Service in accordance with ERISA.

**UNDERWRITING:** We will provide you with an expected claims budget for coverage that do not have Aggregate Stop-Loss Protection. An expected claims budget is our estimate of what the paid claims might be for your group based on size and composition. For coverages with Aggregate Stop-Loss protection insured by us, we will provide you with a maximum claims budget. A maximum claims budget is our estimate of the maximum paid claims you will be liable for funding. But any such estimate is not binding on us, and is completely subject to the terms of the Stop-Loss Policy.

**ACTUARIAL SERVICES:** We will provide you with a monthly premium rate for those employees and dependents who elect continuation under COBRA.

**GENERAL SERVICES:** We will furnish a booklet for each employee describing the Self-Funded Benefit Payment Plan. We will provide forms, enrollment cards and any other supplies necessary for operation of the Self-Funded Benefit Payment Plan.

**OTHER SERVICES:** You may enter into a separate agreement with us to provide any necessary service not provided for under this Agreement.

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## Appendix III – Claim Payment Options

This Exhibit is part of this Administrative Services Only Agreement. You may choose a non-checkwriting EOB only service or one of the following checkwriting methods. These options are explained on the following page.

**NOTE: For all options, the Employer is solely liable to fund claims for his employee and their families, if any, when we determine such claims are reimbursable under the self-funded benefit Plan.**

- (1) Choose one of the following options:
- Option A – EOBs only (no checkwriting)
  - Option B – Checkwriting With Direct Banking
  - Option C – Direct Billing
- (2) If the EOB option is required for Run-in, please specify.

### PRINT & RELEASE OF CHECKS & EOBs

- If you have selected EOB only (Option A), Checkwriting with Direct Banking (Option B), or Direct Billing (Option C or D), all checks and EOB's are released daily.

### CHECK SIGNATURE

- If you have selected checkwriting (Option B) or Direct Billing (Option C), Guardian signs all checks.

### DISTRIBUTION OF CLAIM CHECKS & EOB's:

- (1) If you have selected EOB only (Option A) all check EOB's are mailed to the Employer to be distributed.
- (2) For Plans with checkwriting with Direct Banking (Option B), or Direct Billing (Option C or D), we will mail checks and EOB's directly to the employee.

### CHECKWRITING –

Transfer of funds will be done on a daily basis for "cleared" claim checks.

#### Checkwriting

#### Option A – EOB Only (non-checkwriting)

If you have selected this option, we will provide you with an EOB (Explanation of Benefits) for each self-funded claim processed. We do not provide any checkwriting services.

You agree that you are liable to pay such self-funded claims for your employees, and their families, if any. You will distribute checks and EOB's to your employees or their providers, as shown on the EOB's.

#### Option B – Checkwriting with Direct Banking

If you have selected checkwriting with Direct Banking we will provide the checkwriting services described below in order to process claims payments for the self-funded benefit payment Plan.

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These services are:

- (a) an EOB for each processed claim; and
- (b) a corresponding check drawn on your established benefit funding account which we will forward to employees (or to providers if benefits are assigned), with an additional copy to you, depending on the option selected; and
- (c) a daily check register sent directly to you showing the total amount of self-funded claims processed for that day (only sent to you if a check was issued that day).

The Employer must:

- (a) establish a benefit funding account and a client account at their local bank.
- (b) provide sufficient funds in the client account to ensure payment of self-funded benefits.

**Transfer Options: (check one)**

- Daily
- Weekly
- Semi-monthly
- Monthly

**Option C – Direct Billing**

If you have selected the direct billing option, we will provide the checkwriting services described below in order to process claim payments for the self-funded benefit payment Plan.

These services are:

- (a) an EOB for each processed claim; and
- (b) a corresponding check drawn on a claim funding account, which we will forward to employees (or to providers if benefits are assigned), with an additional copy to you depending on the option selected; and
- (c) a monthly check register sent directly to you showing the total amount of self-funded claims processed.
- (d) we will provide you with a claim invoice by the 10<sup>th</sup> day of the month next following the monthly invoice period.

The Employer must pay the claim invoice using the following payment methods:

- (a) Remit a check, which must be received by Guardian on or before the 25<sup>th</sup> day of the month, for the full net balance due.
- (b) Authorize guardian to initiate a monthly electronic transfer of funds from the Employer's local bank account on or before the 25<sup>th</sup> day of the month, equal to the full net balance due.
- (c) Planholder can initiate electronic transfer of funds either by wire transfer or electronic fund transfer to Guardian on or before the 25<sup>th</sup> day of the month, equal to the full net balance due. (Please discuss transfer of funds options with your bank.)

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## Appendix IV Reports

### REPORTS

The following monthly reports are routinely produced for all Plans:

- Monthly financial transaction register
- Monthly Bank Statement
- Aggregate Stop-loss statement (only for Plans with aggregate stop-loss insurance underwritten by Guardian).
- IRS-B Report (if applicable)
- VSP Vision Report (if applicable)
- Davis Vision Report (if applicable)

### REPORT SET-UP

#### **One claim invoice mailed to one location**

- No  
 Yes (See Below)

One claim invoice with attached claim report separated by assigned code. This "Dept" code can be up to 8 characters long and a combination of letters & numbers. The dept code must be noted on the enrollment form for each insured.

Example: Dept - EAST001

#### **Separate invoices mailed to each location**

- No  
 Yes (see Below)

### DENTAL REPORTS

The Following monthly/annual reports are routinely produced for all dental Plans:

- Claims by Patient (also available by division/dept)
- Charges and payments by type of service
- Charges and payments by category
- Preferred Provider (PPO) usage

Dental Plans with 250+ lives sold with service guarantees can receive the following non-standard reports:

- Dental Claims Turnaround Time Report
- PPO Savings Guarantee Report
- Dental Cost Containment Report

Claim Invoices by location/division. Each location/division must be assigned a Dept code, and a combination of letters & numbers. The dept code must be noted on the enrollment form for each insured.

Please Note: limit of 15 divisions

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## Appendix V - Claim Audit Agreement (Sample)

- A. WHEREAS, Guardian Life Insurance Company of America ("Guardian") desires to cooperate with requests by ("A Employer") to permit an audit for the purposes set forth below; and
- B. W H E R E A S , ("the Auditor") has been retained by Employer for the purpose of performing an audit ("Audit") of claims administered by Guardian.
- C. WHEREAS, the Auditor and the Employer recognize Guardian's legitimate interests in maintaining the confidentiality of its claim information, protecting its business reputation, avoiding unnecessary disruption of its claim administration, and protecting itself from legal liability;

NOW THEREFORE, IN CONSIDERATION of the premises and the mutual promises contained herein, Guardian, the Employer and the Auditor hereby agree as follows:

1. Audit Specifications

The Auditor will communicate to Guardian in writing at least forty-five (30) days prior to the commencement of the Audit the following "Audit Specifications":

- a. the name, title and professional qualifications of the individual Auditors;
- b. the Claim Office locations, if any, to be audited;
- c. the Audit objectives;
- d. the scope of the Audit (time period, lines of coverage and number of claims);
- e. the process by which claims will be selected for audit;
- f. the records/information required by the Auditor for purposes of the Audit; and
- g. the length of time contemplated as necessary to complete the Audit.

2. Review of Specifications.

Guardian will have the right to review the Audit Specifications and to require any changes in, or conditions on, the Audit Specifications which may be necessary to protect Guardian's legal and business interests identified in paragraph C above.

3. Access to Information.

Guardian will make the records/information called for in the Audit specifications available to the Auditor at a mutually acceptable time and place

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4. Audit Report.

The Auditor will provide Guardian with a true copy of the Audit's findings, as well as of the Audit Report, if any, that is submitted to the Employer. Such copies will be provided to Guardian at the same time that the Audit findings and the Audit Report are submitted to the Employer.

5. Comment on Audit Report.

Guardian reserves the right to provide the Auditor and the Employer with its comments on the findings and, if applicable, the Audit Report.

6. Confidentiality.

The Auditor understands that Guardian is permitting the Auditor to review the claim records/information solely for purposes of the Audit. Accordingly, the Auditor will ensure that all information pertaining to individual claimants will be kept confidential in accordance with all applicable laws and/or regulations. Without limiting the generality of the foregoing, the Auditor specifically agrees to adhere to the following conditions:

- a. The Auditor shall not make photocopies or remove any of the claim records/information without the express written consent of Guardian;
- b. The Auditor agrees that its Audit Report or any other summary prepared in connection with the Audit shall contain no individually identifiable information.

7. Restricted Use of the Audit Information.

With respect to persons other than the Employer, the Auditor will hold and treat information obtained from Guardian during the Audit with the same degree and standard of confidentiality owed by the Auditor to its clients in accordance with all applicable legal and professional standards. The Auditor shall not, without the express written consent of Guardian executed by an officer of Guardian, disclose in any manner whatsoever, the results, conclusions, reports or information of whatever nature which it acquires or prepares in connection with the Audit to any party other than the Employer except as required by applicable law. The Employer and Auditor agree to indemnify and to hold harmless Guardian for any and all claims, costs, expenses and damages which may result from any breaches of the Auditor's obligations under paragraphs 6 and 7 of this Agreement or from Guardian's provision of information to the Auditor. The Employer authorizes Guardian to provide to the designated Auditor the necessary information to perform the audit in a manner consistent with all Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Privacy Standards and in compliance with the signed Business Associate Agreement ("BAA").

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8. Termination

Guardian may terminate this with prior written notice. The obligations set forth in Sections 4 through 7 shall survive termination of the Agreement.

Guardian Life Insurance Company of America

By: TO BE SIGNED AT TIME OF AUDIT  
Duly Authorized

Print Name:

Title:

Date:

Employer:

By: TO BE SIGNED AT TIME OF AUDIT  
Duly Authorized

Print Name:

Title:

Date:

Auditor:

By: TO BE SIGNED AT TIME OF AUDIT  
Duly Authorized

Print Name:

Title:

Date:

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## Appendix VI – Business Associate Agreement

As of the Effective Date, the terms and provisions of this Business Associate Agreement are incorporated in and shall supersede any conflicting or inconsistent terms and provisions of (as applicable) the Administrative Services Only Agreement and/or Flexible Spending Account or Reimbursement Accounts Administrative Services Agreement to which this Addendum is attached, including all exhibits or other attachments to and all documents incorporated by reference in any such applicable Agreements (individually and collectively any such applicable Agreements are referred to as the "Agreement"). The Business Associate Agreement contained within this Appendix VI sets out terms and provisions relating to the use and disclosure of protected health information without written authorization from the Individual.

This Business Associate Agreement ("BAA") is made and entered into by and between the Plan Sponsor and the group health Plan (collectively the "Covered Entity") and The Guardian Life Insurance Company of America and its affiliates ("Business Associate"), effective this \_\_\_ day of \_\_\_\_\_, 201\_.

In consideration for the promises and the mutual covenants and undertaking set forth in this BAA, including the Business Associate's access to and/or use of Protected Health Information as defined in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended, for those purposes allowed by the Privacy Rule, Security Standards, and Transaction Standards under HIPAA and the Health Information Technology for Economic & Clinical Health Act ("HITECH Act"), as well as any applicable state or federal law consistent with the terms of this BAA, Business Associate and Covered Entity agree as follows:

1. **Definitions.** As used in this BAA:

- 1.1. "Breach" has the same meaning as this term has in §13400 of the HITECH Act, and shall include the unauthorized acquisition, access, use, or disclosure of PHI in a manner not permitted by the Privacy Rule that compromises the security or privacy of such information.
- 1.2. "Designated Record Set" shall mean a group of records maintained by or for Covered Entity that is (i) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (ii) used, in whole or in part, by or for Covered Entity to make decisions about Individuals. As used herein, the term "Record" means any item, collection, or grouping of information that includes Protected Health Information and is maintained, collected, used, or disseminated by or for Covered Entity.
- 1.3. "Electronic Protected Health Information" means Protected Health Information transmitted by or maintained in electronic media by either party.
- 1.4. "HIPAA" shall mean the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act, Public Law 104-191, and any amendments thereto.
- 1.5. "HIPAA Transaction" shall mean Transactions as defined in 45 C.F.R. § 160.103 of the Transaction Standards.
- 1.6. "HITECH Act" means Subtitle D of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (42 U.S.C. §§ 17921 – 53).

- 1.7. "Individual" shall have the same meaning as the term "individual" in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
- 1.8. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, as of the effective date of this BAA and as they may be amended from time to time.
- 1.9. "Protected Health Information (PHI)" shall have the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- 1.10. "Required by Law" shall have the same meaning as the term "required by law" in 45 C.F.R. § 164.103.
- 1.11. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- 1.12. "Security Standards" shall mean the Security Standards at 45 C.F.R. Parts 160, 162, and 164, as of the effective date of this BAA or as they may be amended from time to time.
- 1.13. "Transaction Standards" shall mean the Standards for Electronic Transactions, 45 C.F.R. Parts 160 and 162, as of the effective date of this BAA or as they may be amended from time to time.
- 1.14. "Services Agreement" shall mean any agreement (or other arrangement) under which Business Associate performs a function or activity on Covered Entity's behalf involving the use, disclosure, maintenance, receipt, transmission or creation of Protected Health Information.
- 1.15. "Unsecured Protected Health Information" or "Unsecured PHI" shall mean PHI that is not secured through the use of a technology or methodology specified by the Secretary in guidance or as otherwise defined in the §13402(h) of the HITECH Act.

Terms used, but not otherwise defined, in this BAA (or the Services Agreement) shall have the same meaning as those terms have in 45 C.F.R. §§ 160.103 and 164.501.

## 2. **Obligations and Activities of Business Associate.**

- 2.1. Business Associate agrees that it shall not use or further disclose Protected Health Information other than as permitted or required by this BAA or as Required by Law.
- 2.2. Business Associate shall develop, implement, maintain and use appropriate safeguards to prevent the use or disclosure of Protected Health Information other than as provided for by this BAA.
- 2.3. Business Associate shall develop, implement, maintain written policies and procedures regarding appropriate administrative, technical and physical safeguards for compliance with the HITECH Act, applicable provisions of the Security Standards and any other applicable implementing regulations issued by the Department of Health and the Human Services as they relate to the preservation of the integrity, confidentiality, and availability of electronic Protected Health Information.
- 2.4. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Breach or any other use or disclosure of Protected Health Information in violation of the requirements of this BAA.
- 2.5. Notification Pursuant to an Incident or Breach.

2.5.1. Breach Notification. Business Associate shall report any Breach of Unsecured Protected Health Information to Covered Entity following its discovery. Business Associate shall make such report without unreasonable delay and in any event within five (5) days. Business Associate shall cooperate with Covered Entity in investigating the breach and in meeting Covered Entity's obligations under the breach notification provisions of HIPAA (45 C.F.R. Part 164 Subpart D).

2.5.2. Privacy Incident Notification. With respect to any incident not subject to reporting under the Breach Notification obligations (Section 2.5.1) of this BAA, Business Associate shall promptly report to Covered Entity any Breach or other use or disclosure of Protected Health Information of which it becomes aware that is not permitted or required by this BAA. Business Associate shall make such report as soon as administratively feasible and within a timeframe adequate to allow the Covered Entity to meet its reporting obligation with respect to applicable state and federal reporting requirements.

2.5.3. Security Incident Notification. With respect to any incident not subject to reporting under the Breach Notification (Section 2.5.1) and/or the Privacy Incident Notification (Section 2.5.2) obligations of this BAA, Business Associate shall report to Covered Entity any successful (a) unauthorized access, use, disclosure, modification, or destruction of Electronic Protected Health Information or (b) unauthorized interference with system operations in Business Associate's information system, of which Business Associate becomes aware. Business Associate shall, upon Covered Entity's request, report to Covered Entity any attempted, but unsuccessful (a) unauthorized access, use, disclosure, modification, or destruction of Electronic Protected Health Information or (b) unauthorized interference with system operations in Business Associate's information systems, of which Business Associate becomes aware. Business Associate shall make such report as soon as administratively feasible and within a timeframe adequate to allow the Covered Entity to meet its reporting obligation with respect to applicable state and federal reporting requirements.

2.5.4. Notification Contents. To the extent that any information described below is not available to be included in the Breach Notification, Privacy Incident Notification or Security Incident Notification, the notification must include an explanation of why such information is not available to Business Associate. If any such information later becomes available, the information will be provided to Covered Entity as soon as reasonably practicable after it becomes available.

Each notification will include the following elements (as applicable):

- i. Identification of each individual whose Protected Health Information is known to have been, or is reasonably believed by Business Associate to have been accessed, acquired, or disclosed during the incident;
- ii. Identification of the nature of the non-permitted access, use, or disclosure and the date of the incident and the date of discovery;
- iii. Identification of the types of Protected Health Information accessed, used, or disclosed;
- iv. Identification of who made the non-permitted access, use, or received the non-permitted disclosure;
- v. The steps Business Associate has taken or is taking to investigate the Breach or incident;
- vi. Identification of any corrective action Business Associate has taken or will take to prevent similar Breaches or incidents in the future;
- vii. Identification of any actions Business Associate has taken or will take to mitigate any harmful effects of the Breach or incident;
- viii. An appraisal of whether Business Associate believes its current security measures are adequate given the outcome, scope and nature of the attempt, and if existing security measures are not adequate, the Business Associate's plans for implementing measure that will address the security inadequacies.

In addition, Business Associate shall provide other such information, as Covered Entity may reasonably request, in meeting the Covered Entity's obligations under the breach

notification provisions of HIPAA as well as any other applicable state and/or federal breach notification provisions.

- 2.6. If Business Associate is a subcontracting Business Associate to the Covered Entity, Business Associate agrees to comply with and be bound by any restrictions and conditions that apply to Covered Entity under any business associate agreement that Covered Entity maintains with any entity relating to any Protected Health Information.
- 2.7. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information agrees in writing to the same restrictions and conditions that apply through this BAA to Business Associate with respect to Protected Health Information, including Electronic Protected Health Information. To the extent that a subcontractor or other agent of Business Associate creates, receives, maintains or transmits Electronic Protected Health Information on behalf of Business Associate, Business Associate will ensure that the subcontractor or agent agrees to comply with the applicable requirements of the Security Standards by entering into an agreement that complies with 45 CFR § 164.314.
- 2.8. Business Associate agrees to make its internal practices, books, and records relating to the use and disclosure of Protected Health Information to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule and Security Rule.
- 2.9. Business Associate agrees to document disclosures of Protected Health Information, and information related to such disclosures, as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.
- 2.10. Business Associate agrees to provide to Covered Entity, in a time and manner designated by Covered Entity, information collected in accordance with documentation of disclosure requirements of this BAA (and 45 C.F.R. § 164.528), to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.
- 2.11. To the extent reasonably necessary for Covered Entity to comply with 45 CFR § 164.524(c)(2), if Business Associate maintains PHI in an electronic format for any Individual, Business Associate agrees to provide, at the request of an Individual, and in the time and manner designated by the Individual, a copy of such information in the electronic format designated by the Individual to that Individual or, if clearly, conspicuously and specifically directed by the Individual to transmit an electronic copy of that information directly to an entity or person designated by the Individual. If electronic information described in the preceding sentence is not readily producible in the form and format requested by the Individual, it will be provided in a readable electronic form and format as agreed to by Business Associate and the Individual, or, if no agreement is reached in a hard copy format. If a request described in this Section is made by the Individual to Covered Entity instead of Business Associate, Business Associate shall promptly provide Covered Entity with the information in a Designated Record Set as necessary for Covered Entity to comply with an Individual's request for access pursuant to 45 C.F.R. § 164.524.
- 2.12. Upon direction from Covered Entity, Business Associate shall amend records in a Designated Record Set as necessary for Covered Entity to comply with an Individual's amendment request pursuant to 45 C.F.R. § 164.526, or, in the alternative, Business Associate shall allow Covered Entity access to records in a Designated Record Set as necessary for Covered Entity to comply with an Individual's amendment request pursuant to 45 C.F.R. § 164.526.
- 2.13. Business Associate shall comply with any limitation in Covered Entity's Notice of Privacy Practices, as such Notice may be updated from time to time. Business Associate shall comply with any restriction request or confidential communications request to which Covered Entity agrees, provided that Covered Entity makes Business Associate aware of such request.

- 2.14. To the extent that Covered Entity delegates to Business Associate any obligation imposed on Covered Entity by the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such delegated obligation.
- 2.15. Business Associate shall encrypt Electronic Protected Health Information prior to saving it on portable media. In other circumstances, Business Associate shall encrypt Electronic Protected Health Information whenever reasonably practicable.
- 2.16. Upon request, Business Associate shall provide Covered Entity with a list of personnel who are authorized to receive or use Protected Health Information pursuant to this BAA.
- 2.17. Business Associate, and its agents and subcontractors, if any, are prohibited from directly or indirectly receiving any remuneration in exchange for any of Covered Entity's PHI.
- 2.18. Business Associate, and its agents and subcontractors, if any, are prohibited from use or disclosure of Genetic Information (as defined in 29 C.F.R. §160.103 except as permitted by 45 C.F.R. § 164.502(a)(5)(i).

### 3. Permitted Uses and Disclosures by Business Associate.

- 3.1. General Use. Except as otherwise limited in this BAA, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity, provided that such use or disclosure would not violate (i) the Privacy Rule, (ii) the HITECH Act or (iii) the minimum necessary standard as set forth by 45 C.F.R. § 164.502(b) if done by Covered Entity.
- 3.2. Specific Use and Disclosure.
  - 3.2.1. Except as otherwise limited in this BAA, Business Associate may use Protected Health Information for the proper management and administration of Business Associate or to carry out its legal responsibilities.
  - 3.2.2. Except as otherwise limited in this BAA, Business Associate may disclose Protected Health Information for its proper management and administration, provided that such disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that: (i) 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 entity (or person), and (ii) the person (or entity) will notify Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
  - 3.2.3. Except as otherwise limited in this BAA, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B), to the extent Business Associate performs such services.
  - 3.2.4. Business Associate may use Protected Health Information to report violations of law to appropriate state and/or federal authorities, consistent with 45 C.F.R. § 164.502(j)(1).
  - 3.2.5. Business Associate may require, as the Privacy Rule allows, that certain requests made by Individuals be made in writing; in furtherance of this Business Associate may create forms for use by Individuals in making such requests. When responding to an Individual's request as provided above, Business Associate may inform the Individual that there may be other "protected health information" created or maintained by Covered Entity or Covered Entity's other business associates and not included in the Business Associate's response. Business Associate shall not be responsible for performing any duties described in the Business Associate Agreement with respect to any such other "protected health information." In carrying out its duties set forth herein, Business Associate may establish such additional

procedures and processes for requests from Individuals as permitted by the Privacy Rule.

3.2.6. Business Associate shall disclose PHI to either Covered Entity, other business associates of Covered Entity, or any person/entity under the control of Covered Entity (including Designated Third Parties) to the extent that Business Associate's obligations under its service agreement with Covered Entity requires Business Associate to disclose (or provide access to) PHI to the aforementioned parties. Business Associate may require that Covered Entity have a business associate agreement with such Designated Third Party. Furthermore, Business Associate may impose other conditions on or for disclosure, such as requiring that the request will (1) be pursuant to the written request by Covered Entity (2) identify the recipient (by name, title, or other appropriate designation) to Business Associate and (3) be for the purpose of Covered Entity obtaining premium bids for the provision of health insurance or HMO coverage; modifying, amending or terminating coverage; or carrying out the administration functions that Covered Entity performs for the coverage(s). Designated Third Parties may include, but are not limited to, third-party administrators, consultants, brokers, auditors, successor administrators or insurers, and stop-loss carriers.

#### 4. **Obligations of Covered Entity.**

- 4.1. Covered Entity shall notify Business Associate of any limitation(s) in the Notice of Privacy Practices of Covered Entity in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.
- 4.2. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.
- 4.3. Covered Entity shall notify Business Associate of any restriction(s) to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction(s) may affect Business Associate's use or disclosure of Protected Health Information.
- 4.4. Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except as specifically permissible by this BAA and the Privacy Rule.
- 4.5. Covered Entity shall notify Business Associate of any requests by Individuals for amendment to PHI contained in a Designated Record Set, whenever such a request is made directly to the Covered Entity. Within five (5) business days of such receipt, the Covered Entity shall forward such request to Business Associate for handling, except that the Covered Entity shall retain and handle all such requests to the extent that they pertain to Individually Identifiable Health Information (such as enrollment information) originated by the Covered Entity or the Covered Entity's other business associates.

Furthermore, with respect to requests from Individuals handled by Business Associate, the Covered Entity delegates to Business Associate the duty to determine, on behalf of the Covered Entity, whether to deny a request for amendment of PHI and the duty to provide any required notices and review as well as, in the case of its determination to grant such a request, the duty to make any amendments in accordance with the terms of the Privacy Rule. In all other instances, the Covered Entity retains all responsibility for handling such requests, including any denials, in accordance with the Privacy Rule.

- 4.6. Covered Entity shall, upon receiving any the request for an accounting of disclosures of PHI held by Business Associate, forward such requests to Business Associate for processing within five (5) business days.
- 4.7. Covered Entity shall forward to Business Associate any requests for privacy protection of PHI in Business Associate's possession pursuant to the requirements of 45 C.F.R. § 164.522.

## 5. Term and Termination.

- 5.1. Term. The Term of this BAA shall be effective as of the date of execution and shall terminate upon (i) termination of the Services Agreement and (ii) when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed, returned or protected in accordance with the terms of this BAA.
- 5.2. Termination for Breach. Upon a material breach of the terms of this BAA by Business Associate, Covered Entity shall, at its option: (i) provide an opportunity for Business Associate to cure the breach or end the violation and terminate this BAA (and the Service Agreement) if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity; or (ii) immediately terminate this BAA (and the Services Agreement) if Business Associate has breached a material term of this BAA and cure is not possible.
- 5.3. Other Circumstances Allowing for Immediate Termination. Notwithstanding anything to the contrary in this BAA, Covered Entity may terminate this BAA immediately upon written notice to Business Associate without liability for such termination, in the event that Business Associate is found to have (or stipulates that it has) violated any privacy, security or confidentiality protection requirements under any applicable information privacy and protection law in any administrative or civil proceeding in which Business Associate has been joined.
- 5.4. Conditions of Termination. Upon termination of this BAA, for any reason, Business Associate shall return to Covered Entity (or destroy) all Protected Health Information. In the event that return (or destruction) of the Protected Health Information is infeasible, Business Associate shall extend the protections of this BAA to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information. This provision shall apply to Protected Health Information that is in the possession of Business Associate's subcontractors (or agents).
- 5.5. The termination provisions of this Section 5 shall supersede and replace any contrary provision that may appear in said underlying Services Agreement.

## 6. Miscellaneous.

- 6.1. Amendment. The parties agree to amend this BAA, as appropriate, to conform to any new or revised legislation, rules and regulations to which parties are subject now or in the future including, without limitation, the Privacy Rule, Security Standards or Transactions Standards, as well as any other applicable state or federal law. Business Associate may amend this BAA to reflect changes to applicable law by providing Covered Entity notice of an amendment to this BAA at least thirty (30) days prior to the amendment's effective date, Covered Entity may reject the terms of the amendment by providing written notice of rejection to Business Associate's Legal Department within thirty (30) days of receiving the amendment. If Covered Entity fails to provide such notice, Covered Entity will be deemed to have agreed to the amendment and the amendment will be binding on Covered Entity without signature or other action by Covered Entity. If Covered Entity rejects the terms of the amendment, Business Associate may terminate this BAA and the Services Agreement in accordance with the termination provision of Section 5 of this BAA. Otherwise, no provision

of this BAA may be modified except by a written document signed by duly authorized representatives of the parties.

- 6.2. Survival. The respective rights and obligations of Business Associate under the Conditions of Termination (Section 5.4) shall survive the termination of this BAA.
- 6.3. Interpretation. Any ambiguity in this BAA shall be resolved to permit Covered Entity to comply with the Privacy Rule, Security Standards, Transaction Standards, and HITECH Act.
- 6.4. Indemnification. Business Associate shall indemnify Covered Entity for any and all reasonable costs and attorney's fees that Covered Entity incurs arising from a violation by Business Associate of its obligations hereunder. In turn, Covered Entity shall indemnify Business Associate for any and all reasonable costs and attorney's fees that Business Associate incurs arising from a violation by Covered Entity of its obligations hereunder.
- 6.5. Third Party Rights. The terms of this BAA are not intended, nor should they be construed, to grant any rights to any parties other than Business Associate and Covered Entity.
- 6.6. Entire Agreement. The BAA constitutes the entire agreement of the parties with respect to the parties' compliance with federal and/or state health information confidentiality laws and regulations, as well as the parties' obligations under the business associate provisions of 45 C.F.R. Parts 160 and 164. This BAA supersedes all prior or contemporaneous written or oral memoranda, arrangements, contracts or understandings between the parties with respect to the parties' compliance with federal and/or state health information confidentiality laws and regulations.
- 6.7. Conflict. In the event of a conflict between the terms of the Services Agreement and this BAA, this BAA will control.
- 6.8. Electronic Transactions. Business Associate hereby represents and warrants that, to the extent that it is electronically transmitting any of the HIPAA Transactions for Covered Entity, the format and structure of such transmissions shall be in compliance with the Transaction Standards.
- 6.9. Minimum Necessary. Business Associate shall, if practicable, use, disclose, or request Protected Health Information in a limited data set, as that term is defined in 45 C.F.R. § 164.514(e)(2). Otherwise, Business Associate shall request from Covered Entity or a third party only the minimum amount of information necessary to perform services under this BAA. Business Associate shall develop, implement, maintain and use policies and procedures to limit uses and disclosures of Protected Health Information to the minimum necessary to perform services under this BAA. Business Associate shall determine what constitutes the minimum necessary Protected Health Information to accomplish the intended purpose of any disclosure and shall not rely on a request from a third party being for the minimum necessary, except as allowed under the Privacy Rule pursuant to the HITECH Act.
- 6.10. Notice. All notices required under this BAA shall be in writing and shall be deemed to have been given on the next day upon delivery by fax or other electronic means or upon personal delivery, or in ten (10) days upon delivery in the mail, first class, with postage prepaid. Notice to either party by the other shall be sent to the attention of the party's Privacy Office. Either party may at any time change its address for notification purposes by mailing a notice to the other stating the change and setting forth the new address.
- 6.11. Owner of Protected Health Information. Under no circumstances shall Business Associate be deemed in any respect to be the owner of any Protected Health Information used or disclosed, created or maintained by or to Business Associate pursuant to the terms of this BAA.

## APPENDIX VII – ASO Fee Guarantee

This Appendix is part of this Administrative Services Only Agreement.

The following applies only if this Plan has the ASO Fee Guarantee, as indicated in Appendix I.

We guarantee that Savings, as demonstrated by Guardian, will exceed all ASO fees during the experience period. If Savings do not exceed ASO fees, we will refund you the difference.

"Savings" refers to the Employer Portion of the sum of Fee Schedule Savings generated by fee schedule discounts from our PPO dentists and Dental Review Logic (DRL) Savings.

"Employer Portion" of savings is the portion of Allowable Charges paid by the Plan times Savings.

"Allowable Charges" means both benefits paid by the Plan and amounts for which a covered person is responsible due to coinsurance, deductibles, copays and benefit maximums.

"Fee Schedule Savings" is the difference between the provider's usual fee as submitted on the claim form to Guardian and the contracted fee schedule expressed as a percentage. When a provider submits the contracted charge instead of the usual fee, we will use the average charge for the service performed in the area of the provider's office.

"Dental Review Logic (DRL) Savings" are savings generated by our claims payment procedures. We save the Employer claims dollars by adjusting claims due to the application of frequency limits, age and time limits, history checks, alternate treatment provisions and professional review. We also check to see if a service is considered a component of a more comprehensive procedure.

Please note that we reserve the right to not honor this guarantee if either the terms of the Plan's provisions are changed or the Member demographics change by 10 percent or more after the effective date of this.

Customer Name: Highlands County  
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## **APPENDIX VIII – PPO and DRL Savings Guarantees**

This Appendix is part of this Administrative Services Only Agreement.

The following applies only if this Plan has a PPO and/or DRL Savings Guarantees, as indicated in Appendix I.

**PPO Savings Guarantee** - For all in-network paid claims during the experience period, excluding orthodontia, we guarantee that using our DentalGuard Preferred PPO dentists will save you the percentage shown in Appendix I. At the end of the experience period, we will compare the dentists' standard fees to our PPO fee schedule. If the savings are less than the indicated percentage, we will refund the difference between the actual and guaranteed savings that was paid by the Plan in excess of any deductible or coinsurance up to 10% of the paid ASO fees.

"Savings" refers to the Employer Portion of the sum of Fee Schedule Savings generated by fee schedule discounts from our PPO dentists.

"Employer Portion" of savings is the portion of Allowable Charges paid by the Program times Savings.

"Experience Period" means the time period that starts on the effective date of this and ends on the date the Agreement is evaluated for renewal.

"Allowable Charges" means both benefits paid by the Plan and amounts for which a covered person is responsible due to coinsurance, deductibles, copays and benefit maximums.

"Fee Schedule Savings" is the difference between the provider's usual fee as submitted on the claim form to Guardian and the contracted fee schedule expressed as a percentage. When a provider submits the contracted charge instead of the usual fee, we will use the average charge for the service performed in the area of the provider's office.

Please note that we reserve the right to not honor this guarantee if either the terms of the Plan Level Particulars are changed or the Member demographics change by 10 percent or more after the effective date of this Agreement.

**DRL Savings Guarantee** - For all claims submitted during the experience period, we guarantee that the application of Guardian's Dental Review Logic, our sophisticated claims processing logic, will save you at least the percentage shown in Appendix I. At the end of the experience period, we will compare the actual savings to the guaranteed savings. If the savings are less than the indicated percentage, we will refund the difference between the actual and guaranteed savings up to a maximum refund of 10% of paid ASO fees.

"Savings" refers to the Employer Portion of the sum of savings generated by Dental Review Logic application.

"Employer Portion" of savings is the portion of Allowable Charges paid by the Plan times Savings.

"Experience Period" means the time period that starts on the effective date of this Agreement and ends on the date the Agreement is evaluated for renewal.

Customer Name: Highlands County  
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"Allowable Charges" means both benefits paid by the Plan and amounts for which a covered person is responsible due to coinsurance, deductibles, copays and benefit maximums.

"Dental Review Logic (DRL) Savings" are savings generated by our claims payment procedures. We save the Employer claims dollars by adjusting claims due to the application of frequency limits, age and time limits, history checks, alternate treatment provisions and professional review. We also check to see if a service is considered a component of a more comprehensive procedure.

Please note that we reserve the right to not honor this guarantee if either the terms of the Plan's provisions are changed or the Member demographics change by 10 percent or more after the effective date of this Agreement.



# HIGHLANDS COUNTY

BOARD OF COUNTY COMMISSIONERS

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July 16, 2015

To: TD Bank NA

Please be advised that we hereby authorize you to honor, execute, and charge to our account number 4259139446 any and all requests or orders for the transfer of funds received from Bank of America, Bank of America, ATTN: Sheila Turner, 901 Main Street, Dallas, TX 75202.

**If there are any ACH Blocks on any funding accounts, please filter the following COMPANY IDs so that the funding transactions initiated by Bank of America can be accepted:**

- 9900000300
- 011900445
- 1122334455

Sincerely,

June Fisher  
County Administrator

600 S. Commerce Ave., B233  
Sebring, Florida 33870  
Phone: 863-402-6500  
Fax: 863-402-6808



# HIGHLANDS COUNTY

BOARD OF COUNTY COMMISSIONERS

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## CLIENT CHECKWRITING AUTHORIZATION FORM

Guardian Plan Number 514206

Account Name – Highlands County Board of County Commissioners Clearing Account

Bank Name – TD Bank NA

Name of Bank Representative – Joy Baker

Bank Address – 4400 S Florida Av, Lakeland, FL 33813

Bank Telephone Number – 888-223-7636

Name on Bank Account - William Ron Handley – Chairman of the Board  
Robert Germaine, Clerk of Courts

Bank Account Number - 4259139446

Bank Routing Number (ABA#) - 067014822

600 S. Commerce Ave., B233  
Sebring, Florida 33870  
Phone: 863-402-6500  
Fax: 863-402-6808



# HIGHLANDS COUNTY

BOARD OF COUNTY COMMISSIONERS

September 2, 2015

Bank of America  
ATTN: Global Treasury Services  
901 Main Street  
Dallas, TX 75202

Dear Sir or Madam:

Please be advised that an agreement has been reached with The Guardian Life Insurance Company of America (The Guardian), Bethlehem, PA, whereby The Guardian is to act as our agent in making benefit payments for which we are liable under certain of our employee benefit plan.

We wish to establish a Benefit Funding account in the name of Highlands County Board of County Commissioners, to fund those employee benefits, which The Guardian processed on our behalf. The Guardian will advise you of the amount to be debited from the Benefit Funding Account being established herein. You are authorized to transfer from our Client Account on a monthly basis, sufficient funds to cover the total amount of our identified liability as determined by The Guardian.

We authorize you, upon receipt of instructions from The Guardian, to advise our bank, as designated herein, to act within one day a request is made, ensuring that sufficient Federal Funds are deposited in our Client Account.

Transfers are to be made by Depository Transfer Checks (DTC's). A sample specification sheet is enclosed, indicating Employer bank name, transit and routing number, and account number.

We understand that you may advance funds to our Benefit Funding Account on our behalf in order to fund payments from the time drafts are presented for payment until the reimbursement is provided by our designated bank and we agree to repay all such advances.

Also enclosed is a certified copy of a resolution adopted by our Board of Directors on September 15, 2015 under which authority to execute this agreement is granted.

Sincerely,

William Handley  
Highlands County Board of County Commissioners





## HIGHLANDS COUNTY

BOARD OF COUNTY COMMISSIONERS

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July 16, 2015

Bank of America  
ATTN: Global Treasury Services  
901 Main Street  
Dallas, TX 75202

Dear Sir or Madam:

Reference is made to Highlands County Board of County Commissioners whose Employee Benefit Plan is administered by The Guardian under group benefits plan 514206. Claim checks will be issued by The Guardian on behalf of Highlands County Board of County Commissioners and will be paid from the Employer's Benefit Funding Account at Bank of America.

We hereby agree to honor as received requests for Depository Transfer of funds against Highlands County Board of County Commissioners' bank account, number 4259139446 held at TD Bank NA for credit to their Benefit Funding Account at Bank of America.

Sincerely,

June Fisher  
County Administrator

600 S. Commerce Ave., B233  
Sebring, Florida 33870  
Phone: 863-402-6500  
Fax: 863-402-6808



**HIGHLANDS COUNTY**  
**BOARD OF COUNTY COMMISSIONERS**

September 2, 2015

Corporation: Highlands County Board of County Commissioners  
Group Plan No. 514206  
Bank: TD Bank  
Board Meeting Date: September 15, 2015

**CERTIFICATION OF BOARD RESOLUTION**

I, the Secretary of the Corporation, hereby certify to Bank of America that the resolution set forth below was duly adopted by the Board of Directors of the Corporation at a meeting held on the Board Meeting Date, September 15, 2015.

Resolve what Bank of America is and hereby is designated as a depository of funds of the Corporation for the specific purpose of funding certain benefits under the Highlands County Board of County Commissioners Employee Benefits Plan established in conjunction with The Guardian. This resolution shall remain in effect until revoked by the Board of Directors and Directors and until the Bank is notified of such revocation.

Witness my hand and the seal of the Corporation this <sup>15th</sup> ~~September~~ day of September, 2015.

William R. Handley  
Signature

William Handley  
Print Name & Title



STATE OF FLORIDA  
COUNTY OF HIGHLANDS

The foregoing instrument was acknowledged before me this 25th day of September, 2015, by  
(name of person acknowledging.)

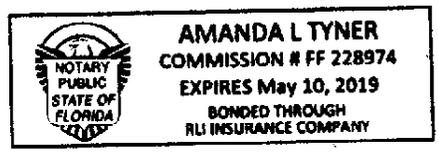
Amanda L Tyner  
(Seal) Signature of Notary Public

Print, Type/Stamp Name of Notary

Personally known:

OR Produced Identification: \_\_\_\_\_

Type of Identification Produced: \_\_\_\_\_



Customer Name: Highlands County  
Group Plan Number: 00514206  
Administrative Services Only Agreement

### SIGNATURES

IN WITNESS WHEREOF, the parties have caused this Agreement, and all Exhibits and Addenda to this Agreement, to be executed in duplicate and signed by their respective officers duly authorized to do so as of the dates given below. Employer executes as the authorized representative of the Plan with respect to the Privacy Addendum to this Agreement.

Dated at \_\_\_\_\_,

Customer Name: Highlands County



This 15th day of September 2015

By William R. Handley  
Name William R. Handley

Its Chairman

Duly Authorized

Dated at \_\_\_\_\_,

THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA

This 5 day of July, 2016

By Rebecca St Horan  
Name: Rebecca St Horan  
Its National Manager  
Duly Authorized