

BOARD OF TRUSTEES  
AGENDA

<input type="checkbox"/> Workshop	<input checked="" type="checkbox"/> Regular	<input type="checkbox"/> Special
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- (A)  Report Only  Recognition

Presenter(s):

Briefly describe the subject of the report or recognition presentation.

- (B)  Action Item

Presenter(s): SAMUEL MIJARES, SUPERINTENDENT  
ISMAEL MIJARES, DEPUTY SUPERINTENDENT FOR BUSINESS & FINANCE

Briefly describe the action required.

CONSIDER AND TAKE APPROPRIATE ACTION ON THE REQUEST TO APPROVE THE CORE SERVICE AGREEMENT AND COST-CONTAINMENT SERVICES AGREEMENT WITH ELAP SERVICES, LLC.

- (C) Funding source: Identify the source of funds if any are required.

HEALTH INSURANCE FUND

- (D) Clarification: Explain any question or issues that might be raised regarding this item.

SEE ATTACHED CONTRACTS.

## CORE SERVICES AGREEMENT

**This Core Services Agreement** (the “Agreement”), made as of December 1, 2022 (the “Effective Date”), by and among Eagle Pass Independent School District (the “Employer”), and ELAP Services, LLC (“ELAP”);

**Whereas**, the Employer has established Eagle Pass Independent School District Benefit Plan for the purpose of providing certain group-health plan benefits to eligible participants (the “Plan”);

**Whereas**, ELAP is a service provider that offers and provides, through itself and/or its affiliates, claims-review services, claims-audit services and various other similar and related services;

**Whereas**, the Employer desires to engage ELAP to provide claims-review services, claims-audit services, and various other similar and related services to the Plan;

**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:

### ARTICLE 1. DEFINITIONS

As used herein, the following terms shall be defined as follows:

- (a) **“Allowable Claim Limit”** shall have the meaning set forth in the Plan Documents and, to the extent not inconsistent with the Plan Documents, shall refer to the reimbursement limits established by the Plan for health, wellness, medical services and supplies listed and included as covered benefits under the Plan.
- (b) **“Charges”** shall mean the fees that a Out-of-Network Provider charged a Plan Participant or the Plan on a Claim.
- (c) **“Claim”** shall mean a medical benefit claim submitted by a Plan Participant or Out-of-Network Provider, after the Plan Participant has received services from a Out-of-Network Provider, to the Plan for reimbursement.
- (d) **“Claim Review and Repricing Services”** shall mean the services of ELAP described in Article 3.1 of this Agreement.
- (e) **“Clean Claim”** shall mean a Claim for which ELAP has received all the information necessary to perform an audit and determine the Allowable Claim Limit.
- (f) **“HIPAA”** shall mean the Health Insurance Portability and Accountability Act of 1996, as amended (including amendments under the Health Information Technology for Economic and Clinical Health Act), and regulations and applicable guidance promulgated by the Secretary of the Department of Health and Human Services.
- (g) **“Medical Provider”** shall mean any individual, professional or facility, authorized and operating within the scope of a license (when licensure is required under applicable law), who furnishes, bills or is paid for health care in the normal course of business and includes, but is not limited to, a physician, nurse, hospital, ambulatory surgical center, health or ambulatory clinic, psychiatric hospital, community mental health center, residential treatment facility, substance abuse treatment center, alternative birthing center, home health care center, skilled nursing facility, ground and air ambulance, and any other such individual, professional group, ancillary healthcare or other facility that the Plan approves.
- (h) **“Out-of-Network Providers”** shall mean a professional Out-of-Network Provider that does not participate in the PHCS Physician Only Network.
- (i) **“Plan Administrator”** shall mean the “administrator” of the Plan, within the meaning of Section 3(16)(A) of ERISA.
- (j) **“Plan Documents”** shall mean the documents (including, but not limited to, the Summary Plan Description and any Summaries of Material Modification and any Amendments) establishing, governing, and setting forth eligibility criteria for covered benefits under the Plan.

- (k) **“Plan Participant”** shall mean, with regard to any Clean Claim submitted to ELAP (and at the time such Clean Claim is submitted to ELAP), a person whom the Plan Administrator (and/or their designee with regard to such functions) determines is eligible for benefits under the Plan.
- (l) **“Plan Sponsor”** shall mean the “plan sponsor” of the Plan, within the meaning of Section 3(16)(B) of ERISA.
- (m) **“Third Party Administrator”** shall mean any entity who, pursuant to a contractual arrangement with the Plan, Plan Sponsor and/or Plan Administrator, provides or will provide claims processing and/or other ministerial services to the Plan. The term “Third Party Administrator” does not apply to ELAP.

## **ARTICLE 2. TERM AND TERMINATION**

**2.1 Term.** The initial term of this Agreement shall begin on the Effective Date and shall run for a period of one (1) year from the Effective Date (“Initial Term”). The Agreement shall renew automatically for additional one-year terms upon each annual anniversary of the Effective Date unless earlier terminated as provided herein.

**2.2 Termination.** The parties may terminate this Agreement as follows:

- (a) **Termination Without Cause.** ELAP party may terminate the Agreement at any time by giving at least sixty (60) days prior written notice to the Plan Sponsor. The termination is effective no earlier than sixty (60) days from the date that ELAP provides notice of termination. The Plan Sponsor may terminate this Agreement at any time with or without cause upon thirty (30) days written notice to ELAP. The termination is effective no earlier than thirty (30) days from the date that the Plan Sponsor provides notice of termination,
- (b) **Termination By ELAP.** ELAP may terminate this Agreement without prior notice at any time, and both this Agreement and all rights and obligations of the parties shall immediately terminate, if the Plan Administrator fails to perform its responsibilities for payment of Claims and ELAP Fees under Article 6 of this Agreement.
- (c) **Automatic Termination.** Upon the occurrence of any of the following events, both this Agreement and all rights and obligations of the parties shall terminate immediately:
  - 1. A party’s violation of or ongoing noncompliance with any material provision of this Agreement (provided that, in the event of any ongoing noncompliance by a party, the other party shall give the noncompliant party notice of such noncompliance and an opportunity to cure such noncompliance within thirty (30) days of such notice; if the noncompliance is not cured within this thirty (30) days, the Agreement and all rights and obligations of the parties shall be deemed to have automatically terminated as of the date of said notice);
  - 2. A proceeding is commenced by a party or against a party under any provision of the United States Bankruptcy Code or under any other state or federal bankruptcy or insolvency law; or
  - 3. A party’s violation, as reasonably determined by the affected party, of any material law, rule or regulation applicable to it or its business, including, without limitation, HIPAA and ERISA.

**2.3 Effect of Termination.** Upon termination, except as otherwise stated in this Agreement, the rights and obligations of the parties under this Agreement shall terminate.

## **ARTICLE 3. CORE SERVICES**

ELAP shall provide the following specific services to the Plan:

**3.1 Claim Review and Repricing Services.** ELAP will audit and review Claims from Out-of-Network Providers in order to identify charges billed in error and/or charges for excessive or unreasonable fees, and to determine reimbursements in accordance with the Allowable Claim Limits established by the Plan appearing in Exhibit A (Claim Review and Audit Program SLA).

**3.2 Maintenance of Records.** Maintain all records it receives for an audit and determination of Allowable Claim Limit of Claims for a period not less than seven (7) years.

**3.3 Reimbursement to Third Party Administrators.** ELAP shall reimburse the Third Party Administrator for a portion of its fees, under this agreement to offset expenses of the Third Party Administrator for claim-handling, legal compliance and other administrative expenses.

#### **ARTICLE 4. COMPENSATION OF ELAP**

ELAP shall receive four percent (4%) of charges billed for each Claim submitted by an Out-of-Network Provider as compensation for the Services provided under this Agreement. Such amount shall be due on the first of each month during the term of this Agreement. Fees shall not exceed six-thousand dollars (\$6,000) on any single Claim.

#### **ARTICLE 5. RESPONSIBILITIES OF THE PLAN ADMINISTRATOR**

**5.1 Plan Administration and Compliance.** The Plan Administrator shall be responsible for, and shall perform or shall cause the Third Party Administrator to perform all Plan administration functions, including but not limited to, Plan Document and Summary Plan Description compliance, determination of eligibility, and processing of Claims. The Plan Sponsor acknowledges that ELAP shall only be responsible for the duties outlined in Articles 3 and 4 and does not take on any Plan administration or fiduciary functions

#### **5.2 Payment of Claims and ELAP Fees.**

- (a) Ensuring that the Plan Sponsor provides adequate funding for payment of Claims;
- (b) Ensuring that Claims are timely paid in accordance with the terms of the Plan documents and any applicable law;
- (c) Paying Claims submitted by Directly Contracted Providers in accordance with the terms of the Direct Agreements. The Plan Administrator and the Plan Sponsor acknowledge and agree that failure to pay Claims within the timeframe specified by the Direct Agreements may result in the loss of any discounts and the Plan being responsible for payment of all Charges of the Directly Contracted Provider even if the Charges exceed the Allowable Claim Limits established by the Plan; and
- (d) Paying ELAP and/or its affiliates fees in accordance with the provisions of Article 4 of this Agreement.

#### **ARTICLE 6. GENERAL INDEMNIFICATION**

**6.1 General Indemnification of the Plan, the Plan Sponsor, and the Plan Administrator.** ELAP agrees to indemnify and hold harmless the Plan, the Plan Sponsor, and the Plan Administrator with respect to any and all claims, suits, actions, penalties, liabilities and costs, including attorneys' fees, arising from

- (a) ELAP's failure to perform its services in accordance with the terms of Exhibit A; and
- (b) ELAP's gross negligence or willful misconduct in the performance of its activities described herein unless it is determined that such claim, suit, action, penalty, liability or cost was caused by or resulted from the negligence or willful misconduct of the Plan, the Plan Sponsor, and/or the Plan Administrator.

**6.2 General Indemnification of ELAP.** To the extent permitted by law, the Plan, the Plan Sponsor and the Plan Administrator agree to indemnify and hold harmless ELAP with respect to any and all claims, suits, actions, penalties, liabilities and costs of any kind, including attorneys' fees, arising from:

- (a) The Plan Sponsor and/or the Plan Administrator overriding the decisions of ELAP with respect to determination of Allowable Claim Limits;
- (b) The failure of the Plan Administrator to perform its responsibilities under this Agreement;
- (c) The failure of the Plan Sponsor to comply with ERISA, the ACA, applicable administrative safeguards in accordance with the DOL Claims Regulations, and any other applicable laws and regulations;
- (d) The Plan Sponsor and/or the Plan Administrator's alleged negligence or willful misconduct in the performance of their activities described herein; and
- (e) Actions of ELAP taken at the direction of a representative of the Plan, Plan Sponsor or Plan Administrator.

**6.3 Satisfaction of General Indemnity.** The party entitled to indemnification (the "Indemnified Party") shall promptly notify, in writing, the party obligated to provide such indemnification (the "Indemnifying

Party”) of any claim for which the Indemnified Party seeks indemnification hereunder. The Indemnifying Party shall have the exclusive right and authority to conduct the defense or settlement of any such claim at the Indemnifying Party’s sole expense and the Indemnified Party shall cooperate with the Indemnifying Party in connection therewith.

## ARTICLE 7. OTHER PROVISIONS

**7.1 Compliance with Privacy and Security Laws.** Each party shall comply at all times with the requirements of HIPAA and other applicable state and federal laws pertaining to the privacy and security of Plan Participants’ individually identifiable information. ELAP further agrees to execute and maintain a Business Associate Agreement with the Third-Party Administrator.

**7.2 Compliance with Other Laws.** The parties shall comply at all times with all other applicable federal, state, and local laws and regulations in the performance of this Agreement.

**7.3 Governing Law.** To the extent not preempted by ERISA or other federal law, this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, exclusive of its conflict of law principles.

**7.4 Choice of Venue.** The exclusive venue for any actions or claims arising under or relating to this Agreement shall be in the State District Court of Maverick County, Texas.

**7.5 Amendments.** This Agreement may not be amended, modified, changed, released or discharged except by a writing signed by a duly authorized representative of each party.

**7.6 Severability.** If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired.

**7.7 Waiver.** The failure of any party at any time to require full performance by the other of any provision of this Agreement shall in no way affect that party’s right to enforce such provision, nor shall the waiver by any party of any breach of any provision of this Agreement be taken or held to be a waiver of any further breach of the same provision or any other provision.

**7.8 Notices.** Notices given under this Agreement shall be in writing and shall be deemed to have been given and delivered three business days after posted with the United States Postal Service, with proper postage prepaid; the next business day following deposit with Federal Express, United Parcel Service or similar carrier (for overnight delivery); or upon successful transmission of electronic mail (as evidenced by a “Delivery Receipt” or “Read Receipt”), in each case properly addressed as follows:

**If to ELAP:**

Trisha Leh  
Senior Vice President, Operations  
1550 Liberty Ridge Drive  
Suite 330  
Wayne, PA 19087  
610-321-1030 (ext. 317)  
[TLeh@elapservices.com](mailto:TLeh@elapservices.com)

With copy to:  
Jeffrey J. Norton  
General Counsel  
[jnorton@elapservices.com](mailto:jnorton@elapservices.com)

**If to Employer Plan Sponsor or Plan Administrator:**

Ismael Mijares  
Eagle Pass Independent School District  
1420 Edison Rd.  
Eagle Pass, TX 78853  
830-773-5181

Or to such other address provided to the other party by written notification in accordance with this section

**7.9 CONFIDENTIALITY.** THE PLAN SPONSOR AND THE PLAN ADMINISTRATOR EXPRESSLY AGREE THAT THE TERMS OF THIS AGREEMENT (INCLUDING ALL EXHIBITS AND ATTACHMENTS TO THIS AGREEMENT) AND THE TERMS OF THE DIRECT AGREEMENTS BETWEEN ELAP AND/OR ITS AFFILIATES AND DIRECTLY CONTRACTED PROVIDERS (“ELAP DIRECT AGREEMENTS”), INCLUDING, BUT NOT LIMITED TO, THE REIMBURSEMENT RATES AND METHODOLOGY, REPRESENT CONFIDENTIAL AND PROPRIETARY INFORMATION WHICH MAY NOT BE DISCLOSED EXCEPT AS REQUIRED FOR PLAN MANAGEMENT AND ADMINISTRATION OR BY LAW.

**7.10 Assignment.** This Agreement is nonassignable without the written consent of the other Party, except that ELAP (a) may assign this Agreement to an ELAP affiliate; or (b) assign or delegate some or all of the ELAP’s responsibilities under this Agreement to any contractor, provided that the ELAP will in such instances retain ultimate responsibility for the satisfactory performance of such assigned or delegated responsibilities.

**7.111 Counterparts.** This Agreement may be executed in one or more counterparts and each fully executed counterpart shall be deemed an original. This Agreement may be signed by facsimile or other electronic signature, with such signature binding the signer with full force of law.

**7.12 Entire Agreement.** This Agreement, along with all exhibits contemplated herein, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and year first above written.

Eagle Pass Independent School District

ELAP Services, LLC

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: Trisha Leh

Title: \_\_\_\_\_

Title: Sr. Vice President, Operations

## EXHIBIT A

### CLAIM REVIEW AND AUDIT PROGRAM SLA

ELAP will audit and review Claims submitted for reimbursement by Out-of-Network Providers.

#### CLAIM REVIEW AND AUDIT GUIDELINES

ELAP will utilize commercially reasonable efforts to review and audit Clean Claims to ensure that Out-of-Network Providers comply with industry standard coding logic and National Correct Coding Initiative (“NCCI”) and Centers for Medicare and Medicaid Services (“CMS”) coding standards. The Claim Review and Audit procedures that ELAP performs shall include but shall not be limited to:

- 1. Errors.** Verifying that Clean Claims do not include any identifiable billing mistakes including, but not limited to, upcoding, duplicate charges, and charges for services not performed. Additionally, verifying that Clean Claims do not include charges that are required to treat injuries sustained or illnesses contracted, including infections and complications, which, in the opinion of the Plan Administrator can be attributed to medical errors by the Out-of-Network Provider.
- 2. Unbundling.** Verifying that Clean Claims do not include charges for any items billed separately that are customarily included in a global billing procedure code in accordance with the American Medical Association’s CPT® (Current Procedural Terminology) and/or the Healthcare Common Procedure Coding System (HCPCS) codes used by CMS.
- 3. Itemized Bill Audit.** Reviewing itemized bills for Clean Claims for inpatient and outpatient services of \$25,000 or greater, in order to identify whether Billed Charges include charges for services or supplies that are not consistent with the patient’s diagnoses based upon the CPT, HCPCS, and ICD-9/ICD-10 codes (diagnostic codes) reflected in the invoices submitted by the Out-of-Network Provider.
- 4. Operative Report.** Reviewing operative reports for Clean Claims of \$25,000 or greater for ambulatory health and surgical centers in order to identify whether Billed Charges include charges for services or supplies that are not consistent with the patient’s diagnoses based upon the CPT, HCPCS, and ICD-9/ICD-10 codes (diagnostic codes) reflected in the invoices submitted by the Out-of-Network Provider.
- 5. Medical Records Audit.** Determining, in its sole discretion, that an audit of the provider’s medical records is appropriate and necessary to assess whether certain charges for services and supplies were rendered or provided as billed and either conducting such audit directly or arranging for such audit to be conducted. An audit may be performed in determination of the Allowable Claim Limit or during any retrospective review of charges.

#### ALLOWABLE CLAIM LIMIT GUIDELINES

In determining Allowable Claim Limits, ELAP shall adhere to the following guidelines (which guidelines have been or shall be adopted by the Plan):

- 1. Errors, Unbundled and/or Unsubstantiated Charges Guidelines.** ELAP shall exclude the following from amounts paid under the Allowable Claim Limits:
  - a. Charges that ELAP identifies as improperly coded, duplicated, unbundled and/or for services not performed;
  - b. Charges for treating injuries sustained or illnesses contracted, including infections and complications, which, in the opinion of the Plan Administrator can be attributed to medical errors by the Out-of-Network Provider;
  - c. Charges that ELAP is unable to identify or understand; and
  - d. If ELAP requests and audits medical records, charges that cannot be verified from the requested medical records.
- 2. Additional Guidelines.** ELAP shall use the following guidelines when determining Allowable Claim Limits:

- a. **Professional Out-of-Network Providers.** The Allowable Claim Limits for Out-of-Network Provider shall be the Medicare allowed amount in the geographic area plus an additional 25%.

While this Plan typically pays professional providers based on the Medicare allowed amounts above, certain services may be reimbursed at 110% of the Medicare allowed amount for the service. These services may include, but are not limited to, routine diagnostic tests, evaluation services, telehealth and services for ongoing therapy. A full list of services subject to this rule can be found here: [www.planlimit.com/profl](http://www.planlimit.com/profl). This list will be updated at least annually to reflect the Plan's current plan design.

- b. **Guidelines Where There is Insufficient Information to Determine Allowable Claim Limit.** In the event that ELAP determines that insufficient information is available to determine Allowable Claim Limits for specific services or supplies ELAP may apply the following guidelines:
  - i. **General Medical and/or Surgical Services.** The Allowable Claim Limit for any covered services may be calculated based upon industry standard resources including but not limited to published and publicly available fee and cost lists and comparisons, or any combination of such resources that in the opinion of the Plan administrators results in the determination of a reasonable expense under the Plan.
  - ii. **Medical and Surgical Supplies, Implants, Devices.** The Allowable Claim Limit for charges for medical and surgical supplies made by a provider may be based upon the invoice price (cost) to the provider, plus an additional 12%. The documentation used as the resource for this determination will include, but not be limited to, invoices, receipts, cost lists or other documentation as deemed appropriate under the Plan.
  - iii. **Physician, Medical and Surgical Care, Laboratory, X-ray, and Therapy.** The Allowable Claim Limit for these services may be determined based upon the 60<sup>th</sup> percentile of Fair Health (FH®) Allowed Benchmarks.
- c. **Comparable Services or Supplies Guidelines.** In the event that ELAP determines that insufficient information is available to determine Allowable Claim Limits for specific services or supplies using the guidelines listed in Section 2 above, ELAP shall use the most comparable services or supplies, as determined by ELAP in its sole discretion and judgment based upon comparative severity and/or geographic area, to determine the Allowable Claim Limit.

In the event that a determination of Allowable Claim Limit for a Claim exceeds the actual Charges billed for the services and/or supplies, the actual Charges billed for the Claim shall be the Allowable Claim Limit.

#### **COMPLETED AUDIT RESULTS**

For each completed audit, ELAP will identify and report any charges that are improperly coded, duplicated, unidentified, unbundled and/or found to exceed the Allowable Claim Limits. ELAP will return the completed review and audit results to the Plan Administrator or Third Party Administrator for the adjudication of the Claims based upon the recommended determination of Allowable Claim Limits by ELAP.



## COST-CONTAINMENT SERVICES AGREEMENT

**This Cost-Containment Services Agreement** (the “Agreement”), made as of December 1, 2022 (the “Effective Date”), by and among Eagle Pass Independent School District (the “Employer”), and ELAP Services, LLC (“ELAP”);

**Whereas**, the Employer has established Eagle Pass Independent School District Benefit Plan for the purpose of providing certain group-health plan benefits to eligible participants (the “Plan”);

**Whereas**, ELAP is a service provider that offers and provides, through itself and/or its affiliates, administration of specified services under both full and limited Cost-Containment Services program, and various other similar and related services;

**Whereas**, the Employer desires to retain ELAP to provide certain Cost-Containment services (as specified in this Agreement) and ELAP desires to accept such retention upon the terms and conditions set forth in this Agreement;

**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:

### ARTICLE 1. DEFINITIONS

As used herein, the following terms shall be defined as follows:

- (a) **“Allowable Claim Limit”** shall have the meaning set forth in the Plan Documents and, to the extent not inconsistent with the Plan Documents, shall refer to the reimbursement limits established by the Plan for health, wellness, medical services and supplies listed and included as covered benefits under the Plan.
- (b) **“Balance Bill”** shall mean an Out-of-Network Provider's invoice for Charges which were found to be in excess of the Allowable Claim Limit determined by ELAP.
- (c) **“Charges”** shall mean the fees that an Out-of-Network Medical Provider charged a Plan Participant or the Plan on a Claim.
- (d) **“Claim”** shall mean a medical benefit claim submitted by a Plan Participant or Out-of-Network Provider, after the Plan Participant has received services from a Out-of-Network Provider, to the Plan for reimbursement.
- (e) **“Clean Claim”** shall mean a Claim for which ELAP has received all the information necessary to perform an audit and determine the Allowable Claim Limit.
- (f) **“Cost-Containment Services”** shall mean a Cost-Containment program adopted by the Employer and administered by ELAP Services, LLC provided that as used in this Agreement and in any Exhibit to this Agreement, shall, unless the context clearly indicates otherwise, only refer to that portion (which may include all) of the Cost-Containment Services administered by ELAP Services, LLC.
- (g) **“HIPAA”** shall mean the Health Insurance Portability and Accountability Act of 1996, as amended (including amendments under the Health Information Technology for Economic and Clinical Health Act), and regulations and applicable guidance promulgated by the Secretary of the Department of Health and Human Services.
- (h) **“Maximum Acceptable Reimbursement”** shall mean the maximum reimbursement agreed to in advance by the Plan for payment to Out-of-Network Providers during the provision of Metric-Based Negotiation Services. Any reimbursement to an Out-of-Network Provider over this maximum, shall require written approval by the Plan.
- (i) **“Medical Provider”** shall mean any individual, professional or facility, authorized and operating within the scope of a license (when licensure is required under applicable law), who furnishes, bills or is paid for health care in the normal course of business and includes, but is not limited to, a physician, nurse, hospital, ambulatory surgical center, health or ambulatory clinic, psychiatric hospital, community mental health center, residential treatment facility, substance abuse treatment center,

alternative birthing center, home health care center, skilled nursing facility, ground and air ambulance, and any other such individual, professional group, ancillary healthcare or other facility that the Plan approves.

- (j) **"Metric-Based Negotiation Services"** shall mean the services described in this Agreement (including any Exhibit).
- (k) **"Out-of-Network Providers"** shall mean a professional Medical Provider that does not participate in the PHCS Physician Only Network.
- (l) **"Plan Administrator"** shall mean the "administrator" of the Plan, within the meaning of Section 3(16)(A) of ERISA.
- (m) **"Plan Documents"** shall mean the documents (including, but not limited to, the Summary Plan Description and any Summaries of Material Modification and any Amendments) establishing, governing, and setting forth eligibility criteria for covered benefits under the Plan.
- (n) **"Plan Participant"** shall mean, with regard to any Clean Claim submitted to ELAP (and at the time such Clean Claim is submitted to ELAP), a person whom the Plan Administrator (and/or their designee with regard to such functions) determines is eligible for benefits under the Plan.
- (o) **"Plan Sponsor"** shall mean the "plan sponsor" of the Plan, within the meaning of Section 3(16)(B) of ERISA.
- (p) **"Third Party Administrator"** shall mean any entity who, pursuant to a contractual arrangement with the Plan, Plan Sponsor and/or Plan Administrator, provides or will provide claims processing and/or other ministerial services to the Plan. The term "Third Party Administrator" does not apply to ELAP.

## ARTICLE 2. TERM AND TERMINATION

**2.1 Term.** The initial term of this Agreement shall begin on the Effective Date and shall run for a period of one (1) year from the Effective Date ("Initial Term"). The Agreement shall renew automatically for additional one-year terms upon each annual anniversary of the Effective Date unless earlier terminated as provided herein.

**2.2 Termination.** The parties may terminate this Agreement as follows:

- (a) **Termination Without Cause.** ELAP party may terminate the Agreement at any time by giving at least sixty (60) days prior written notice to the Plan Sponsor. The termination is effective no earlier than sixty (60) days from the date that ELAP provides notice of termination. The Plan Sponsor may terminate this Agreement at any time with or without cause upon thirty (30) days written notice to ELAP. The termination is effective no earlier than thirty (30) days from the date that the Plan Sponsor provides notice of termination,
- (b) **Termination By ELAP.** ELAP may terminate this Agreement without prior notice at any time, and both this Agreement and all rights and obligations of the parties shall immediately terminate, if the Plan Administrator fails to perform its responsibilities for payment of Claims and ELAP Fees under Article 6 of this Agreement.
- (c) **Automatic Termination.** Upon the occurrence of any of the following events, both this Agreement and all rights and obligations of the parties shall terminate immediately:
  1. A party's violation of or ongoing noncompliance with any material provision of this Agreement (provided that, in the event of any ongoing noncompliance by a party, the other party shall give the noncompliant party notice of such noncompliance and an opportunity to cure such noncompliance within thirty (30) days of such notice; if the noncompliance is not cured within this thirty (30) days, the Agreement and all rights and obligations of the parties shall be deemed to have automatically terminated as of the date of said notice);
  2. A proceeding is commenced by a party or against a party under any provision of the United States Bankruptcy Code or under any other state or federal bankruptcy or insolvency law; or
  3. A party's violation, as reasonably determined by the affected party, of any material law, rule or regulation applicable to it or its business, including, without limitation, HIPAA and ERISA.

**2.3 Effect of Termination.** Upon termination, except as otherwise stated in this Agreement, the rights and obligations of the parties under this Agreement shall terminate.

### **ARTICLE 3. RESPONSIBILITIES OF ELAP**

ELAP shall provide the following specific services to the Plan:

**3.1 Metric-Based Negotiations.** ELAP may negotiate on behalf of the Plan with the Out-of-Network Provider, or its designee/representative, to reach an agreed upon reimbursement rate under the Maximum Acceptable Reimbursement previously authorized by the Plan in accordance with Exhibit A herein. If an agreement cannot be reached under the Maximum Acceptable Reimbursement, or with additional written authority provided by the Plan, ELAP shall return the Claim to the Third-Party Administrator.

**3.2 Maintenance of Records.** Maintain all records it receives for an audit and determination of Allowable Claim Limit of Claims for a period not less than seven (7) years.

**3.3 Reimbursement to Third Party Administrators.** ELAP shall reimburse the Third Party Administrator for a portion of its fees, under this agreement to offset expenses of the Third Party Administrator for claim-handling, legal compliance and other administrative expenses.

### **ARTICLE 4. COMPENSATION OF ELAP**

There will be no additional fee for the ELAP Cost-Containment and Guide Services described herein (including any Exhibit). Please refer to the ELAP Core Services Agreement for the all-inclusive fee. However, ELAP shall provide a one-time fund of twenty-five thousand dollars (\$25,000) to be utilized to negotiate and settle Balance Bills for Claims audited by ELAP under this Agreement.

### **ARTICLE 5. RESPONSIBILITIES OF THE PLAN ADMINISTRATOR**

**5.1 Plan Administration and Compliance.** The Plan Administrator shall be responsible for, and shall perform or shall cause the Third Party Administrator to perform all Plan administration functions, including but not limited to, Plan Document and Summary Plan Description compliance, determination of eligibility, and processing of Claims. The Plan Sponsor acknowledges that ELAP shall only be responsible for the duties outlined in Article 3 and does not take on any Plan administration or fiduciary functions.

#### **5.2 Payment of Claims and ELAP Fees.**

- (a) Ensuring that the Plan Sponsor provides adequate funding for payment of Claims;
- (b) Ensuring that Claims are timely paid in accordance with the terms of the Plan documents and any applicable law;
- (c) Paying ELAP and/or its affiliates fees in accordance with the provisions of Article 5 of this Agreement.

### **ARTICLE 6. GENERAL INDEMNIFICATION**

**6.1 General Indemnification of the Plan, the Plan Sponsor, and the Plan Administrator.** ELAP agrees to indemnify and hold harmless the Plan, the Plan Sponsor, and the Plan Administrator with respect to any and all claims, suits, actions, penalties, liabilities and costs, including attorneys' fees, arising from

- (a) ELAP's failure to perform its services in accordance with the terms of this Agreement; and
- (b) ELAP's gross negligence or willful misconduct in the performance of its activities described herein unless it is determined that such claim, suit, action, penalty, liability or cost was caused by or resulted from the negligence or willful misconduct of the Plan, the Plan Sponsor, and/or the Plan Administrator.

**6.2 General Indemnification of ELAP.** To the extent permitted by law, the Plan, the Plan Sponsor and the Plan Administrator agree to indemnify and hold harmless ELAP with respect to any and all claims, suits, actions, penalties, liabilities and costs of any kind, including attorneys' fees, arising from:

- (a) The Plan Sponsor and/or the Plan Administrator overriding the decisions of ELAP with respect to determination of Allowable Claim Limits or determinations related to Metric-Based Negotiations;
- (b) The failure of the Plan Administrator to perform its responsibilities under this Agreement;
- (c) The Plan Sponsor and/or the Plan Administrator's alleged negligence or willful misconduct in the performance of their activities described herein; and
- (d) Actions of ELAP taken at the direction of a representative of the Plan, Plan Sponsor or Plan Administrator.

**6.3 Satisfaction of General Indemnity.** The party entitled to indemnification (the "Indemnified Party") shall promptly notify, in writing, the party obligated to provide such indemnification (the "Indemnifying Party") of any claim for which the Indemnified Party seeks indemnification hereunder. The Indemnifying Party shall have the exclusive right and authority to conduct the defense or settlement of any such claim at the Indemnifying Party's sole expense and the Indemnified Party shall cooperate with the Indemnifying Party in connection therewith.

## **ARTICLE 7. OTHER PROVISIONS**

**7.1 Compliance with Privacy and Security Laws.** Each party shall comply at all times with the requirements of HIPAA and other applicable state and federal laws pertaining to the privacy and security of Plan Participants' individually identifiable information. ELAP further agrees to execute and maintain a Business Associate Agreement with the Third-Party Administrator.

**7.2 Compliance with Other Laws.** The parties shall comply at all times with all other applicable federal, state, and local laws and regulations in the performance of this Agreement.

**7.3 Governing Law.** To the extent not preempted by ERISA or other federal law, this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, exclusive of its conflict of law principles.

**7.4 Choice of Venue.** The exclusive venue for any actions or claims arising under or relating to this Agreement shall be in the State District Court of Maverick County, Texas.

**7.5 Amendments.** This Agreement may not be amended, modified, changed, released or discharged except by a writing signed by a duly authorized representative of each party.

**7.6 Severability.** If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired.

**7.7 Waiver.** The failure of any party at any time to require full performance by the other of any provision of this Agreement shall in no way affect that party's right to enforce such provision, nor shall the waiver by any party of any breach of any provision of this Agreement be taken or held to be a waiver of any further breach of the same provision or any other provision.

**7.8 Notices.** Notices given under this Agreement shall be in writing and shall be deemed to have been given and delivered three business days after posted with the United States Postal Service, with proper postage prepaid; the next business day following deposit with Federal Express, United Parcel Service or similar carrier (for overnight delivery); or upon successful transmission of electronic mail (as evidenced by a "Delivery Receipt" or "Read Receipt"), in each case properly addressed as follows:

**If to ELAP:**

Trisha Leh  
Senior Vice President, Operations  
1550 Liberty Ridge Drive  
Suite 330  
Wayne, PA 19087  
610-321-1030 (ext. 317)  
[TLeh@elapservices.com](mailto:TLeh@elapservices.com)

With copy to:  
Jeffrey J. Norton

General Counsel  
[jnorton@elapservices.com](mailto:jnorton@elapservices.com)

**If to Employer Plan Sponsor or Plan Administrator:**

Ismael Mijares  
Eagle Pass Independent School District  
1420 Edison Rd.  
Eagle Pass, TX 78853  
830-773-5181  
imijares@eaglepassisd.com

Or to such other address provided to the other party by written notification in accordance with this section

**7.9 CONFIDENTIALITY.** THE PLAN SPONSOR AND THE PLAN ADMINISTRATOR EXPRESSLY AGREE THAT THE TERMS OF THIS AGREEMENT (INCLUDING ALL EXHIBITS AND ATTACHMENTS TO THIS AGREEMENT), INCLUDING, BUT NOT LIMITED TO, THE REIMBURSEMENT RATES AND METHODOLOGY, REPRESENT CONFIDENTIAL AND PROPRIETARY INFORMATION WHICH MAY NOT BE DISCLOSED EXCEPT AS REQUIRED FOR PLAN MANAGEMENT AND ADMINISTRATION.

**7.10 Assignment.** This Agreement is nonassignable without the written consent of the other Party, except that ELAP (a) may assign this Agreement to an ELAP affiliate; or (b) assign or delegate some or all of the ELAP's responsibilities under this Agreement to any contractor, provided that the ELAP will in such instances retain ultimate responsibility for the satisfactory performance of such assigned or delegated responsibilities.

**7.11 Counterparts.** This Agreement may be executed in one or more counterparts and each fully executed counterpart shall be deemed an original. This Agreement may be signed by facsimile or other electronic signature, with such signature binding the signer with full force of law.

**7.12 Entire Agreement.** This Agreement, along with all exhibits contemplated herein, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and year first above written.

Eagle Pass Independent School District

ELAP Services, LLC

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: Trisha Leh

Title: \_\_\_\_\_

Title: Sr. Vice President, Operations

## **EXHIBIT A**

### **Metric-Based Negotiations Services Authorization**

Employer and the Plan expressly authorize ELAP to negotiate on behalf of the Plan with all Out-of-Network Providers, or their designees/representatives, to reach an agreed upon reimbursement rate up to the Maximum Acceptable Reimbursement in accordance with its Standard Operating Procedures. Any reimbursement amount above the Maximum Acceptable Reimbursement shall require prior approval from the Plan in accordance with the below terms. The Plan hereby acknowledges and agrees that if ELAP is unable to secure reimbursement rates up to the Maximum Acceptable Reimbursement, and prior approval for an exception is not granted by the Plan and/or Plan Administrator, ELAP return the Claim to the Third-Party Administrator.

The Plan further acknowledges and fully accepts that reimbursement under the terms of this authorization may be higher than the reimbursement amount paid to an Out-of-Network Provider under ELAP's Claim Review and Audit Program with the understanding that the purpose of allowing for higher reimbursement amounts is to manage Plan expenses as well as minimize and/or avoid disruption and Plan Participant confusion and dissatisfaction, which may result from payment disputes and balance billing for the benefit of the Plan and Plan Participants. The Plan also understands that Plan Participant cost-sharing, which includes coinsurance, deductibles, and co-pays, may be adjusted as a result of additional reimbursement to the Out-of-Network Provider.

#### **Maximum Acceptable Reimbursement**

The Employer hereby authorizes ELAP to use the following Maximum Acceptable Reimbursement when providing Metric-based Negotiation Services:

The Maximum Acceptable Reimbursement for all Claims from Out-of-Network Providers shall be either 650% of Medicare, or 90% of billed charges, whichever amount is lower.

Any settlement offers above 650% of Medicare or that exceed 90% of billed charges shall require written approval by the Plan.

If the Plan wishes to have ELAP continue its negotiation efforts on its behalf in the event that ELAP is unable to settle the matter within the additional authority provided by the Plan, the Plan will notify ELAP of same in an agreed-upon manner as set forth above.

In pursuing negotiation for settlement of any Balance Bill or payment dispute on behalf of the Plan or Plan Sponsor, ELAP will follow its Standard Operating Procedures.