



## VISION SERVICE PLAN

### PROVIDER DISPUTE RESOLUTION PROCEDURE

#### I. OVERVIEW AND PURPOSE

##### **Introduction**

Vision Service Plan, a California not-for-profit corporation ("VSP"), is committed to providing high quality health care to its enrollees through VSP's network of contracted Providers. As part of this commitment, VSP maintains a fast, fair, and cost-effective dispute resolution mechanism that Providers may use to resolve billing, payment, or contract disputes. This Dispute Resolution Procedure ("DRP") is available to contracted Providers for Quality Management disputes, Fraud and Abuse Claim disputes, and contract disputes. This DRP is also available to non-contracted Providers as it relates to Fraud and Abuse Claim disputes. The separate policies for resolution of these different types of Provider disputes are explained below. For all intents and purposes, the term "Provider or Providers" encompasses only those optometrists and/or ophthalmologists licensed to practice in their respective states.

##### **Claims Payment Dispute**

Claim payment disputes ("CPD(s)") arise when a Provider contests or denies a claim payment reimbursement, makes an appeal, or requests a reconsideration of a claim or group of claims if those claim(s) have been denied, adjusted, or contested. CPDs are not handled pursuant to this DRP. CPDs are processed pursuant to the requirements of Section 1300.71.38 ("CCR 1300.71.38"), of Title 28, California Code of Regulations unless required by other state law. CPDs are managed under Claim Appeals in the Eligibility and Authorization Section of the **VSP Provider Reference Manual ("PRM")**, found online at [eyefinity.com](http://eyefinity.com). All CPDs are handled and resolved by VSP without charge to the Provider. There is no right to appeal a CPD determination under this DRP, or by a challenge in court.

##### **Dispute Resolution Procedure Overview**

This DRP includes the processes established to provide VSP and Providers (collectively "the Parties") with a fair and cost-effective process for the final determination of Fraud and Abuse Claim disputes, contract disputes and Quality Management disputes, as defined below, between the Parties. Such disputes shall be decided using this DRP, as may be modified from time to time and, accordingly, could be finally decided by an arbitrator, and not by any federal, state, or local court or agency. The DRP is not intended to waive any rights, remedies, or claims afforded to either party with the California Department of Managed Healthcare ("DMHC"). The privileges and protections afforded by the Health Care Quality Improvement Act of 1986, 42 U.S.C. § 11111, shall govern and apply to all aspects of this DRP, except as otherwise set forth herein.

##### **Fraud and Abuse Claim Disputes**

The FBI has identified healthcare billing fraud as the fastest growing white-collar crime in America. Accordingly, California and many other states require licensed health care plans, like VSP, to establish and maintain an active Anti-Fraud and Abuse Program. VSP's Anti-Fraud and

Abuse Program operates largely through its Special Investigative Unit (“**SIU**”), which coordinates, investigates, and assesses the appropriate course of action for incidents involving fraud and abuse. SIU investigations are done in conjunction with VSP’s Director of Optometry, Medical Director, the Office of the General Counsel, and appropriate internal business partners. VSP seeks recovery of all damages and penalties permitted by law in any Fraud and Abuse Claim. A fraud claim is one where a Provider knowingly makes or causes to be made a false or fraudulent claim for payment of a health care benefit (“**Fraud**”). An abuse claim is one where the Provider, through inadvertence or neglect, causes a false claim to be made without knowingly or intentionally misrepresenting facts, but nonetheless obtains payment for health care services when payment was not in conformity with VSP’s policies (“**Abuse**”) (collectively, “**Fraud and Abuse Claim**” or “**FAC**”). A FAC may originate from third-party reports, hotline reports, or data analysis. SIU investigations of a FAC may include an announced or unannounced Provider audit.

When VSP notifies a Provider that VSP has determined that the Provider has submitted one or more Fraud and Abuse Claims, and the Provider disputes VSP’s determination, the Provider must submit the dispute through VSP’s DRP process. FAC disputes may lead to termination from VSP’s network of contracted Providers.

### **Contract Disputes**

Contract disputes between a contracted Provider and VSP concern disputes related to the interpretation, application, intent, termination, and breach of the Network Doctor Agreement (“**NDA**”). VSP and contracted Providers must first submit a contract dispute through this DRP prior to filing a Demand for Arbitration. Unless otherwise stated in the Provider’s NDA, exhaustion of the Provider Dispute Resolution/Written Submission process (“**PDR**”) below is a prerequisite to pursuing binding arbitration. Contract disputes may lead to termination from VSP’s network of contracted Providers.

### **Quality Management Disputes**

VSP maintains a Quality Management Program (“**QM Program**”) that ensures Providers comply with their respective NDA and VSP’s patient-care policies and procedures. The QM Program is based on health care industry standards set by the American Medical Association (“**AMA**”), National Committee of Quality Assurance (“**NCQA**”) and other state and federal guidelines. VSP’s QM Program includes clinical peer review of patient medical records and quality of care grievances. Providers failing to meet the QM Program requirements are subject to corrective action up to and including termination from VSP’s network of contracted Providers.

Providers receiving corrective action notifications and who dispute VSP’s Quality Management findings, must submit the dispute through this DRP process. Unless otherwise stated in the Provider’s NDA, exhaustion of the PDR process below is a prerequisite to pursuing binding arbitration.

Generally, such Quality Management disputes will address issues such as: Provider malpractice, professional misconduct, negative finding from a quality assurance medical record review or other peer review proceedings, audit disputes that result from negligent or mistaken billing or that are otherwise not in conformity with VSP’s Policies, and criminal and civil wrongs committed by a Provider based on patient complaints or obtained from reporting from the National Practitioner Data Bank (“**NPDB**”), state/federal agencies and other third-party complaints. (“**QM Disputes**”).

### **Confidentiality**

All facts, records, data, and information used, acquired, or exchanged in preparation for, submission, and hearings hereunder (“**Materials**”) shall be used and maintained with strict confidentiality and shall not be disclosed to any third party. The Materials shall only be used by the Parties to the extent necessary to carry out the purposes of the DRP. The Materials may be subject to subpoena or discovery as may be required by law. The confidentiality of the Materials shall survive the final actions, decisions, awards and any modification or termination of the NDA or DRP. The DRP is a proprietary document belonging solely to VSP. In no event shall the DRP be shared, distributed, or published to any third party or filed in court without the prior written consent of VSP or appropriate court protective order. Silence in response to any Request for Disclosure shall not be deemed as consent to any disclosure.

### **Dispute Resolution Costs**

The Provider is not responsible for any administrative costs associated with either the PDR or the peer review process as more fully set forth below. Each Party is responsible for their respective attorneys’ fees and costs, except as provided for in Arbitration which has its own separate rules as more fully set forth below

## **II. PROVIDER DISPUTE RESOLUTION (“PDR”)/Written Submission**

### **Notice of Adverse Action / Right to Contest or Deny**

If VSP intends to take adverse action against a Provider as provided above, VSP will send an Adverse Action Notice to the Provider. The Adverse Action Notice shall contain the following information:

- The action(s) or proposed action(s) that VSP intends to take against the Provider (e.g., restitution, probation, termination, etc.);
- A summary of the factual basis for the action(s) to be taken;
- That a Provider can dispute the Adverse Action Notice with instructions on how to commence dispute resolution;
- In Fraud and Abuse matters, where an audit was conducted pursuant to Health and Safety Code sections 1371, 1348 and other relevant statutes and regulations, a spreadsheet summary of the audit that identifies the claim number, name of the patient, the date of service and a clear explanation of the basis upon which VSP believes that the amount paid on the claim is in excess of the amount due, including interest and penalties on the claim. In addition, the Adverse Action Notice shall include the information required by Health and Safety Code section 1371, subdivision (b)(2) and any other applicable statutes and regulations.

If VSP intends to terminate a Provider by removing them from the network and/or terminating their ability to submit claims, the Provider may remain on the VSP Doctor Network and/or submit claims until a Written Determination of the dispute is made, as more fully set forth below. However, VSP, in its sole and absolute discretion, may terminate the Provider from the network and/or the right to submit claims immediately if there is reasonable cause to conclude any of the following:

- Provider’s conduct presents a past or present risk of harm to any patient.
- Provider’s conduct presents an unacceptable quality of care issue to any patient.

- Provider’s conduct constitutes intentional fraud, misrepresentation or gross indifference in the submission of true and accurate claims;
- Provider’s conduct constitutes incompetence or willful indifference in treating a patient’s vision or other health care needs;
- Provider’s license or other lawful authority to practice has expired, been terminated, or is in any other form of suspension, probation or conditional status;
- Provider has refused to allow an audit of his/her practice(s); or
- Other reasonable cause exists.

VSP’s failure to immediately terminate the Provider shall not create an inference that any one or all of the above situations have not occurred; shall not infer that termination is not warranted in the particular case; and shall not act as a waiver to prevent VSP from deciding to terminate the Provider at a later time.

For all Adverse Action Notices, the completion of this PDR process is a condition precedent to the commencement of either the Peer Review Hearing or binding arbitration.

For purposes of this DRP, and unless otherwise provided, Notices are deemed made when deposited in the U.S. mail, sent by email or by other means as agreed to in writing by the Parties. The date of “receipt” will be five (5) working days after the date of mailing, or, if emailed, the date the email was received. Should any deadline fall on a weekend or holiday, the new deadline shall be the next working day. “Working day” means Monday through Friday, excluding recognized federal holidays per CCR section 1300.71 (13) and the working day after Thanksgiving and the working day before Christmas.

**Dispute Resolution Administrator**

The VSP Dispute Resolution Administrator (“**DRA**”) manages all procedural DRP matters and communications between the Provider, VSP and the submissions made pursuant the DRP. The current DRA is Melanie Trammell. Her contact information is: VSP, Attn: Melanie Trammell, 3333 Quality Drive, MS 163, Rancho Cordova, CA 95670, email: drpdispute@vsp.com, phone: (916)851-4092.

**Submission of Dispute**

Upon receipt of an Adverse Action Notice, a Provider may contest or deny the Adverse Action Notice. To contest or deny the Adverse Action Notice, the Provider shall send a Notice of Contest/Denial (“**Contest/Denial**”) to the DRA at the address identified above. The deadline for submission of a Contest/Denial is as follows:

- For an Adverse Action regarding a Fraud and Abuse Claim Dispute, the Provider shall send the Contest/Denial within forty-five (45) working days of receipt of the Adverse Action Notice. The Adverse Action Notice shall be deemed uncontested and final if a Contest/Denial is not received within this time frame, with no further right to any challenge or appeal.
- For an Adverse Action regarding any other dispute or challenge covered by this DRP, the Provider shall send the Contest/Denial within 365 calendar days of the Adverse Action Notice. However, VSP may impose an effective date of action within an Adverse Action

Notice (other than one regarding a Fraud and Abuse Claim dispute) that is less than the 365 calendar days if consistent with applicable law.

The Contest/Denial shall state and provide the factual and legal basis upon which the Provider believes that restitution and/or termination are not warranted. The Contest/Denial shall at a minimum include:

- the Provider's name, identification number and contact information;
- the name and contact information of legal counsel, if any;
- a clear identification of the claims from the audit that are disputed, the date(s) of service of each claim, and the basis of the contest or denial as to each claim;
- a clear explanation of the basis upon which the Provider believes that restitution, termination or other remedy sought by VSP and identified in the Notice is not warranted or in error; and
- if applicable, a clear statement of all legal issues being raised.

Providers shall submit with their Contest/Denial any and all documents (patient charts, exam records, financial documentation, lab invoices, patient statements, legal documentation, etc.), statements and other evidence that they believe supports the Contest/Denial. The Provider's Contest/Denial shall be the Provider's sole opportunity to submit evidence in this process. A Provider may be asked to amend the Contest/Denial within forty-five (45) working days of receipt of the Contest/Denial if it has been determined that information is missing or otherwise incomplete. Where Fraud and Abuse Claims are uncontested, VSP shall be entitled to offset the amounts disclosed in the Notice, but only after giving the Provider ten (10) working days' notice prior to withholding those disclosed amounts.

### **Format of Contest/Denial**

Documents submitted to the DRA must:

- be legible;
- include page numbers in the bottom right-hand corner;
- if provided electronically, in a commonly used file format (.doc, .csv, .xlsx, or .pdf) which is easy to open and print.

**Documents not meeting the above requirements may be returned to the Provider to amend and resubmit.** Please direct any questions regarding the submission of documents directly to the DRA.

### **Acknowledgment of Dispute**

Upon receipt of Provider's Contest/Denial, VSP will acknowledge receipt of the Contest/Denial to the Provider's address identified in the Contest/Denial (a) within two (2) working days of the date of receipt of an electronic Contest/Denial; or (b) within fifteen (15) working days of the date of receipt of a mailed Contest/Denial.

### **VSP's Response**

Within fifteen (15) working days of receipt of a complete Contest/Denial, VSP shall provide to the DRA, its written response (“**Response**”) to the Contest/Denial. The Response shall include all documents, statements, or other evidence that supports VSP’s position as to the Contest/Denial and the damages or other remedies being sought. This shall be VSP’s sole opportunity to submit evidence in this process.

### **Written Determination**

A Written Determination stating the pertinent facts and explaining the reasons for the determination shall be issued within forty-five (45) working days after the date of receipt of the Contest/Denial or amended Contest/Denial as required by CCR 1300.71.38 section (f) and any other applicable statutes and regulations. A Written Determination shall be final unless the Provider requests a Peer Review Hearing as more fully set forth below.

### **Decision and Payment**

If the Written Determination concludes that the Provider owes VSP a monetary amount in restitution, the Provider shall pay VSP within fifteen (15) working days of issuance of the Written Determination unless Provider requests additional resolution measures as detailed below. If VSP owes a monetary amount in restitution, interest, or penalties to the Provider, VSP shall pay any outstanding amounts to the Provider within fifteen (15) working days of the issuance of the Written Determination. All Provider payments shall be mailed to the DRA at the address referenced above in the DRA section.

If the Provider fails to pay VSP within fifteen (15) working days and has not requested additional resolution measures, the Written Determination shall be deemed final and VSP may withhold/offset the Provider’s payment from the Provider’s current claims payments until the restitution is paid in full. The Written Determination shall serve as the Provider’s fifteen (15) working days written notice of any intended withholding/offset.

Upon issuance of the Written Determination, a Provider has the option to appeal to either a Peer Review Hearing or to a de novo review through binding arbitration (“**Arbitration**”). At that time, a Provider may request a copy of VSP’s Response, and any additional non-privileged documents taken into consideration in the process of rendering the Written Determination. If a Provider requests a Peer Review Hearing, they may still appeal to Arbitration if unsatisfied with the outcome of the Peer Review Hearing. VSP may only appeal to Arbitration after a Provider has requested a Peer Review Hearing and a Panel Determination has been rendered. See below for further details.

## **III. PEER REVIEW HEARING**

### **Overview**

Providers that are unsatisfied with the result of the PDR may request a Peer Review Hearing comprised of a panel of practicing Network Doctors. A request for or participation in a Peer Review Hearing does not waive the Provider’s future right to request a de novo review through binding arbitration.

### **Peer Review Hearing Panel**

The Chair of the Peer Review Hearing Panel (“**Panel Chair**”), who is appointed by the Chairman of the Board of Directors, shall appoint two (2) optometrists who are also VSP contracted Providers to serve on the Peer Review Hearing Panel (“**Panel**”). A majority of the Panel shall

include peers with the same licensure as the Provider requesting the Peer Review Hearing. The Panel Chair shall be in charge of the Peer Review Hearing and shall make all determinations of the procedural conduct of the Peer Review Hearing. No Panel member shall be in direct economic competition with the affected Provider, and no Panel member shall be in a position to gain direct financial benefit from the outcome of the Peer Review Hearing. The fact that Panel members and Provider are on the same network shall not, standing alone, constitute direct economic competition within the meaning of this paragraph. Panel members shall be provided with copies of all the documents to be considered at the Peer Review Hearing and may attend in-person or by video conference.

### **Request for Peer Review Hearing**

A Provider requesting a Peer Review Hearing must submit a Peer Review Hearing Request (“**Request**”) within fifteen (15) working days of receipt of the Written Determination. The Request must include whether the Provider prefers to attend the Hearing in person or via video conference and if Provider will have counsel in attendance. The DRA determines whether the Hearing will be in-person or via video conference.

### **Acknowledgement of Request**

The DRA will acknowledge (“**Acknowledgement**”) the Request within five (5) working days of its receipt. The Acknowledgement will include the date in which the Provider’s Request will be heard and will lay out any accompanying deadlines which will occur before the Peer Review Hearing is to take place.

### **Submission of Additional Evidence/Request to Include Witnesses**

In addition to the initial documentation submitted during the PDR, both Parties will have an opportunity to submit additional relevant evidence, including the right to request witness testimony at the Peer Review Hearing, either in-person or via teleconference. The initial documentation submitted with the original Contest/Denial and VSP’s subsequent Response will be considered by the Panel and **does not require resubmission**. Additional evidence must be submitted to the DRA within fifteen (15) working days after receipt of the Acknowledgment. The decision to include additional submitted evidence or witnesses is in the sole discretion of the Panel Chair.

### **Court Reporter**

Either party, or the Panel, may arrange for a stenographic record of the proceeding to be kept by an independent certified court reporter. Notification must be submitted to the DRA within fifteen (15) working days after receipt of the Acknowledgment. The party giving notice of the use of a court reporter shall pay the expense for the reservation and for the original certified transcript. The opposing party and the Panel shall be permitted to purchase a copy of the transcript from the court reporter and shall only be required to pay the court reporter’s usual and customary fee for a copy of the transcript. If the Panel requests a court reporter, the costs for the reservation of the court reporter and of the transcript(s), shall be equally shared by the Parties. With the exception of a court reporter and/or personal notes of the Hearing by the Parties, their counsel, the Panel, and the DRA, there shall be no audio, video, or other recording of the Hearing of any kind.

### **Peer Review Hearing**

A. Attendance/Response. Provider and VSP shall attend the Peer Review Hearing as designated

and shall respond fully and completely, under oath, to all questions from members of the Panel. If the Provider fails to attend the scheduled Peer Review Hearing, the Request shall be deemed rescinded, and the Written Determination shall be final with no further right to any challenge or appeal.

B. Legal Counsel. Each party may be accompanied by legal counsel at the Peer Review Hearing. However, only the Parties to the case will be permitted to present their respective case to the Panel. Unless the Panel Chair determines otherwise, each party may offer an opening and closing statement, may question witnesses (if any), and introduce previously produced documents as evidence during the Peer Review Hearing. As a peer-to-peer review, the Panel Chair may, and is encouraged to, facilitate a discussion of the evidence between the Provider and the members of the Panel. **Legal counsel shall not be permitted to call or question witnesses or argue the merits of the case or issues during the course of the Peer Review Hearing. The Provider may consult with counsel during the course of the Peer Review Hearing, but only insofar as it does not interrupt or delay the Peer Review Hearing.**

During closing arguments at the Peer Review Hearing, counsel for each party may give a closing statement that shall not exceed five (5) minutes, except as may be permitted by the Panel Chair. A closing statement shall be limited to the facts presented at the Peer Review Hearing and shall not identify, address, or include any new evidence. Each party shall bear their own legal fees, costs, and expenses.

In a Peer Review Hearing, where the Provider is a physician, and where the Request contains issue(s) concerning a final proposed action for which reporting is required under the California Business and Professions Code Section 805, and where the Provider is not represented by counsel in the Hearing, the Panel shall not be entitled to the presence of legal counsel at the Peer Review Hearing.

C. Hearing Management. The Panel Chair, in their sole and absolute discretion, shall manage the Hearing and the admission of evidence so as to timely consider the facts and address the issues to be heard.

D. Scope of Evidence. The rules of evidence and Code of Civil Procedure relating to the questioning of witnesses and presentation of evidence in court shall not apply to the Peer Review Hearing. Evidence offered and admitted shall be directly relevant to the issues designated in the Request. Regardless of the issues identified and raised by the Request, the Panel shall not consider testimony, evidence, or arguments challenging the validity, purpose, or reasoning of the NDA or DRP. Any such testimony or evidence will not be admitted or considered, regardless of its possible admissibility in a court of law or other tribunal. Any dispute regarding the NDA or this DRP shall, at either party's request, be submitted to binding arbitration pursuant to Section IV below.

E. Adjournment and Conclusion. The Panel Chair may adjourn, reconvene, or reopen the Peer Review Hearing at the convenience of the Panel or the Parties without special notice; and shall close the Peer Review Hearing upon determining that the record is complete. The Panel shall, thereafter, conduct their private deliberations and render their decision in writing.

### **Peer Review Panel Determination**



Within fifteen (15) working days after the close of the Peer Review Hearing and deliberations, the Panel shall issue to the Parties a reasoned decision (“**Panel Determination**”) and provide notice of the right to request a de novo review through binding arbitration. Subject to the right of either party to request Arbitration, the Panel Determination shall be final and binding and there shall be no further right by either party to appeal or otherwise challenge the Panel Determination to VSP’s Board of Directors, in court or other forum.

### **Decision and Payment**

If the Panel Determination concludes that the Provider owes VSP a monetary amount in restitution, the Provider shall pay VSP within fifteen (15) working days of issuance of the Panel Determination. If VSP owes a monetary amount in restitution, interest, or penalties to the Provider, VSP shall pay any outstanding amounts to the Provider within fifteen (15) working days of the issuance of the Panel Determination.

If the Provider fails to pay VSP within the time referenced above, VSP may withhold/offset the Provider’s payment for the Provider’s current claims until the restitution is paid in full. The Panel Determination shall serve as the Provider’s fifteen (15) working days written notice of any intended withholding/offset.

A Panel Determination shall be final unless either party requests binding arbitration. Any payments due by either party shall be stayed in the event that either party elects to continue to Arbitration.

## **IV. BINDING ARBITRATION (DE NOVO REVIEW)**

### **Requesting Binding Arbitration**

At the request of either the Provider or VSP, a Panel Determination may be appealed to final and binding arbitration with venue in Sacramento, California. Except as may be provided herein, either party may request Arbitration under this provision. Arbitration may be requested in the following circumstances:

- By the Provider upon receipt of a Written Determination;
- By VSP or Provider upon receipt of a Panel Determination;
- By VSP or Provider in any controversy that relates to procedural/substantive issues of the DRP (section V below);
- By VSP or Provider in any and all other contests, denials, or controversies which may arise that are not otherwise provided for herein;
- By VSP if the Provider refuses to comply with an Adverse Action Notice, after having exhausted their rights to PDR and the Peer Review processes; or
- By VSP if Provider fails to comply with either the Written and/or Panel Determination and has failed to exhaust his/her remaining rights to Peer Review and/or Arbitration.

Arbitration shall consist of a de novo review of the findings from a Written and/or Panel Determination. A Request for Arbitration must be made within fifteen (15) working days of either a Written Determination or Panel Determination. The Request for Arbitration shall be made to the DRA at the address stated above.

If VSP intends to terminate the Provider as set forth in the Notice, and termination was upheld by either the Written Determination or Panel Determination, the Provider may remain on the VSP

Doctor Network and/or submit claims until the arbitrator renders a decision as set forth below. However, VSP in its sole and absolute discretion, may terminate the Provider from the network and halt claims processing immediately as set forth above.

### **Meet and Confer**

Within fifteen (15) working days of receipt of the Request for Arbitration, the party requesting arbitration (“**Claimant**”) shall propose final and binding terms of settlement (“**Settlement Proposal**”) to the other party (“**Respondent**”). Within five (5) working days of receipt of the Settlement Proposal, Respondent shall accept or reject the Settlement Proposal. If the Settlement Proposal is accepted by Respondent, the Parties shall proceed to draft and execute a settlement agreement, forthwith. The failure to respond to a Settlement Proposal made in accordance with this section, is considered a rejection of the Settlement Proposal.

If Respondent rejects the Settlement Proposal, the case shall proceed to Arbitration and the arbitrator shall be selected as set forth below.

If Claimant obtains an arbitration award that is equal to or greater than the Settlement Proposal, the Claimant shall be deemed the prevailing party for purposes of an award of arbitration costs, plus an award of reasonable attorneys’ fees, which attorneys’ fees shall not exceed \$25,000. (California Civil Code Section 1717 shall not apply for purposes of determining the prevailing party.) If the arbitration award is less than the Settlement Proposal, Respondent shall be deemed the prevailing party for purposes of an award of arbitration costs, plus an award of attorneys’ fees, which fees shall not exceed \$25,000.

The failure or refusal, whether by intent, inadvertence, or neglect, to make a Settlement Proposal as set forth above, shall be deemed a waiver of any right by Claimant to recover any attorneys’ fees, or arbitration, or other costs under the NDA, or any law regardless of the fact that Claimant may be the prevailing party in the arbitration.

If Claimant fails to provide a Settlement Proposal within fifteen (15) working days of receipt of the Request for Arbitration, the Respondent may propose a Settlement Proposal within twenty (20) working days of receipt of the Request for Arbitration. Within five (5) working days of receipt of the Settlement Proposal, Claimant shall accept or reject the Settlement Proposal. If Respondent obtains an arbitration award that is equal to or greater than the Settlement Proposal, the Respondent shall be deemed the prevailing party for purposes of an award of arbitration costs, plus an award of reasonable attorneys’ fees, which attorneys’ fees shall not exceed \$25,000. (California Civil Code Section 1717 shall not apply for purposes of determining the prevailing party.) If the arbitration award is less than the Settlement Proposal, neither party shall be the prevailing party and both parties will be responsible for their own attorneys’ fees and arbitration costs.

### **Demand for Arbitration / Selection of an Arbitrator**

Demand for Arbitration - If a settlement is not reached or a proposal is not made as set forth above, Claimant shall within thirty (30) working days from the receipt of Request for Arbitration submit a Demand for Arbitration (“**Demand**”) to the DRA.

Selection of an Arbitrator - The arbitration shall be heard before one (1) neutral arbitrator from JAMS, pursuant to the JAMS Streamlined Arbitration Rules & Procedures in effect at the time of the Request for Arbitration, (“**JAMS Rules**”) unless otherwise agreed to in writing by the Parties. The arbitrator shall be a retired judge, or a retired attorney with over 20 years of practice; with experience in health care claims.

The Parties shall mutually agree on an arbitrator or, if they are unable to agree, have JAMS facilitate the arbitrator selection process. Once the Parties select an arbitrator, or it is determined that they are unable to agree, the DRA shall be advised. Once an arbitrator is identified, then the DRA shall complete a Stipulation for Arbitration, which requires the signature of both parties, and submit it along with the Demand to the JAMS Case Manager.

To the extent that the JAMS Rules are deleted or otherwise extinguished, the Commercial Rules of JAMS shall apply, except that discovery shall be limited to a document exchange between the Parties. In any Arbitration provided for herein, regardless of what the JAMS Rules reflect now or at any time in the future, there shall be no material, expert, or other witness depositions, interrogatories, or requests for admissions, unless otherwise agreed to between the Parties. The JAMS Rules can be found at <https://www.jamsadr.com/rules-streamlined-arbitration>. If there is any conflict between the JAMS rules and those within this DRP, the DRP shall prevail.

If JAMS declines to conduct the Arbitration, the Arbitration instead shall be administered by the American Health Lawyers Association (“**AHLA**”), and pursuant to the JAMS Rules referenced above, unless otherwise agreed to by the Parties or required by AHLA.

If an arbitrator is not requested in the manner and time periods set forth above, each of the Parties shall be deemed to have accepted the Written Determination and/or the Panel Determination, which **shall become final, binding and conclusive; shall be effective immediately**, shall not be subject to appeal or judicial review except to the limited extent provided by the Federal Arbitration Act (“**FAA**”), and shall be confirmed and judgment entered consistent therewith in the Sacramento County Superior Court, or any other court having competent jurisdiction. There shall be no right to seek further redress through any other legal action.

#### Arbitration Fees

Each JAMS arbitrator has their own schedule of fees applicable for Arbitrations. All fees shall be shared equally by the Parties and shall be payable to JAMS promptly upon request. If either party fails to pay their respective fees in accordance with any timeline set by JAMS (or AHLA) or as set forth below, the following shall apply:

- If Claimant fails to pay their share of fees by the JAMS deadline, or if none is provided within twenty (20) working days of the date of the JAMS invoice, it shall be concluded that the Claimant has failed to agree to participate in the Arbitration process and the Written Determination or Panel Determination shall become final and binding. There shall be no further right to appeal or to seek other redress; including challenge in court. The Written Determination or Panel Determination shall become final and effective immediately. In such case, Respondent may proceed with the Arbitration at their sole cost and expense, and without the Claimant’s participation, solely for the purpose of finalizing the Written or Panel Determination as an arbitration award. No further involvement by Claimant shall be permitted.

- If Respondent fails their share of fees by the JAMS deadline, or if none is provided within twenty (20) working days of the date of the JAMS invoice, Claimant will have the right to pay and proceed with the Arbitration without the Respondent's participation. No further involvement by Respondent will be permitted.
- If Arbitration was requested by either party subsequent to a Section V dispute below and Claimant fails to timely pay their portion of the arbitration fees or costs, the claim shall be deemed waived and shall be considered time-barred. There shall be no further right to arbitrate or to seek relief of any kind, in any forum.

### **Record**

Any party, or arbitrator (at the Parties shared expense), may arrange for a stenographic record of the proceeding to be kept by an independent certified court reporter. Any party wanting a record of the arbitration shall give notice to the arbitrator and the other party at least ten (10) working days prior to the arbitration. The party requesting the use of a court reporter shall pay for the reservation and for the original certified transcript. The opposing party and arbitrator shall be permitted to purchase a copy of the transcript from the court reporter and shall only be required to pay the court reporter's usual and customary fee for a copy of the transcript. If the arbitrator desires the use of a court reporter, the cost for the reservation and for the original certified transcript shall be equally shared by the Parties. With the exception of the court reporter and/or the personal notes of the Arbitration by the Parties, their counsel and the arbitrator, there shall be no audio, video, or other recording of the Arbitration of any kind.

### **Withdrawal**

At any time prior to submitting a Demand to JAMS, the Request for Arbitration may be withdrawn by Claimant, with prejudice, with no further right to challenge or appeal. Once an arbitrator has been selected, no withdrawal will be permitted unless consented to in writing by Respondent and JAMS. Any fees then due and owed to JAMS shall be paid in full solely by the Claimant.

### **Class Action Waiver**

Any Arbitration conducted herein will be conducted only on an individual basis by the Provider. A Provider waives any and all rights, if any, to bring a class action Arbitration for any disputes identified herein to include any other disputes related to the NDA and/or this DRP.

### **Award**

The arbitration award shall be final, binding, and conclusive, shall be effective immediately, shall not be subject to appeal or judicial review except to the limited extent outlined by the FAA, and shall be enforceable by the Sacramento County Superior Court, or in any court with the competent jurisdiction. The award rendered by the arbitrator shall be considered an arbitration award for purposes of confirming an award under the California Code of Civil Procedure Section 1285, et. seq. The party seeking confirmation of the arbitration award shall be entitled to recover attorneys' fees and costs incurred in confirming the arbitration award.

## **V. OTHER DISPUTES**

### **Other Disputes**

Should any other disputes arise between the Parties, including any breach or compromise of the confidentiality provisions by either party or third party acting for or on behalf of a party, a good faith effort shall be made first to resolve the dispute(s). Notice of such dispute must be provided

to the other party in writing. If the Parties are unable to resolve or reach a mutually agreement within twenty (20) working days of the party's receipt of the Notice of Dispute, either party may submit the dispute to binding arbitration pursuant to the rules and procedures provided herein. A Request for Arbitration must be made within sixty (60) working days of receipt of the Notice of Dispute.

For all disputes under Section V, any arbitration award shall be final, binding, and conclusive, shall be effective immediately, shall not be subject to appeal or judicial review except to the limited extent provided by the FAA and shall be enforceable in the Sacramento County Superior Court, or in any other court having competent jurisdiction. The award rendered by the arbitrator shall be considered an arbitration award for purposes of confirming an award under the California Code of Civil Procedure Section 1285, et. seq. The arbitration award may be entered in any court having competent jurisdiction. The party seeking confirmation of the arbitration award shall be entitled to recover attorneys' fees and costs incurred in confirming the arbitration award.

## **VI. GENERAL PROVISIONS**

Except as may be required by law, no VSP agent or employee is authorized to make material changes or alterations to this DRP without first obtaining approval from VSP's Board of Directors or another Committee or Officer appointed thereby. Absent exigent circumstances or as required by law, any material alteration to this DRP shall go into effect upon thirty (30) calendar days' notice to Provider through the usual means of communication. Fraud and Abuse Claim disputes, contract disputes and Quality Management disputes shall be handled pursuant to the DRP in effect at the time the Contest/Denial submission is made as set forth herein. A Request for Arbitration shall be handled pursuant to the DRP in effect at the time that the Request for Arbitration is made.

If any provision of this DRP is held by an arbitrator to be invalid, void, or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way. Any such determination will only be operative with respect to the Provider that is a party to the arbitration proceeding. Any ambiguity or conflicting provision of the DRP shall be interpreted to give full meaning to the intent and purpose of the DRP.

The provisions of the DRP shall survive termination of the effective NDA.