

DDM SERVICE AGREEMENT

This DDM Service Agreement, made as of _____, 200__ (“the Effective Date”), by and between _____, having its principal office at _____ (the "Employer") and ELAP, Inc., having its principal office at Ludwigs Corner Professional Center, 961 Pottstown Pike, Chester Springs, PA 19425 (the "Designated Decision Maker" or "DDM");

When the Employer is acting as the Plan Sponsor under this Agreement, it will be referred to as the “Plan Sponsor,” and when it is acting as the Administrator of the Plan under this Agreement, it will be referred to as the “Plan Administrator.” As Plan Sponsor, the Company is acting in its capacity as the settlor of the Plan; and, as the Plan Administrator, it is acting in its fiduciary capacity;

WITNESSETH:

Whereas, the Plan Sponsor has established an Employee Welfare Benefit Plan, for the purpose of providing certain welfare benefits to eligible participants (the "Plan");

Whereas, the Plan Administrator desires to have the DDM act as a fiduciary with respect to certain health benefit claims and appeals which are filed under the Plan;

Whereas, the DDM desires to provide such services to the Plan; and

Whereas, the parties desire to set forth the terms and conditions upon which the DDM will provide such services.

Now, therefore, in consideration of the mutual covenants and agreements hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Defined Terms. Capitalized terms which are not otherwise defined in this Agreement shall have the meanings set forth in the Employee Retirement Income Security Act of 1974, as amended ("ERISA") or in the Exhibits which are attached hereto and made a part hereof. As used herein, the following terms shall be defined as follows:

(a) "Damages" shall mean (i) all attorneys' fees incurred by the DDM in connection with a Referred Appeal; (ii) all attorneys' fees incurred by the Plan Sponsor, the Plan Administrator and/or the Plan in connection with a Referred Appeal, if such attorneys are designated by the DDM; (iii) all other fees, costs and expenses resulting from the investigation, adjudication, and defense (including any appeal) of a Referred Appeal incurred by the DDM or, with prior written consent of the DDM, by the Plan Sponsor, Plan Administrator and/or the Plan; (iv) any restitutionary damages finally awarded by a court of competent jurisdiction to a participant; and (v) any attorneys' fees and costs incurred by the participant if a court of competent jurisdiction finally determines that such fees and costs are to be paid by the Plan Sponsor, the Plan Administrator, the Plan and/or the DDM. "Damages" shall not mean sanctions; fines; penalties; taxes; multiple, exemplary or punitive damages; or the amount of any Health Benefit Claim;

(b) "Referred Appeal" shall mean any final appeal of a denied Health Benefit Claim under the Plan, which shall be referred to the DDM by the Plan Administrator. "Referred Appeal" shall not mean any appeals of Pre-service Urgent Care Claims (as defined in 29 C.F.R. § 2560.503-1 (the "DOL Claims Processing Regulations")), which shall be the sole responsibility of the Plan Administrator and any other person or entity to whom it may delegate such responsibility;

(c) "Health Benefit Claim" shall mean a claim for benefits filed by a participant in the Plan, where the request for approval of treatment or services or the rendering of services or supplies occurred during the term of this Agreement. "Health Benefit Claim" shall not mean any Pre-service Urgent Care Claims;

(d) "Limit of Liability" shall mean an amount equal to One Million Dollars (\$1,000,000) per Referred Appeal;

(e) "Third Party Administrator" shall mean the entity engaged by the Plan Administrator to provide certain claims processing and other ministerial services to the Plan; and

(g) "Plan Documents" shall mean the documents establishing and governing, and setting forth the benefits of, the Plan, including the plan document and the Summary Plan Description.

2. Responsibilities of DDM. The DDM shall provide the services set forth on Exhibit A, which is attached hereto and made a part hereof, in the manner set forth therein.

3. Responsibilities of Plan Administrator and Third Party Administrator. The Plan Administrator shall perform, and shall cause the Third Party Administrator to perform, the duties set forth on Exhibit B, which is attached hereto and made a part hereof, in the manner set forth therein.

4. Compensation of DDM. The DDM shall receive, as its compensation for services provided under this Agreement, an amount equal to _____ (\$_____) per employee enrolled in the Plan per month. Such amount shall be due on the first of each month during the term of this Agreement.

5. Liability of the Parties.

5.1. Amount of Liability. The DDM shall be responsible for all Damages; provided, however, that DDM's total liability under this provision is limited to the Limit of Liability. The parties agree that responsibility for any Damages in excess of the Limit of Liability shall be that of the Plan Sponsor, the Plan Administrator and/or the Plan.

5.2. Exclusions. The DDM shall not be liable for any Damages incurred by the Plan Sponsor, the Plan Administrator and/or the Plan in connection with any Referred Appeal, if and to the extent that such Damages are (a) the result of negligence or willful misconduct by the Plan Sponsor, the Plan Administrator or the Third Party Administrator in performing its duties under this Agreement, including those set forth on Exhibit B; or (b) the result of language in the Plan Documents which is not in compliance with applicable law or which otherwise is unenforceable.

5.3. Notification. The Plan Sponsor and/or the Plan Administrator shall notify the DDM, in writing, of the commencement of any litigation relating to a Referred Appeal or the occurrence of any event which might give rise to liability under this section within three (3) business days following such commencement or occurrence. In the event the Plan Sponsor and/or the Plan Administrator fail to provide such written notice within three (3) business days following such commencement or occurrence, then the DDM shall have no responsibility in connection with such litigation or event. An occurrence, as used in this section, shall refer to a service of complaint, writ of summons, or letter of representation from an attorney for a plan participant or medical provider.

6. Exclusivity. The rights granted to the Plan Sponsor, the Plan Administrator and/or the Plan pursuant to this Agreement shall be deemed to be their exclusive rights with respect to the subject matter of this Agreement.

7. Term and Termination. The initial term of this Agreement shall be one (1) year, beginning on _____, 200__, through _____ 200__, or as otherwise set forth in this Section 7. This agreement shall renew itself automatically for additional one-year periods of time, unless and until terminated by either party in accordance with the provisions of this Section 7. This Agreement shall terminate as follows:

7.1. By Either Party with Notice. Either party to this Agreement may terminate it by giving sixty (60) days' prior written notice thereof to the other party.

7.2. By DDM Upon Failure to Pay Fees. The DDM may resign without prior notice at any time, and this Agreement shall immediately terminate, if the Employer does not pay the fees set forth in Section 4 within ten (10) days of the due date.

7.3. Rights and Duties Upon Termination. As of the date of termination of this Agreement, all rights and obligations of the parties shall terminate, except that (a) the DDM shall continue to perform its obligations under this Agreement with respect to any Referred Appeal of a Health Benefit Claim, provided that the Plan Documents continue to name the DDM as a designated decision maker with maximum discretionary authority with respect to such Referred Appeals; and (b) the Plan Sponsor shall pay all fees which are due and owing under this Agreement as of the date of termination.

8. Binding Effect; Assignment. This Agreement shall be binding upon the parties hereto and their successors and assigns; provided, however, that neither party may assign its rights or obligations hereunder without the prior written consent of the other.

9. Severability. Any provision of this Agreement which is adjudicated to be invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability only, and shall be deemed reformed so as to continue to apply to the maximum extent and to provide the maximum indemnification permissible to the Plan Sponsor, the Plan Administrator and/or the Plan under the applicable law of any such jurisdiction. Any such adjudication shall not invalidate or render unenforceable any of the remaining provisions herein.

10. Notices. All notices hereunder shall be in writing and delivered by hand or by overnight delivery. Notice shall be deemed to be given upon receipt. Notices shall be directed to the parties at their respective addresses set forth above, or at such other addresses as the parties may from time to time designate in writing.

11. Entire Agreement; Modification. This Agreement represents the entire agreement between the parties relating to the subject matter hereof. No provision of this Agreement may be modified, except in writing, signed by the parties.

12. Controlling Law. This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania, without regard to its conflicts of laws provisions.

In witness whereof, the parties hereto have caused this Agreement to be executed as of the date first above written.

ATTEST:

THE EMPLOYER

By:

Its Duly Authorized _____

ATTEST:

_____ **ELAP, Inc.** _____

By:

Its Duly Authorized _____

Exhibit A
Responsibilities of DDM

1. Limitation of Responsibility, Liability and Authority of the DDM. It is understood and agreed that the DDM shall have no responsibility, liability or authority under the Plan other than with respect to Referred Appeals.

2. Determinations of Referred Appeals. The DDM shall have the responsibility and full discretionary authority to review and decide any and all Referred Appeals. In doing so, it may, in its sole discretion, use the services of such third party consultants as it deems necessary and shall pay any fees associated therewith. The DDM shall make such decisions, and provide notice thereof to the participants, within the timeframes set forth in the DOL Claims Processing Regulations. Such notices shall meet the requirements set forth in the DOL Claims Processing Regulations. Simultaneously with providing notice to the participant, the DDM shall advise the Third Party Administrator and the Plan Administrator of its determination and provide to each of them a copy of the notice.

In carrying out its responsibilities under this Paragraph 2, the DDM shall be acting as a fiduciary of the Plan and shall adhere to the applicable standards of conduct, which are set forth in 29 U.S.C. § 1104(a)(1)(A), (B) and (D).

3. Plan Administrator Disagreement. In the event the Plan Administrator does not agree with the DDM's determination regarding a Referred Appeal and elects to override such determination, then all obligations of the DDM under this Agreement with respect to such Referred Appeal shall terminate. More specifically, the DDM shall have no obligation to indemnify or hold the Plan, the Plan Sponsor and/or the Plan Administrator harmless with respect to such Referred Appeal.

Exhibit B
Responsibilities of Plan Sponsor, Plan Administrator and Third Party Administrator

1. Referred Appeals. Referred Appeals shall be forwarded to the DDM by the Third Party Administrator or the Plan Administrator within three business days of receipt of the appeal. The Third Party Administrator and the Plan Administrator shall comply with the requirements of this Paragraph 1, even if the participant has forwarded a copy of the appeal to the DDM.

2. Ancillary Documents. The Plan Administrator or the Third Party Administrator shall provide the entire file relating to the denied Health Benefit Claim which is the subject of a Referred Appeal to the DDM, within the timeframe set forth in Paragraph 1 above.

3. Plan Document and Summary Plan Description. Prior to the execution of this Agreement, the Plan Administrator shall furnish to the DDM a copy of the Plan Document and Summary Plan Description, together with any amendments thereto. Any amendments which are thereafter adopted shall be furnished to the DDM no later than the effective date of such amendment. The Plan Administrator agrees that it shall ensure that the Plan Document, Summary Plan Description and all amendments thereto (a) are adopted in accordance with ERISA and any applicable law and comply with the requirements of ERISA, the regulations adopted thereunder and any other applicable law; and (b) the aforementioned documents must name the DDM as a designated decision maker with maximum discretionary authority with respect to Referred Appeals. The amendment setting forth the provisions of (b) shall be in a form acceptable to the DDM.

4. Exclusions. The Plan Sponsor shall have full responsibility for ensuring that all exclusions in the Plan Document and Summary Plan Description are written in such a way so as to be enforceable. In the event that an exclusion is not enforceable, in the DDM's opinion, then the DDM shall have the authority to direct the payment of any related Health Benefit Claim, and the DDM shall have no further liability in connection therewith, including the liability set forth in Section 5 of this Agreement.

5. Specific Exclusions. Simultaneously with the execution of this Agreement, the Plan Sponsor shall amend the Plan Document and Summary Plan Description so that the exclusions relating to medical necessity, illegal acts and experimental or investigational treatment and supplies are in conformity with the language provided by the DDM.

6. Claims Processing and Appeals. The Plan Administrator and the Third Party Administrator shall comply with all requirements of the DOL Claims Processing Regulations in the processing of Health Benefit Claims and appeals under the Plan.

7. Administrative Safeguards. The Plan Administrator and the Third Party Administrator shall provide the DDM with a description of the administrative safeguards which are in place to ensure consistent application of Plan provisions, in accordance with the requirements of the DOL Claims Processing Regulations.