

# GOVERNMENT OF GUAM

## 2021 DEPARTMENT/AGENCY LISTING

#	NON-AUTONOMOUS DEPARTMENTS/LINE AGENCIES
1	BUREAU OF BUDGET & MANAGEMENT RESEARCH
2	BUREAU OF STATISTICS AND PLANS
3	BUREAU OF WOMEN'S AFFAIRS
4	CHAMORRO LAND TRUST COMMISSION
5	CHIEF MEDICAL EXAMINER
6	CIVIL SERVICE COMMISSION
7	COUNCIL OF ARTS & HUMANITIES AGENCY
8	CUSTOMS AND QUARANTINE AGENCY
9	DEPARTMENT OF ADMINISTRATION
10	DEPARTMENT OF AGRICULTURE
11	DEPARTMENT OF CHAMORRO AFFAIRS
12	DEPARTMENT OF CORRECTIONS
13	DEPARTMENT OF INTEGRATED SERVICES FOR INDIVIDUALS WITH DISABILITIES
14	DEPARTMENT OF LABOR
15	DEPARTMENT OF LAND MANAGEMENT
16	DEPARTMENT OF MILITARY AFFAIRS
17	DEPARTMENT OF PARKS AND RECREATION
18	DEPARTMENT OF PUBLIC HEALTH & SOCIAL SERVICES
19	DEPARTMENT OF PUBLIC WORKS
20	DEPARTMENT OF REVENUE & TAXATION
21	DEPARTMENT OF YOUTH AFFAIRS
22	GOVERNMENT ETHICS COMMISSION
23	GUAM BEHAVIORAL HEALTH AND WELLNESS CENTER
24	GUAM COMMISSION FOR EDUCATOR CERTIFICATION
25	GUAM EDUCATIONAL TELECOM CORPORATION
26	GUAM ELECTION COMMISSION
27	GUAM ENERGY OFFICE
28	GUAM ENVIRONMENTAL PROTECTION AGENCY
29	GUAM FIRE DEPARTMENT
30	GUAM HOMELAND SECURITY
31	GUAM POLICE DEPARTMENT
32	GUAM PUBLIC LIBRARY
33	GUAM REGIONAL TRANSIT AUTHORITY
34	GUAM SOLID WASTE AUTHORITY
35	GUAM VETERANS AFFAIRS
36	HAGATNA RESTORATION & REDEVELOPMENT
37	LT GOVERNOR'S OFFICE
38	MAYOR'S COUNCIL
39	OFFICE OF TECHNOLOGY
40	OFFICE OF THE GOVERNOR

#	AUTONOMOUS DEPARTMENTS/AGENCIES
41	GOVERNMENT OF GUAM RETIREMENT FUND- RETIREE/SURVIVOR
42	GOVERNMENT OF GUAM RETIREMENT FUND-STAFF
43	GUAM COMMUNITY COLLEGE
44	GUAM DEPARTMENT OF EDUCATION
45	GUAM ECONOMIC DEVELOPMENT AUTHORITY
46	GUAM HOUSING AND URBAN RENEWAL AUTHORITY
47	GUAM HOUSING CORPORATION
48	GUAM INTERNATIONAL AIRPORT AUTHORITY
49	GUAM LEGISLATURE
50	GUAM MEMORIAL HOSPITAL AUTHORITY
51	GUAM POWER AUTHORITY
52	GUAM VISITORS BUREAU
53	GUAM WATERWORKS AUTHORITY
54	OFFICE OF THE ATTORNEY
55	OFFICE OF THE PUBLIC AUDITOR
56	PORT AUTHORITY OF GUAM
57	PUBLIC DEFENDER SERVICE CORPORATION
58	UNIVERSITY OF GUAM

This Dental Agreement to the FY2022 \_\_\_\_\_ is made and entered into on [DATE] by and between \_\_\_\_\_ and **THE GOVERNMENT OF GUAM** (“**Customer**”) is effective as of October 2, \_\_\_\_\_ (“**Effective Date**”).

The Customer has established a self-funded employee benefits plan, described in Exhibit 1 (Dental Service Schedule), (the “**Plan(s)**”), for certain covered persons, as defined in the Plan(s) (the “**Plan Participants**”).

The Customer wants to make available to Plan Participants one or more products and administrative services (“**Services**”) offered by \_\_\_\_\_, as specified in the attached schedules, and \_\_\_\_\_ wants to provide those Services to the Customer for the compensation described herein in Exhibit 2 (Service and Fee Schedule).

All other provisions of the FY \_\_\_\_\_ Group Health Insurance Contract remain in full force and effect.

The parties therefore agree as follows:

## 1. TERM

The term of this Agreement will be one year beginning on the Effective Date. The term shall be considered an “**Agreement Period**”.

## 2. SERVICES

\_\_\_\_\_ shall provide the Services described in Exhibit 1 (Dental Service Schedule).

## 3. STANDARD OF CARE

\_\_\_\_\_ and the Customer will discharge their obligations under this Agreement with that level of reasonable care which a similarly situated services provider or plan administrator, respectively, would exercise under similar circumstances. If the Customer delegates claim fiduciary duties to \_\_\_\_\_ pursuant to the applicable schedule, \_\_\_\_\_ shall observe the standard of care and diligence required of a fiduciary under ERISA Section 404(a)(1)(B).

## 4. SERVICE FEES

The Customer shall pay \_\_\_\_\_ the fees according to the Service and Fee Schedule (“**Service Fees**”).

\_\_\_\_\_ shall provide the Customer with a monthly statement indicating the Service Fees owed for that month. The Customer shall pay \_\_\_\_\_ the Service Fees no later than 31 calendar days after the first calendar day of the month in which the Services are provided (the “**Payment Due Date**”). The Customer shall provide with their payment either a copy of the \_\_\_\_\_ invoice, modified to reflect current eligibility, or a copy of a pre-approved invoice which meets \_\_\_\_\_’s billing requirements. The Customer shall also reimburse \_\_\_\_\_ for certain additional expenses, as stated in the Service and Fee Schedule.

All overdue amounts are subject to the late charges as set forth in Article 5 of Chapter 22 of 5 Guam Code Annotated. \_\_\_\_\_ shall prepare and submit to the Customer an annual report showing the Service Fees paid.

## 5. BENEFIT FUNDING

The Customer shall choose one of the banking facilities offered by \_\_\_\_\_ through which Plan benefit payments, Service Fees and Plan benefit related charges will be made. All such amounts will be paid through the

banking facility by check, electronic funds transfer or other reasonable transfer methods. The Customer shall reimburse the banking facility for all such payments on the day of the request. All such reimbursements will be made by wire transfer in federal funds using the instructions provided by \_\_\_\_\_, or by another transfer method agreed upon by both parties.

Since funding is provided on a checks issued basis, Customer and \_\_\_\_\_ agree that outstanding payments to providers (e.g., uncashed checks or checks not presented for payment) will be handled in the manner indicated and memorialized by the Parties in a separate form letter. The terms and conditions of this Agreement shall apply to that letter.

In the event that \_\_\_\_\_ has exercised its right to suspend claim payments or terminate this Agreement as stated in section 17(B) (Termination), \_\_\_\_\_ may place a stop payment order on all of the Customer's outstanding benefit checks.

## 6. FIDUCIARY DUTY

It is understood and agreed that the Customer, as plan administrator, retains complete authority and responsibility for the Plan, its operation, and the benefits provided there under, and that \_\_\_\_\_ is empowered to act on behalf of the Customer in connection with the Plan only to the extent expressly stated in this Agreement or as agreed to in writing by \_\_\_\_\_ and the Customer.

The Customer has the sole and complete authority to determine eligibility of persons to participate in the Plan.

Claim fiduciary responsibility is identified in the applicable Schedule.

## 7. CUSTOMER'S RESPONSIBILITIES

**(A) Eligibility** – The Customer shall supply \_\_\_\_\_, by electronic medium acceptable to \_\_\_\_\_, with all relevant information identifying Plan Participants and shall notify \_\_\_\_\_ by the tenth day of the month following any changes in Plan participation. \_\_\_\_\_ is not required to honor a notification of termination of a Plan Participant's eligibility which \_\_\_\_\_ receives more than 120 days after termination of such Plan Participant. \_\_\_\_\_ has no responsibility for determining whether an individual meets the eligibility requirements of the Plan.

**(B) Plan Document Review** – The Customer shall provide \_\_\_\_\_ with all Plan documents at least 30 days prior to the Effective Date. \_\_\_\_\_ will review the Plan documents to determine any potential differences that may exist among such Plan documents and \_\_\_\_\_'s claim processing systems and internal policies and procedures. \_\_\_\_\_ does NOT review the Customer's Summary of Benefits and Coverage (“SBC”), Summary Plan Description (“SPD”) or other Plan documents for compliance with applicable law. The Customer also agrees that it is responsible for satisfying any and all Plan reporting and disclosure requirements imposed by law, including updating the SBC or SPD and other Plan documents and issuing any necessary summaries of material modifications to reflect any changes in benefits.

**(C) Notice of Plan or Benefit Change** – The Customer shall notify \_\_\_\_\_ in writing of any changes in Plan documents or Plan benefits (including changes in eligibility requirements) at least 30 days prior to the effective date of such changes. \_\_\_\_\_ will have 30 days following receipt of such notice to inform the Customer whether \_\_\_\_\_ will agree to administer the proposed changes. If the proposed changes increase \_\_\_\_\_'s costs, alter \_\_\_\_\_'s ability to meet any performance standards or otherwise impose substantial operational challenges, \_\_\_\_\_ may require an adjustment to the Service Fees or other financial terms.

- (D) **Employee Notices** – The Customer shall furnish each Employee covered by the Plan written notice that the Customer has complete financial liability for the payment of Plan benefits. The Customer shall inform its Plan Participants, in a manner that satisfies applicable law, that confidential information relating to their benefit claims may be disclosed to third parties in connection with plan administration.
- (E) **Third Party Consents** – The Customer shall obtain any consents, authorizations or other permissions from Employees or relevant third parties, which may be required under law or otherwise necessary in order for \_\_\_\_\_ to access, use or disclose information and data for the purposes of providing Services under this Agreement.
- (F) **Miscellaneous** – The Customer shall promptly provide \_\_\_\_\_ with such information regarding administration of the Plan as required by \_\_\_\_\_ to perform its obligations and as \_\_\_\_\_ may otherwise reasonably request from time to time. Such information shall include, at no cost to \_\_\_\_\_, all relevant medical records, lab and pharmacy data, claim and other information pertaining to Plan Participants and/or Employees. \_\_\_\_\_ is entitled to rely on the information most recently supplied by the Customer in connection with the Services and \_\_\_\_\_’s other obligations under the Agreement. \_\_\_\_\_ is not responsible for any delay or error caused by the Customer’s failure to furnish correct information in a timely manner. \_\_\_\_\_ is not responsible for responding to Plan Participant requests for copies of Plan documents. The Customer shall be liable for all Plan benefit payments made by \_\_\_\_\_, including those payments made following the termination date or which are outstanding on the termination date.

## 8. RECORDS

\_\_\_\_\_, its affiliates and authorized agents shall use all Plan-related documents, records and reports received or created by \_\_\_\_\_ in the course of delivering the Services (“**Plan Records**”) in compliance with applicable privacy laws and regulations. \_\_\_\_\_ may de-identify Plan Records and use them for quality improvement, statistical analyses, product development and other lawful, non-Plan related purposes. Such Plan Records will be kept by \_\_\_\_\_ for a minimum of seven years, unless \_\_\_\_\_ turns such documentation over to the Customer or a designee of the Customer.

## 9. CONFIDENTIALITY

- (A) **Business Confidential Information** - Neither party may use “Business Confidential Information” (as defined below) of the other party for its own purpose, nor disclose any Business Confidential Information to any third party. However, a party may disclose Business Confidential Information to that party’s representatives who have a need to know such information in relation to the administration of the Plan, but only if such representatives are informed of the confidentiality provisions of this Agreement and agree to abide by them. The Customer shall not disclose \_\_\_\_\_’s provider discount or payment information to any third party, including the Customer’s representatives, without \_\_\_\_\_’s prior written consent and until each recipient has executed a confidentiality agreement reasonably satisfactory to \_\_\_\_\_.

The term “**Business Confidential Information**” as it relates to the Customer means the Customer identifiable business proprietary data, procedures, materials, lists and systems, but does not include Protected Health Information (“PHI”) as defined by HIPAA or other claims-related information.

The term “**Business Confidential Information**” as it relates to \_\_\_\_\_ means the \_\_\_\_\_ identifiable business proprietary data, rates, fees, provider discount or payment information, procedures, materials, lists and systems.

- (B) **Plan Participant Information** - Each party will maintain the confidentiality of Plan Participant-identifiable information, in accordance with applicable law and, as appropriate, the terms of the HIPAA business associate agreement associated with this Agreement. The Customer may identify, in writing, certain Customer employees or third parties, who the Plan has authorized to receive Plan Participant-identifiable information from \_\_\_\_\_ in connection with Plan administration. Subject to more restrictive state and federal law,

\_\_\_\_\_ will disclose Plan Participant-identifiable information to the Customer designated employees or third parties. In the case of a third party, \_\_\_\_\_ may require execution by the third party of a non-disclosure agreement reasonably acceptable to \_\_\_\_\_. The Customer agrees that it will only request disclosure of PHI to a third party or to designated employees if: (i) it has amended its Plan documents, in accordance with 45 CFR 164.314(b) and 164.504(f)(2), so as to allow the Customer designated employees or third parties to receive PHI, has certified such to the Plan in accordance with 45 CFR 164.504(f)(2)(ii), and will provide a copy of such certification to \_\_\_\_\_ upon request; and (ii) the Plan has determined, through its own policies and procedures and in compliance with HIPAA, that the PHI that it requests from \_\_\_\_\_ is the minimum information necessary for the purpose for which it was requested.

**(C) Upon Termination** - Upon termination of the Agreement, each party, upon the request of the other, will return or destroy all copies of all of the other's Business Confidential Information in its possession or control except to the extent such Business Confidential Information must be retained pursuant to applicable law or cannot be disaggregated from \_\_\_\_\_'s databases. \_\_\_\_\_ may retain copies of any such Business Confidential Information it deems necessary for the defense of litigation concerning the Services it provided under this Agreement, for use in the processing of runoff claims for Plan benefits, and for regulatory purposes.

## 10. AUDIT RIGHTS

The Customer may, at its own expense, audit Plan claim transactions upon reasonable notice to \_\_\_\_\_. The Customer may conduct one audit per year and the audit must be completed within two years of the end of the time period being audited. Audits of any performance guarantees, if applicable, must be completed in the year following the period to which the performance guarantee results apply. Audits must be performed at the location where the Customer's claims are processed.

The Customer may select its own representative to conduct an audit, provided that the representative must be qualified by appropriate training and experience for such work and must perform the audit in accordance with published administrative safeguards or procedures and applicable law. In addition, the representative must not be subject to an Auditor Conflict of Interest which would prevent the representative from performing an independent audit. An "Auditor Conflict of Interest" means any situation in which the designated representative (i) is employed by an entity which is a competitor of \_\_\_\_\_, (ii) has terminated from \_\_\_\_\_ or any of its affiliates within the past 12 months, or (iii) is affiliated with a vendor subcontracted by \_\_\_\_\_ to adjudicate claims. If the audit firm is not licensed or a member of a national professional group, or if the audit firm has a financial interest in audit findings or results, the audit agent must agree to meet \_\_\_\_\_'s standards for professionalism by signing \_\_\_\_\_'s Agent Code of Conduct prior to performing the audit. Neither the Customer nor its representative may make or retain any record of provider negotiated rates or information concerning treatment of drug or alcohol abuse, mental/nervous, HIV/AIDS or genetic markers.

The Customer shall provide reasonable advance notice of its intent to audit and shall complete an Audit Request Form providing information reasonably requested by \_\_\_\_\_. No audit may commence until the Audit Request Form is completed and executed by the Customer, the auditor and \_\_\_\_\_. Further, the Customer or its representative shall provide \_\_\_\_\_ with a complete listing of the claims chosen for audit at least four weeks prior to the on-site portion of the audit.

The Customer's auditors shall provide their draft audit findings to \_\_\_\_\_, prior to issuing the final report. This draft will provide the basis for discussions between \_\_\_\_\_ and the auditors to resolve and finalize any open issues. \_\_\_\_\_ shall have a right to review the auditor's final Audit Report, and include a supplementary statement containing information and material that \_\_\_\_\_ considers pertinent to the audit.

Additional guidelines related to the scope of the audit are included in the applicable schedules.

## 11. RECOVERY OF OVERPAYMENTS

\_\_\_\_\_ shall reprocess any identified errors in Plan benefit payments (other than errors \_\_\_\_\_ reasonably determines to be *de minimis*) and seek to recover any resulting overpayment by attempting to contact

the party receiving the overpayment twice by letter, phone, or email. The Customer may direct \_\_\_\_\_ not to seek recovery of overpayments from Plan Participants, in which event \_\_\_\_\_ will have no further responsibility with respect to those overpayments. The Customer shall reasonably cooperate with \_\_\_\_\_ in recovering all overpayments of Plan benefits.

If \_\_\_\_\_ elects to use a third-party recovery vendor, collection agency, or attorney to pursue the recovery, the overpayment recoveries will be credited to the Customer net of fees charged by \_\_\_\_\_ or those entities.

Any requested payment from \_\_\_\_\_ relating to an overpayment must be based upon documented findings or direct proof of specific claims, agreed to by both parties, and must be due to \_\_\_\_\_'s actions or inactions. Indirect or inferential methods of proof – such as statistical sampling, extrapolation of error rate to the population, etc. – may not be used to determine overpayments. In addition, use of software or other review processes that analyze a claim in a manner different from the claim determination and payment procedures and standards used by \_\_\_\_\_ shall not be used to determine overpayments.

When seeking recovery of overpayments from a provider, \_\_\_\_\_ has established the following process: if it is unable to recover the overpayment through other means, \_\_\_\_\_ may offset one or more future payments to that provider for services rendered to Plan Participants by an amount equal to the prior overpayment. \_\_\_\_\_ may reduce future payments to the provider (including payments made to that provider involving the same or other health and welfare plans that are administered by \_\_\_\_\_) by the amount of the overpayment, and \_\_\_\_\_ will credit the recovered amount to the plan that overpaid the provider. By entering into this Agreement, the Customer is agreeing that its right to recover overpayments shall be governed by this process and that it has no right to recover any specific overpayment unless otherwise provided for in this Agreement.

The Customer may not seek recovery of overpayments from network providers, but the Customer may seek recovery of overpayments from other third parties once the Customer has provided \_\_\_\_\_ notice that it will seek such recovery and \_\_\_\_\_ has been afforded a reasonable opportunity to recover such amounts. \_\_\_\_\_ has no duty to initiate litigation to pursue any overpayment recovery. Customer agrees to comply with all of the applicable terms of \_\_\_\_\_'s network provider contracts.

## 12. INDEMNIFICATION

(A) \_\_\_\_\_ shall indemnify the Customer, its affiliates and their respective directors, officers, and employees (only as employees, not as Plan Participants) for that portion of any loss, liability, damage, expense, settlement, cost or obligation (including reasonable attorneys' fees) (“Losses”) caused directly by (i) any material breach of this Agreement by \_\_\_\_\_, including a failure to comply with the standard of care in section 3; (ii) \_\_\_\_\_'s negligence, willful misconduct, fraud, or breach of fiduciary responsibility; or (iii) \_\_\_\_\_'s infringement of any U.S. intellectual property right of a third party, arising out of the Services provided under this Agreement.

(C) The party seeking indemnification under this Agreement must notify the indemnifying party within 20 days in writing of any actual or threatened action, to which it claims such indemnification applies. Failure to so notify the indemnifying party will not be deemed a waiver of the right to seek indemnification, unless the actions of the indemnifying party have been prejudiced by the failure of the other party to provide notice as indicated above.

The indemnifying party may join the party seeking indemnification as a party to such proceeding; however the indemnifying party shall provide and control the defense and settlement with respect to claims to which this section applies.

(C) The Customer and \_\_\_\_\_ agree that: (i) health care providers are not the agents or employees of the Customer or \_\_\_\_\_ and neither party renders medical services or treatments to Plan Participants; (ii) health care providers are solely responsible for the health care they deliver to Plan Participants, and neither

the Customer nor \_\_\_\_\_ is responsible for the health care that is delivered by health care providers; and (iii) the indemnification obligations of (A) or (B) above do not apply to any portion of any loss relating to the acts or omissions of health care providers with respect to Plan Participants.

**(D)** These indemnification obligations above shall not apply to any claims caused by (i) an act, or failure to act, by one party at the direction of the other, or (ii) with respect to intellectual property infringement, the Customer's modification or use of the Services or materials that are not contemplated by this Agreement, unless directed by \_\_\_\_\_, including the combination of such Services or materials with services, materials or processes not provided by \_\_\_\_\_ where the combination is the basis for the claim of infringement. For purposes of the exclusions in this paragraph, the term "Customer" includes any person or entity acting on the Customer's behalf or at the Customer's direction. For purposes of (A) and (B) above, the standard of care to be applied in determining whether either party is "negligent" in performing any duties or obligations under this Agreement shall be the standard of care set forth in section 3.

### **13. DEFENSE OF CLAIM LITIGATION**

In the event of a legal, administrative or other action arising out of the administration, processing or determination of a claim for Plan benefits, the party designated in this document as the fiduciary which rendered the decision in the appeal last exercised by the Plan Participant which is being appealed to the court ("appropriate named fiduciary") shall undertake the defense of such action at its expense and settle such action when in its reasonable judgment it appears expedient to do so. If the other party is also named as a party to such action, the appropriate named fiduciary will defend the other party PROVIDED the action relates solely and directly to actions or failure to act by the appropriate named fiduciary and there is no conflict of interest between the parties. The Customer agrees to pay the amount of Plan benefits included in any judgment or settlement in such action. The other party shall not be liable for any other part of such judgment or settlement, including but not limited to legal expenses and punitive damages, except to the extent provided in section 12 (Indemnification).

Notwithstanding anything to the contrary in this section 13, in any multi-claim litigation disputing reimbursement for benefits for more than one Plan Sponsor, the Customer authorizes \_\_\_\_\_ to defend and reasonably settle the Customer's benefit claims in such litigation.

### **14. REMEDIES**

Other than in an action between the parties for third party indemnification, neither party shall be liable to the other for any consequential, incidental or punitive damages whatsoever.

### **15. COMPLIANCE WITH LAWS**

\_\_\_\_\_ shall comply with all applicable federal and state laws including, without limitation, the Patient Protection and Affordable Care Act of 2010 ("PPACA"), the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and the Employee Retirement Income Security Act of 1974 ("ERISA"), and all applicable Guam laws

### **16. TERMINATION**

This Agreement may be terminated by \_\_\_\_\_ or the Customer as follows:

**(A) Termination by the Customer** – The Customer may terminate this Agreement, or the Services provided under one or more schedules, for any reason, by giving \_\_\_\_\_ at least 90 days' prior written notice of when such termination will become effective.

**(B) Termination by \_\_\_\_\_ and Suspension of Claim Payments-**

(1) \_\_\_\_\_ may terminate this Agreement, or the Services provided under one or more schedules, for any reason, by giving the Customer at least ninety (90) days' prior written notice of when such termination will become effective.

(2) If the Customer fails to fund claim wire requests from \_\_\_\_\_, or fails to pay Service Fees by the Payment Due Date, \_\_\_\_\_ has the right to cease paying claims and suspend Services until the requested funds or Service Fees have been provided. \_\_\_\_\_ may terminate the Agreement immediately upon notice to the Customer if the Customer fails to fund claim wire requests or pay the applicable Service Fees in full within (15) fifteen days of written notice by \_\_\_\_\_.

**(C) Legal Prohibition** - If any jurisdiction enacts a law or \_\_\_\_\_ reasonably interprets an existing law to prohibit the continuance of the Agreement or some portion thereof, the Agreement or that portion shall terminate automatically as to such jurisdiction on the effective date of such law or interpretation; provided, however, if only a portion of the Agreement is impacted, the Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

**(D) Responsibilities on Termination** –

Upon termination of the Agreement, for any reason other than default of payment by the Customer, \_\_\_\_\_ will continue to process runoff claims for Plan benefits that were incurred prior to the termination date, which are received by \_\_\_\_\_ within 12 months following the termination date. The Service Fee for such activity is included in the Service Fees described in the Service and Fee Schedule(s). Runoff claims will be processed and paid in accordance with the terms of this Agreement. New requests for benefit payments received after the 12-month runoff period will be returned to the Customer or to a successor administrator at the Customer's expense. Claims which were pended or disputed prior to the start of the runoff period will be handled to their conclusion by \_\_\_\_\_, as well as provider performance or incentive payments paid for prior period performance pay outs, and Customer agrees to fund such claims or payments when requested by \_\_\_\_\_.

The Customer shall continue to fund Plan benefit payments and agrees to instruct its bank to continue to make funds available until all outstanding Plan benefit payments have been paid or until such time as mutually agreed upon by \_\_\_\_\_ and the Customer. The Customer's wire line and bank account from which funds are requested must remain open for one year after runoff processing ends, or two years after termination.

Upon termination of the Agreement and provided all Service Fees have been paid, \_\_\_\_\_ will release to the Customer, or its successor administrator, all claim data in \_\_\_\_\_'s standard format, within a reasonable time period following the termination date. All costs associated with the release of such data shall be paid by the Customer.

## 17. GENERAL

**(A) Relationship of the Parties** - The parties to this Agreement are independent contractors. This Agreement is not intended and shall not be interpreted or construed to create an association, agency, joint venture or partnership between the parties or to impose any liability attributable to such a relationship. Each party shall be solely responsible for all wages, taxes, withholding, workers compensation, insurance and any other obligation on behalf of any of its employees,

**(B) Intellectual Property** - \_\_\_\_\_ represents that it has either the ownership rights or the right to use all of the intellectual property used by \_\_\_\_\_ in providing the Services under this Agreement (the "\_\_\_\_\_ IP"). \_\_\_\_\_ has granted the Customer a nonexclusive, non-assignable, royalty free, limited right to use certain of the \_\_\_\_\_ IP for the purposes described in this Agreement. Customer agrees not to modify, create derivative product from, copy, duplicate, decompile, disassemble, reverse engineer or otherwise attempt to perceive the source code from which any software component of the \_\_\_\_\_ IP is compiled or interpreted. Nothing in this Agreement shall be deemed to grant any additional ownership rights in , or any right to assign, sublicense, sell, resell, lease, rent or otherwise transfer or convey, the \_\_\_\_\_ IP to the Customer.

**(C) Communications** - \_\_\_\_\_ and the Customer may rely upon any communication believed by them to be genuine and to have been signed or presented by the proper party or parties. For a notice or other communication under this Agreement to be valid, it must be in writing and delivered (i) by hand, (ii) by e-



mail or (iii) by fax to a representative of each party as mutually agreed upon. Notices or communications may also be sent by U.S. mail to the address below.

If to \_\_\_\_\_:

If to the Customer:

Director  
Department of Administration Government of Guam  
590 S. Marine Corps Dr., Ste. 224  
Tamuning, Guam 96913

- (D) Force Majeure** – With the exception of the Customer’s obligation to fund benefit payments and Service Fees, neither party shall be deemed to have breached this Agreement, or be held liable for any failure or delay in the performance of any portion of its obligations under this Agreement, including performance guarantees if applicable, if prevented from doing so by a cause or causes beyond the reasonable control of the party. Such causes include, but are not limited to: acts of God; acts of terrorism; pandemic; fires; wars; floods; storms; earthquakes; riots; labor disputes or shortages; and governmental laws, ordinances, rules, regulations, or the opinions rendered by any court, whether valid or invalid.
- (E) Governing Law** - The Agreement shall be governed by and interpreted in accordance with applicable federal law, including ERISA. To the extent such federal law does not govern, the Agreement shall be governed by Guam law.
- (F) Financial Sanctions** – If Plan benefits or reimbursements provided under this Agreement violate or will violate any economic or trade sanctions, such Plan benefits or reimbursements are immediately considered invalid. \_\_\_\_\_ cannot make payments for claims or Services if it violates a financial sanction regulation. This includes sanctions related to a blocked person or a country under sanction by the United States, unless permitted under a written office of Foreign Assets Control (OFAC) license.
- (G) Waiver** - No delay or failure of either party in exercising any right under this Agreement shall be deemed to constitute a waiver of that right.
- (H) Third Party Beneficiaries** - There are no intended third-party beneficiaries of this Agreement.
- (I) Severability** – If any provision of this Agreement or the application of any such provision to any person or circumstance shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement and all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect.
- (J) Entire Agreement; Order of Priority** - This Agreement, and the accompanying HIPAA business associate agreement, constitutes the entire understanding between the parties with respect to the subject matter of this Agreement, and supersedes all other agreements, whether oral or written, between the Parties.
- (K) Amendment** – No modification or amendment of this Agreement will be effective unless it is in writing and signed by both Parties, except that a change to a party’s address of record as set forth in section 18(C) (Communications) may be made without being countersigned by the other party.
- (L) Assignment** - This Agreement may not be assigned by either party without the written approval of the other party. The duties and obligations of the parties will be binding upon, and inure to the benefit of, successors, assigns, or merged or consolidated entities of the parties.
- (M) Survival** - Sections 5, 8 through 13 and 17(D) shall survive termination of the Agreement.

The parties are signing this agreement as of the date stated in the introductory clause.

SAMPLE

# EXHIBIT 1

## DENTAL SERVICE SCHEDULE

Subject to the terms and conditions of the Agreement, the Services available from \_\_\_\_\_ are described below. Unless otherwise agreed in writing, only the Services selected by the Customer in the Service and Fee Schedule (as modified by \_\_\_\_\_ from time to time pursuant to section 4 of the Agreement) will be provided by \_\_\_\_\_. Additional Services may be provided at the Customer's written request under the terms of the Agreement. This Schedule shall supersede any previous documents describing the Services.

### I. CLAIM FIDUCIARY

The Customer and \_\_\_\_\_ agree that with respect to Section 503 of the Employee Retirement Income Security Act of 1974, as amended, \_\_\_\_\_ will be the "appropriate named fiduciary" of the Plan for the purpose of reviewing denied claims under the Plan. The Customer understands that the performance of fiduciary duties under ERISA necessarily involves the exercise of discretion on \_\_\_\_\_'s part in the determination and evaluation of facts and evidence presented in support of any claim or appeal. Therefore, and to the extent not already implied as a matter of law, the Customer hereby delegates to \_\_\_\_\_ discretionary authority to determine entitlement to benefits under the applicable Plan documents for each claim received, including discretionary authority to determine and evaluate facts and evidence, and discretionary authority to construe the terms of the Plan. It is also agreed that, as between the Customer and \_\_\_\_\_, \_\_\_\_\_'s decision on any claim is final and that \_\_\_\_\_ has no other fiduciary responsibility.

### II. ADDITIONAL AUDIT GUIDELINES

\_\_\_\_\_ is not responsible for paying the Customers' audit fees or the costs associated with an audit. \_\_\_\_\_ will bear its own expenses associated with an audit; provided (i) the on-site portion of the audit is completed within five days, and (ii) the sample size is no more than 250 claims. \_\_\_\_\_ will notify the Customer prior to the audit, if an audit request would require an additional payment from the Customer for any audits in excess of the aforementioned thresholds.

### III. DENTAL MANAGEMENT SERVICES:

#### 1. Dental Utilization Management:

The Dental utilization management program provides for appropriate review, by licensed dentists and other dental professionals, of certain dental claims, as well as of voluntary predeterminations, in order to assist in making coverage determinations based on the necessity and appropriateness of services rendered to treat Plan Participants' dental conditions.

#### 2. Dental/Medical Integration (DMI) Program:

The DMI program is designed to educate Plan Participants on the impact of good oral health care on the management of certain diseases and conditions. Plan Participants identified with diabetes, coronary artery disease/cerebrovascular disease or who are pregnant, are sent educational materials explaining the correlation between their disease or condition and periodontal disease. The following programs are included:

- Enhanced Benefit Program for Pregnant Women (offers additional benefits, i.e., an additional cleaning).
- Enhanced Benefit Program for Diabetes and Coronary Artery Disease (offers additional benefits, i.e., an additional cleaning).
- Member Outreach Program (educational materials sent to Plan Participants or outreach phone calls made to Plan Participants encouraging the importance of oral care).

#### IV. TECHNOLOGY/WEB TOOLS

1. \_\_\_\_\_

\_\_\_\_\_ 's online participating provider directory--updated daily -- that anyone can use to locate network physicians and other health care providers such as dentists, optometrists, hospitals and pharmacies.

2. \_\_\_\_\_ / \_\_\_\_\_

\_\_\_\_\_ / \_\_\_\_\_ is a secure Employee website that can be used as an online resource for personalized health and financial information.

#### V. ID CARDS

Dental ID cards are not required to obtain dental services; therefore, \_\_\_\_\_ does not mail ID cards to Plan Participants. However, Plan Participants can print their card by going to their secure website at [www.\\_\\_\\_\\_\\_.com](http://www._____.com).

Upon the Customer's request, \_\_\_\_\_ will include third-party vendor information on Plan Participant identification cards. In such event, the Customer shall indemnify \_\_\_\_\_, its affiliates and their respective directors, officers, and employees from that portion of any actual third-party loss (including reasonable attorney's fees) resulting from the inclusion of such third party vendor information on identification cards.

#### VI. DENTAL SAVINGS PROGRAMS

##### 1. DENTAL PPO NETWORK PROGRAM (PPO).

PPO dental Providers are considered participating providers in the Customer's Plan, and Covered Services rendered by such Providers will be paid as in-network services in accordance with the terms of the Customer's Plan. When available, the Contracted Rates with PPO Providers may result in savings for the Customer and Plan Participants. \_\_\_\_\_ contracts with one or more third-party network vendors to access their Contracted Rates with Providers. The Providers have agreed to accept the Contracted Rate and not to balance bill Plan Participants.

##### 2. Terms and Conditions Applicable to Both Programs

###### A. Customer Charges For Provider Payments

For Plan benefits rendered by a Provider for which \_\_\_\_\_ has accessed a Contracted Rate, the Customer shall be charged the amount paid to the Provider, less any applicable coinsurance and/or deductible owed by the Plan Participant under the Plan.

###### B. Access Fees

(i) As compensation for the services provided by \_\_\_\_\_ under either program for Savings achieved, the Customer shall pay an Access Fee to \_\_\_\_\_ as described in the Service and Fee Schedule (excluding Savings with respect to claims for which \_\_\_\_\_ is liable for funding, e.g., claims in excess of an individual or aggregate stop loss point).

(ii) \_\_\_\_\_ shall provide a quarterly report of Savings and Access Fees. Access Fees may be included with claims in other reports.

C. Plan Participant Information Regarding the Programs

The Customer is responsible for informing Plan Participants of the availability of the programs.

D. Definitions

As used in this section VI:

“**Access Fee**” means the amount to be paid by the Customer to \_\_\_\_\_ for access to the Savings provided under the program, as indicated in the Service and Fee Schedule.

“**Contracted Rate**” means the amount the Provider has agreed to accept as payment under the Provider’s contract with a third party network vendor.

“**Provider**” means those dentists and other dental care providers who have agreed pursuant to a contract with a third-party network vendor to provide Plan benefits at a Contracted Rate under the program.

“**Recognized Charge**” is defined in the Customer’s Plan. Where a similar term (such as “reasonable charge amount”) is used in the Customer’s Plan instead of “recognized charge”, it will have the same meaning as Recognized Charge.

“**Savings**” means: the difference between the average charges for the area as identified in the FAIR Health claims database and the Contracted Rate. For any Plan benefit where the Recognized Charge is lower than the Contracted Rate, the Savings will be zero.

The Customer acknowledges that:

- (i) \_\_\_\_\_ does not credential, monitor or oversee those Providers who participate through third-party contracts; such providers may not necessarily be available or convenient.
- (ii) Information about participating PPO Providers can be found on \_\_\_\_\_, \_\_\_\_\_’s online provider listing, on our website at [www.\\_\\_\\_\\_\\_.com](http://www._____.com) or by other comparable means. PPO Providers listed on \_\_\_\_\_ may not necessarily be available or convenient.
- (iii) The following claim situations may not be eligible for either program:
  - Claims involving Medicare when \_\_\_\_\_ is the secondary payer
  - Claims involving coordination of benefits (COB) when \_\_\_\_\_ is the secondary payer

E. General Provisions

(i) \_\_\_\_\_’s only liability to the Customer for any loss of access to a discount arising under or related to either program, regardless of the form of action, shall be limited to the Access Fees actually paid to \_\_\_\_\_ by the Customer for services rendered; provided, however, this limitation will not apply to or affect any performance standards set forth in the Agreement.

(ii). The terms and conditions of either program shall remain in effect for any claims incurred prior to the termination date that are administered by \_\_\_\_\_ after the termination date.

## EXHIBIT 2 SERVICE AND FEE SCHEDULE

The Service Fees and Services effective for the period beginning October 1, 2021 and ending September 30, 2022 are specified below. They shall be amended for future periods, in accordance with section 4 of the Agreement. Any reference to “Member” shall mean a Plan Participant as defined in the Agreement.

Product	Per Employee* Per Month Fee - *A person within classes that are specifically described in Appendix I, including employees, retirees, COBRA continues and any other persons including those of subsidiaries and affiliates of Customer who are reported, in writing, to _____ for inclusion in the Services Agreement.
Comprehensive Dental	\$3.09

Services	
▪ Dental Utilization Management	Included
▪ _____	Included
▪ _____ / _____	Included

### A. Late Payment

If Customer fails to provide funds on a timely basis to cover benefit payments as provided in the Agreement, and/or fails to pay service fees on a timely basis as provided in such Agreement, \_\_\_\_\_ will assess a late payment charge in accordance with Article 5 of Chapter 22 of Title 5 of the Guam Code Annotated.

\_\_\_\_\_ reserves the right to collect any incurred late payment charges through the claim wire on a monthly basis provided there is no other special payment arrangements in-force to fund any incurred late payment charges. Customer will be notified by \_\_\_\_\_ in writing to obtain approval prior to billing any late payment charges through claim wire.

\_\_\_\_\_ will notify Customer of any changes in late payment interest rates. The late payment charges described in this section are without limitation to any other rights or remedies available to \_\_\_\_\_ under the Agreement or at law or in equity for failure to pay.