



# CONTRACT

(fee-for-goods or services contract with an individual, business, non-profit, or governmental entity of another state)

<b>Begin Date</b> 4/1/2021	<b>End Date</b> 6/30/2028	<b>Agency Tracking #</b> 31786-00156	<b>Edison Record ID</b>		
<b>Contractor Legal Entity Name</b> UMR, Inc.			<b>Edison Vendor ID</b>		
<b>Goods or Services Caption</b> (one line only) Administrative services for State's self-insured Medicare Supplement Plan					
<b>Contractor</b> <input checked="" type="checkbox"/> Contractor		<b>CFDA #</b>			
<b>Funding —</b>					
<b>FY</b>	<b>State</b>	<b>Federal</b>	<b>Interdepartmental</b>	<b>Other</b>	<b>TOTAL Contract Amount</b>
2022			\$2,300,000		\$2,300,000
2023			\$4,600,000		\$4,600,000
2024			\$4,700,000		\$4,700,000
2025			\$4,800,000		\$4,800,000
2026			\$5,000,000		\$5,000,000
2027			\$2,600,000		\$2,600,000
<b>TOTAL:</b>			<b>\$24,000,000</b>		<b>\$24,000,000</b>
<b>Contractor Ownership Characteristics:</b>					
<input type="checkbox"/> Minority Business Enterprise (MBE): African American, Asian American, Hispanic American, Native American					
<input type="checkbox"/> Woman Business Enterprise (WBE)					
<input type="checkbox"/> Tennessee Service Disabled Veteran Enterprise (SDVBE)					
<input type="checkbox"/> Tennessee Small Business Enterprise (SBE): \$10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees.					
<input type="checkbox"/> Other:					
<b>Selection Method &amp; Process Summary</b> (mark the correct response to confirm the associated summary)					
<input checked="" type="checkbox"/> Competitive Selection			RFP		
<input type="checkbox"/> Other					
<b>Budget Officer Confirmation:</b> There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.					
<b>Speed Chart</b> (optional)		<b>Account Code</b> (optional)		<i>CM</i>	

**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
Finance & Administration, Division of Benefits Administration  
AND UMR, Inc.**

This Contract, by and between the State of Tennessee, Finance & Administration, Division of Benefits Administration ("State") and UMR, Inc. ("Contractor"), is for the provision of administrative services as a Third Party Administrator ("TPA") for a self-insured supplemental medical insurance program for retirees with Medicare, as further defined in the "SCOPE" State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is For-Profit Corporation.

Contractor Place of Incorporation or Organization: Delaware

Contractor Edison Registration ID #

**A. SCOPE:**

- A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.

The Contractor agrees to provide services under an administrative services only arrangement as a TPA for the State's *The Tennessee Plan* (Plan), a self-insured supplemental medical insurance plan for retirees with Medicare, according to the Contract and the *Plan Document and Summary Plan Description for The Tennessee Plan (Supplemental Medical Insurance for Retirees with Medicare)* (Plan Document), see Appendix 7.1. The Contractor recognizes the State will set the premium rates for the Plan and may elect to adjust the State contribution for those enrolled (Members) in the Plan. The Contractor agrees the State's decisions on the premium rates and contribution are final and not subject to appeal. The Contractor agrees there will be no minimum enrollment guarantees under the Contract.

- A.2. Definitions. For purposes of this Contract, definitions shall be as follows and as set forth in the Contract:

- a. **Agency Benefits Coordinator ("ABC"):** The individual within each agency or department who is the officially-designated liaison between BA and employees.
- b. **At-Risk Performance Payment:** Contractor's payment based on KPI performance listed on the SLA Scorecard set forth in Contract Attachment C. The payment is calculated based on the SLA Scorecard quarterly score and percentage of the administrative fees at risk.
- c. **Average Speed of Answer ("ASA"):** The average waiting time for a caller before he/she is answered by a call center service representative. For this definition, the term "answer" shall mean to begin an uninterrupted dialogue with the caller. If a call center representative asks the caller to hold during the first 60 seconds of the dialogue, the Contractor shall not consider the call to be "answered" for purposes of this definition until the call center representative returns to the caller and begins an uninterrupted dialogue.
- d. **Benefits:** The services available to Members and the corresponding amounts that Members and the Plan will pay for covered services under this contract.

- e. **Benefits Administration (“BA”)**: The division of the Tennessee Department of Finance & Administration that administers the Public Sector Plans.
- f. **Business Days**: Traditional workdays, including Monday, Tuesday, Wednesday, Thursday, and Friday. State Government Holidays are excluded.
- g. **Claim**: Notification to an insurance company or Third-Party Administrator (TPA) requesting payment of an amount due under the terms of the policy.
- h. **Claims Payment Accuracy**: The measurement of Claims processed with an accurate payment of Benefits divided by the total number of Claims with payments in the audited population.
- i. **Claims Processing Accuracy or Procedural Accuracy**: The measurement of Claims processed without procedural errors divided by number of Claims in the audited population.
- j. **Claims Processing Turnaround**: The total number of calendar days needed to process a Claim. The calculation covers the period from the day the Claim is received to the day the Claim is processed, suspended, or denied.
- k. **Coinsurance** – The percentage amount of allowable charges paid by the Plan and by the Member to a Provider for service provided to the Member.
- l. **Copayment** - The portion of the charge (flat dollar amount) to the Member that is the responsibility of the Member.
- m. **Decision Support System (“DSS”)**: A database and query tool containing health care information and Claims data which allows for analytics and executive decision making.
- n. **Edison**: The State’s enterprise resource planning system, which supports human resources, payroll, insurance, contracting, procurement and other agency functions.
- o. **First Call Resolution**: A Member or other caller’s question(s) is answered during their first call eliminating the need for the Contractor to call back.
- p. **In Writing**: Written communication between the Parties, which may be in the form of an official memo, or documents sent via postal mail, fax, or email communications.
- q. **Key Performance Indicators (“KPI”)**: Performance indicators which are the metrics used to measure and evaluate Contractor’s performance against the desired outcomes. These indicators are used to determine Contractor’s At-Risk Performance Payment as set forth in Contract Attachment and Contract Attachment C.
- r. **Member**: Eligible retiree(s) and dependent(s) enrolled in *The Tennessee Plan* sponsored by the State Insurance Committee.
- s. **Plan**: *The Tennessee Plan* provided under this Contract.
- t. **Plan Document**: The legal publication that defines eligibility, enrollment, Benefits and administrative rules of *The Tennessee Plan* and is posted on the BA website as *PLAN DOCUMENT AND SUMMARY PLAN DESCRIPTION FOR THE*

*TENNESSEE PLAN (Supplemental Medical Insurance for Retirees with Medicare).*

- u. **Protected Health Information (“PHI”)**: As defined in the HIPAA Privacy Rule, 45 CFR § 160.103.
- v. **Public Key Infrastructure (“PKI”)**: The framework and services that provide for the generation, production, distribution, control, accounting, and destruction of public key certificates. Components include the personnel, policies, processes, server platforms, software, and workstations used for the purpose of administering certificates and public-private key pairs, including the ability to issue, maintain, recover, and revoke public key certificates.
- w. **Public Sector Plans (“Plans”)**: Refers to all benefit options sponsored by the State, Local Government, and Local Education Insurance Committees (e.g. health plan options, life insurance, other voluntary benefits).
- x. **Section 508**: Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d) and implementing regulations at 36 CFR 1194 Parts A-D which requires accessibility among persons with a disability.
- y. **Service Level Agreement (“SLA”) Scorecard**: Performance management scorecard that contains Contractor’s KPIs and desired outcomes in Contract Attachment C. The At-Risk Performance Payments will be based on the Contractor’s ability to meet the listed KPIs.
- z. **Span of Control**: Information Technology and telecommunications capabilities that the Contractor itself operates or for which it is otherwise legally responsible according to the terms and conditions of this Contract. The Span of Control also includes Systems and telecommunications capabilities outsourced by the Contractor.
- aa. **Splash Page**: Dedicated and customized webpage for this Contract containing Plan information, specific to the Plan, which does not require a Member to log in.
- bb. **State, Local Government, and Local Education Insurance Committees**: Policy making bodies for the State, Local Government, and Local Education Plans established under Tenn. Code Ann. § 8-27-101, 8-27-207, and 8-27-301 respectively.
- cc. **Subrogation**: Subrogation refers to the process an insurance company or TPA uses to seek reimbursement from the responsible party for a Claim it has already paid.
- dd. **Subscriber**: A retiree enrolled in The Tennessee Plan.
- ee. **Third-Party Administrator (“TPA”)**: The Contractor adjudicating Claims, performing medical underwriting, and providing other services under the Scope of the Contract.

A.3. Staffing.

- a. The Contractor shall have a designated full-time implementation team to service this account. All of the Contractor’s implementation team members shall have participated, as team members, in the implementation of an insurance or TPA program for at least one other large client (i.e., a client plan with at least 5,000 members). The Contractor’s implementation team shall include a full-time, designated project manager ready to begin work immediately following the Contract Effective Date. The team shall also include an account manager

dedicated to this Contract, who will be the main contact with the State for all of the day-to-day matters relating to the implementation and ongoing operations. Also, the Contractor shall assign a backup to the account manager. An information systems project manager shall be part of the implementation team. All implementation team members shall be available as needed during the implementation as well as thirty (30) days after the go-live date.

b. Staffing Plan:

- (1) As part of its project implementation plan described in Contract section A.14., the Contractor shall submit to the State for review and approval a detailed staffing plan. The Contractor shall submit to the State its staffing plan with its project implementation plan by the date specified in Contract Section A.16.
  - (2) The staffing plan shall provide staffing estimates for all functions and requirements of the Contract, including:
    - i. Representatives/operators, serving in the call center
    - ii. Contractor supervisory/account management staff;
    - iii. Technical staff, as required to process the Plan enrollment files from the State's Edison system; and
    - iv. Communications staff responsible for published documents and text on websites.
- c. The Contractor shall provide and maintain qualified personnel and staffing to provide all contractual deliverables and services.
- d. The Contractor shall ensure that all staff; including the Contractor's employees, independent contractors, consultants, and subcontractors; performing services has the experience and qualifications to perform the applicable services. The State may also direct the Contractor to replace staff members providing core services and/or interacting regularly with the State as it deems necessary and appropriate. The decision of the State on these matters shall not be subject to appeal.
- e. The Contractor shall designate an account manager and a back-up with overall responsibility for the Plan. The account manager shall serve as the single point of contact for the State and have overall responsibility for the Contractor's functions under the Contract. The account manager shall have the authority to make decisions and resolve problems on behalf of the Contractor with the State.
- f. In addition to the account manager, the Contractor shall designate a customer service manager, who shall manage the call center operations and staff assigned to the State.
- g. The Contractor shall also designate an information systems project coordinator who shall be responsible for implementation of the systems requirements necessary to administer the Plan and interface with the State.

- h. Unless otherwise directed by the State, all key Contractor project staff shall attend a project kick-off meeting at the State offices in Nashville, Tennessee, within ten (10) Business Days after the Contract Effective Date or on a date established by the State. The State may also approve virtual meetings as appropriate.
- i. The Contractor shall train its representatives/operators and other staff regarding the provisions of the State's Plan. The Contractor's staff shall successfully complete the training program prior to assuming their duties. The Contractor shall conduct regular staff refresher training to address current Plan Benefits, process, and policy.
- j. The Contractor shall employ no employees or contract with subcontractors that are on the U.S. Department of Health and Human Services' Office of Inspector General (OIG) exclusions list unless the Contractor receives prior, written approval from the State.
- k. The Contractor agrees that, prior to the execution of the Contract, it will provide the State with a list of the subcontractors that will be utilized in connection with this Contract and will provide reasonable advance notice of any additional subcontractors that may be used. The State may approve or disapprove the Contractor's subcontractors or its staff assigned to this Contract if the State is not satisfied with the service delivered by the subcontractor or its staff. Should the State disapprove of any particular subcontractor, the Contractor will work with the State in good faith to procure a reasonable alternative subcontractor.
- l. Key personnel commitments made by the Contractor shall not be changed unless prior approval is received from the State. For these purposes, such commitments shall include any named individuals in the proposal and the levels of effort proposed. The Contractor shall notify the State at least fifteen (15) Business Days in advance of proposed changes In Writing and shall submit justification (including proposed substitutions) in sufficient detail to the State to evaluate the impact.
- m. The State shall perform an account satisfaction survey of the Contractor's performance annually during the contract period to determine the State's satisfaction with the ongoing account team and Contractor. Results shall be shared with the Contractor including the identification of any deficiencies. The Contractor shall respond In Writing within fifteen (15) days of receiving the results with a corrective action plan as necessary to remedy any identified deficiencies.

A.4. Call Center.

- a. The Contractor shall maintain a call center and provide a dedicated toll-free line, by the date specified in A.16. for the exclusive purpose of responding to inquiries and general questions from Members and those eligible for the Plan. The Contractor shall provide advice and assistance to callers regarding matters such as, but not limited to, Plan Benefits, Claim details, and underwriting applications.
- b. Call Center Requirements
  - (1) The Contractor shall operate a call center that uses a designated toll-free

number as the “front-end” entry point for callers. The Contractor’s call center shall have designated representatives/operators to respond to inquiries from Members.

- (2) The Contractor’s call center and staff shall be located in the continental United States.
- (3) The Contractor’s call center shall accept calls, at a minimum, from 7:00 a.m. to 4:30 p.m. Central Time (CT), Monday through Friday, except on official State Holidays.

c. Call Center Processes

- (1) The Contractor’s call center shall maintain a monthly Average Speed Of Answer rate of thirty (30) seconds or less.
  - (2) The Contractor’s call center shall maintain a monthly average First Call Resolution rate of eighty-five (85%) or greater.
- d. The Contractor shall provide statistics related to the call center performance standards above to the State on a monthly basis. (See Contract Attachment D – Reporting Requirements #5.)
- e. The Contractor’s call center shall have call management systems and communications infrastructure that can manage the potential call volume and achieve the performance standards.
- f. The Contractor’s call management systems shall be scalable and flexible so they can be adapted as needed, within negotiated timeframes where applicable, in response to Plan benefit or enrollment changes.
- g. The Contractor’s call management systems shall be equipped with caller identification. In addition, the Contractor’s call center shall adopt caller identification for outgoing calls.
- h. The Contractor’s call management system shall record and index all calls such that the Contractor can easily retrieve recordings of individual calls based on the Edison Id of the caller, phone number of the caller, the caller’s name, the date/time of the call and the staff member who handled the call. The Contractor shall be able to provide a full recording of each call upon the State’s request. The Contractor shall archive the recordings for one year from the date of each call.
- i. The Contractor may use an automated interactive voice response (IVR) system for managing inbound calls, provided that the caller always has the ability to leave the IVR system and wait in the queue in order to speak directly with a live-voice call center staff member rather than continuing through additional prompts.
- j. The Contractor shall have the ability to make outbound calls without interrupting the ability of callers to continue to access the call center.
- k. The call management system shall enable the logging of all calls, including:

- (1) The caller's identifying information (e.g., Edison employee ID);
- (2) The call date and time;
- (3) The reason for the call;
- (4) The member services representative that handled the call;
- (5) The length of call; and
- (6) The resolution of the call and if unresolved, the action taken and follow up steps required.

- l. The call management system shall maintain a history of correspondence and call transactions for performance management, quality management and audit purposes. This history shall contain the actual information, a date/time stamp that corresponds to when the transaction took place, the origin of the transaction (e.g., the State and /or one of its authorized representatives or the Member), and the member services representative that processed the transaction. Related correspondence and calls shall be indexed and properly recorded such that they can be treated in reporting and analysis as part of a distinct transaction.
- m. The Contractor's call center staff shall have access to the Contractor's enrollment and other systems as necessary to respond to inquiries from Members.

A.5. Communications/Materials.

- a. The Contractor shall develop a written marketing and communications plan by the date specified in Contract Section A.16. In addition, the Contractor shall update this plan on an annual basis to reflect any changes in marketing strategy and updated methods, tools or technology to engage with Members. Contractor's marketing plan will reflect a thoughtful, proactive approach to encourage Member enrollment, and drive engagement and utilization of applicable services and programs. Contractor shall identify what resources (e.g., MailChimp, Constant Contact, etc.) Contractor will use to support marketing and communications. All marketing and communications plan updates shall be approved In Writing by the State.
  - 1) Contractor will provide an annual analytics report of marketing and communications efforts that could include email or other communications statistics. Contractor shall use the State's template or the Contractor's template with prior approval In Writing by the State.
  - 2) The Contractor covenants that all materials distributed and prepared or produced by the Contractor shall be accurate in all material respects.
- b. The Contractor shall, in consultation with the State, develop and disseminate Member information and communication materials. All material must have approval In Writing by the State prior to distribution. Contractor shall ensure that all Member materials and other communications meet any state or federal regulatory compliance (e.g., Civil Rights Compliance), if applicable. The Contractor shall develop all materials in conformance with the style, formatting and other related standards developed by the State and its marketing staff.
  - 1) Materials could include, but are not limited to, Member handbooks, Member identification (ID) cards, welcome packet, administrative forms, letters, emails, manuals, brochures, fliers, webinars, text messages, website copy, website images, mobile app and app content, social media content, PowerPoints, training materials, marketing materials specific to the Plan and videos.

- 2) Marketing/segmenting: Contractor may offer or suggest marketing and communications based on segmentation of population (e.g., demographics, geography, etc.). Contractor may provide data to address paths and barriers to engagement.
  - 3) Personalization of materials and digital communications may be an option upon request.
  - 4) Contractor shall provide marketing and communications samples of how they introduce Plan options to Members.
  - 5) The Contractor shall use graphics to communicate key messages to populations with limited literacy, limited-benefit program literacy or limited English proficiency. The Contractor shall also prominently display the call center's telephone number in large, bolded typeface and hours of operation on all materials.
  - 6) The Contractor shall provide text and graphics, if applicable, for the State's communication to Members.
  - 7) As part of its submission to the State, the Contractor in consultation with the State shall specify how the materials will be sent e.g., email, text, regular mail, other.
- c. Member materials shall be finalized (including State review and sign-off) and ready for distribution on or before the date(s) specified in Contract Section A.16. or otherwise In Writing by the State.
- d. In addition to the Member information and communications referenced above, the Contractor shall assist the State, if requested, in the education and dissemination of information regarding the Plan. This assistance may include but not be limited to:
- 1) Written information;
  - 2) Audio/video and webinar presentations;
  - 3) Member and Agency Outreach: With notification In Writing to the State, attendance at meetings, workshops, benefits fairs, marketing events and conferences (approximately 60-70 annually).
    - i. Educating State staff, Agency Benefits Coordinators, Members and other persons on Contractor's administrative and benefits procedures. Specifically, when a new agency joins the Plan, Contractor may be asked to attend onsite enrollment and benefits educational events.
    - ii. Educating Members and Agency Benefits Coordinators could include targeted agency outreach and partnering with other state departments on outreach efforts across the state on benefit implementation, engagement and education.
    - iii. Any on-site visits to agencies, marketing or other state department co-marketing efforts covered shall require prior notification In Writing to the State. The State also reserves the right to request Contractor's attendance at specific events or webinars.
- e. Unless otherwise specified, the Contractor shall be responsible for all costs related to the design, development, printing, distribution, mailing (if applicable) and revision of all materials that are required to be produced under this Contract.
- f. The Contractor shall use First Class Mail for all mailings, unless otherwise directed or unless otherwise approved by the State In Writing. With prior approval, the State may approve bulk or alternative rates.
- g. The Contractor shall provide the State with draft versions of all communications

materials and letters at least fourteen (14) Business Days prior to planned printing, assembly, and/or distribution (including web posting). The Contractor shall not distribute any materials until the State issues approval In Writing to the Contractor for the respective materials. The State has and retains the ability to edit and customize all communication pieces distributed by the Contractor, including the right to require that the State branding "ParTNers for Health" logo be included on any Member letters or correspondence. The Contractor shall ensure communications are specific to the Plan design and not simply a rebranding/repackaging of standard book-of-business materials or communications unless it is to remain in compliance with other regulatory requirements.

- h. The Contractor shall work in conjunction with the State's staff to ensure continuity of branding across all Plan materials, mailings, emails, website, apps, social media and any other communications information, tools, communication methods, and resources. This branding shall include, but is not limited to, use of the "ParTNers for Health" logo, color scheme and applicable taglines. All uses of these branding elements shall be subject to prior approval In Writing by the State. All marketing and communications materials specific to this Plan, including contact information for any Members, shall become property of the State.
- i. The Contractor shall have the exclusive responsibility to write, edit and arrange for clearance of materials (such as securing full time use of a stock photograph for perpetuity) for any and all marketing and communication materials.
- j. The Contractor shall distribute materials that are culturally sensitive and professional in content, appearance and design with prior approval In Writing by the State.
- k. The Contractor shall provide electronic templates of all finalized materials in a format that the State can easily alter, edit, revise and update.
- l. Unless otherwise prior approved In Writing by the State, the Contractor shall design all marketing and communication materials at a sixth (6.0) grade reading level or lower using the Flesch-Kincaid Index, or a comparable product. The Contractor shall evaluate materials using the entire text of the materials (except return addresses). When submitting draft materials to the State for approval, the Contractor shall provide a certification of the reading level of each piece of material.
- m. At any time and at the State's request, the Contractor shall notify Members, In Writing, of any benefit or other Plan changes no less than thirty (30) Business Days prior to the implementation of the change.
- n. Unless otherwise directed by the State, the Contractor shall print and distribute any mass mailings developed by the State within fourteen (14) Business Days of receiving the language/copy from the State.
- o. The Contractor shall ensure that up-to-date versions of all printed Member marketing and communication materials can be downloaded from the Splash Page. The Contractor shall provide an electronic copy of all marketing and communication materials at the State's request to the State for posting on the State's website.
- p. The Contractor shall update web-based versions of all materials as Plan changes are made and to correct errors. The Contractor shall update web-based versions at the

request of the State, within five (5) Business Days or other time approved by the State. New Plan year information must be added no later than one (1) month prior to the State's annual enrollment.

- q. Unless approved in advance and In Writing by the State, the Contractor shall not distribute any promotional materials or gifts to employees or Members, even if such gifts are of a de minimus value (e.g., magnets, pens, etc.).

A.6. Welcome Kit

- a. Unless otherwise directed by the State, the Contractor shall mail a welcome kit to at least ninety-five percent (95%) of Subscribers on or before fourteen (14) Business Days prior to the go-live date. The welcome kit shall include items approved by the State In Writing including, but not limited to: ID card (can be mailed separately), Member handbook, a URL to customized Splash Page maintained by the Contractor, toll-free customer service number, general Contractor website login information, and other agreed upon material.
- b. As a new Subscriber(s) joins the Plan, they shall be mailed a welcome kit no later than ten (10) Business Days from the date initial enrollment was passed to the Contractor on the enrollment file. At least ninety-five percent (95%) of ongoing welcome kits shall be mailed within ten (10) Business Days of new Subscriber enrollment record being received.

A.7. Member Handbooks and Member Identification (ID) Cards

- a. The Contractor, following review and approval In Writing by the State, shall write, update, print and distribute, upon the State's request, Member handbooks and shall maintain an up-to-date version of the Member handbook on the State's Splash Page (see Contract Section A.8).
- b. The Member handbook shall be specific to the Plan. Handbooks shall include, but not be limited to, detailed Benefits and excluded services and procedures; detailed cost-sharing requirements for each benefit option; description of additional features specific to any of the benefit options; description of procedures for accessing services; description of appeal procedures; and other information helpful to Members.
- c. Upon request by the State, the Contractor shall mail a Member handbook, with a cover letter if requested by the State, no later than ten (10) Business Days from receipt of a Member's request for a copy.
- d. Upon the State's request, the Contractor shall provide Member handbooks to specified parties (e.g., Agency Benefits Coordinators) within fourteen (14) Business Days of the State's request to provide copies. The number of Member handbooks, fliers and other relevant information to be printed shall be in sufficient quantities for distribution by the Contractor to the State's Agency Benefits Coordinators, plus a quantity of handbooks and brochures as requested by the State for distribution to potential new Members, unless otherwise directed In Writing by the State.
- e. The Contractor shall provide Subscribers with ID cards and shall establish a process that allows Subscribers to request replacement or duplicate cards by phone, online and mobile app (if applicable) and/or other possible future

methods or technology upon request.

- f. The cost of creating and mailing ID cards is the responsibility of the Contractor.
- g. The ID card shall include the State's "ParTners for Health" color logo, on the top front of the card, as directed by the State and the Contractor's logo may appear on the front in a corner.
  - (1) The words "Administered by: CONTRACTOR NAME" may appear beneath this in a smaller font size.
  - (2) The front of the card shall also include the following information: Member name, Member number (which shall NOT be the Member's Social Security Number), group name and/or number; benefit option (e.g., *The Tennessee Plan*), and select cost sharing amounts, if requested by the State.
  - (3) The back or front of the card shall include the following information: Member's effective date of coverage, the Contractor's Member services phone number and hours of operation, and the address of the Contractor's website for this Plan. The State has final approval of the ID card appearance and language/copy.
- h. ID cards shall contain unique identifiers for each Subscriber, which shall be the employee or retiree's unique Edison ID provided on the enrollment file. Contractor may add additional identifiers if prior approved by the State In Writing.
- i. Ninety-five percent (95%) of initial ID cards must be mailed to all Subscribers no later than fourteen (14) Business Days prior to go-live contingent upon the State providing complete and accurate enrollment information. Ninety-five percent (95%) of ongoing ID cards shall be mailed to Subscribers no later than ten (10) Business Days from receipt of a new enrollment, change in enrollment, or request for a replacement card.
- j. As directed by the State, the Contractor shall re-issue ID cards to reflect approved changes within the timeframe specified by the State.

A.8. Splash Page, Contractor Website, and Mobile Application

- a. The Contractor shall maintain a Splash Page, which does not require a Member to log in, dedicated to and customized to the State containing information specific to the Plan. The design of the Splash Page, inclusive of the site map, page layout, color/font scheme and branding, static content and any documents which can be accessed via, or downloaded from, the Splash Page must be prior approved In Writing by the State.
- b. The Splash Page shall at a minimum contain the following information or a link to the information:
  - (1) Contractor customer service phone number and hours;
  - (2) Plan Benefits, limitations, and exclusions;
  - (3) Plan Document;
  - (4) Member handbook(s);

- (5) Member tools, forms, and information; and
  - (6) Other information as requested by the State.
- c. The Contractor shall link the Splash Page to the BA website, other State-contracted vendor websites, microsities, content or other web or mobile device enabled video/multimedia tools apps, methods or technology as determined by the State that are useful or applicable for Members (State-approved tools from other approved vendors). The Contractor shall obtain prior approval In Writing from the State for any links from the site to an external website/portal or webpage.
- d. Contractor shall have a website with a Member log-in portal on the Splash Page so Members can view Member-specific documents. Contractor must maintain this website, which shall be available twenty-four (24) hours a day, three hundred sixty-five (365) days a year except for maintenance windows.
- e. The Contractor's website shall be enabled for mobile devices, mobile app or by other methods that may apply. The Contractor website and/or Splash Page shall at a minimum contain the following for access via mobile devices, mobile apps, or other access methods:
- (1) Member specific Benefits, including Coinsurance, exclusions, and limitations;
  - (2) Have an intuitive user interface, including a frequently asked questions (FAQs) section and other resources;
  - (3) Access to temporary Member ID cards;
  - (4) Any applicable Member forms; and
  - (5) Links to other State contractors' websites, if requested by the State.
- f. The Contractor shall submit the text and screenshots of the Splash Page and Contractor website to the State for review and approval by the dates specified in Contract Section A.16.
- g. The Contractor shall grant the State access to the customized developed Splash Page for review and approval no later than the date specified in Contract Section A.16.
- h. The Splash Page and Contractor website shall be fully operational with the exception of Member data/Protected Health Information (PHI) on or before the date specified in Contract Section A.16.
- i. Unless otherwise approved by the State, the Contractor shall update content and/or documents posted to the Splash Page and/or Contractor's website/portal within ten (10) Business Days of the State's prior approval of changes to said content and/or documents.
- j. The Contractor shall ensure that all up-to-date versions of all printed materials can be downloaded from the Splash Page or accessible via a mobile device, or other method, if applicable.

- k. The Contractor shall provide all information pertinent to each new Plan year on the Splash Page and website by the date specified In Writing by the State.
- l. The Contractor shall host the Splash Page on a non-governmental server, which shall be located within the United States. The contractor shall have adequate server capacity and infrastructure to support the likely volume of traffic from Members without disruption or delay.
- m. The Contractor shall obtain and cover the cost of the domain name for the Contractor's Splash Page. The Splash Page URL must be prior approved by the State In Writing.
- n. To ensure accessibility among persons with a disability, the Contractor's Splash Page and Contractor's own log-in portal and website shall be in Compliance with Section 508. If the Contractor posts any video content, it shall include a closed captioning option and/or include text scripting to comply with Section 508 for these products.
- o. The Contractor shall include a mobile application for use by Members with prior approval In Writing by the State. The Contractor must agree to and adhere to all security measures as it relates to Member data. The Contractor must provide a one hundred percent (100%) secure web-based application that requires only a web browser and an internet connection.
- p. At the State's request, the Contractor's mobile application(s) shall be linked with other web applications to allow for seamless data linkage (this may include, but is not limited to, single sign-on) of Member information including the ability for Members to, as applicable, view and order ID cards, upload information (through a mobile device), or link to other technology or information that is helpful to the Member.
- q. Contractor agrees that the State shall have the authority to request any revisions to the Contractor's online Terms and Conditions or Online Service Agreement at any time and that the State shall be provided with a copy of any Terms and Conditions that a Member must consent to in order to be provided with online account access. If Contractor revises the online Terms and Conditions or Online Service Agreement, Contractor agrees to provide the State with a copy of the proposed changes at least sixty (60) Business Days prior to the new effective date, and will allow the State to make revisions.

A.9. Administrative Services

- a. The Contractor shall provide customary corporate office services and functions including but not limited to call center, Claims adjudication, medical underwriting, administration, and accounting.
- b. The Contractor, upon request by the State, shall review and comment on benefit provisions in the Plan. When so requested, the Contractor shall comment in regard to:
  - (1) industry practices; and/or
  - (2) the general financial impact to premium rates plus Plan and Member costs if

future changes were made to the Benefits of the Plan.

- c. The Contractor shall provide assistance and information to the State regarding applicable existing and proposed Federal and State laws, court holdings and regulations affecting the Plan, and other Plan related matters as needed.
- d. The Contractor shall provide assistance with questions and issues raised by the State, individual employees/retirees, former Members and others identified by the State. The Contractor shall log escalated questions (other than general routine questions identified by the State In Writing) and issues and submit the log monthly to the State until notified by the State In Writing to begin sending the log to the State quarterly. (See Contract Attachment D #12.)
- e. The Contractor shall refer calls regarding eligibility and premium payment issues to the State.
- f. The Contractor shall respond to all inquiries In Writing from the State within three (3) Business Days after receipt of said inquiry. In cases where additional information to answer the State's inquiry is required, the Contractor shall notify the State within two (2) Business Days as to when the response can be furnished to the State. For matters designated as urgent by the State, the Contractor shall provide a response to the State within four (4) hours during normal business hours. During non-business hours, the Contractor shall provide a response to urgent matters to the State within twenty-four (24) hours. Staff members, from the applicable business unit, with final decision making authority shall provide responses. Said responses may be communicated through the Account Manager.
- g. The Contractor shall answer, In Writing, within five (5) Business Days, all written inquiries from Members concerning Benefits available through the benefit option, its clarifications and revisions, and other relevant information.
- h. The Contractor shall establish a formal grievance procedure for Members and providers to appeal decisions in regard to administration of the Plan and to resolve disputes that may arise in the administration of the Plan. The Contractor shall provide the State with a written copy of this grievance procedure by the date specified in Contract Section A.16., and the State reserves the right to require changes in the procedures when appropriate.
- i. To maintain the privacy of personal information, the Contractor shall enable Transport Layer Security (TLS), or other encryption software as directed by the State, on the mail server used for daily communications between the State and the Contractor. TLS, or other protocols that provide data encryption, shall be enabled no later than the go-live date and shall remain in effect throughout the term of the contract unless otherwise directed by the State.
- j. The Contractor shall meet with representatives of the State periodically, but no less than annually, to discuss programmatic, operational and contractual issues related to the Plan. The Contractor shall have in attendance the staff requested by the State, which shall include the account manager and representatives from the Contractor's organizational units required to respond to topics indicated by the agenda. These meetings will take place at the State of Tennessee offices in

Nashville, Tennessee, unless directed otherwise by the State. Quarterly meetings between the Contractor and the State may also be held upon request by either the Contractor or the State. At its discretion, the State may allow the Contractor to participate in meetings by webinar or teleconference.

- k. The Contractor shall perform, following review and approval by the State, annual Member satisfaction surveys. The survey instrument shall be developed by the Contractor and approved by the State In Writing. The survey shall be conducted at a time mutually agreed upon by the State and the Contractor and shall involve a statistically valid random sample of State Members. The Contractor shall guarantee a statistically valid response rate consistent with the sample size. The Contractor shall obtain an overall Member satisfaction rating equal to or greater than eighty-five percent (85%) in the first year and ninety percent (90%) in all subsequent year(s) within the Term. Based upon the results of the survey, the Contractor and the State shall jointly develop an action plan to correct problems or deficiencies identified through this activity.
- l. The Contractor shall not modify the services or Benefits provided to Members during the term of this Contract without the prior written consent of the State.
- m. The Contractor shall refer all media and legislative inquiries concerning the Plan to BA, which will have the sole and exclusive responsibility to respond to all such inquiries. However, the Contractor shall respond directly to audit requests from the Comptroller, to audit requests from divisions within the Department of Finance & Administration, and to subpoenas; in all such instances, the Contractor shall copy BA on all correspondence.
- n. Unless prior approved In Writing by the State and in compliance with State and Federal law, the Contractor shall not use information gained through this Contract, including but not limited to utilization and pricing information, in marketing or expanding non-State business relationships or for any pecuniary gain.
- o. The Contractor shall ensure that the U. S. Postal Service or other mailing service does not return any undeliverable mail to the State.
- p. The Contractor shall accept and process Claims filed directly by Members, Providers, and/or Medicare Part A and Part B Fiscal Intermediaries. The Contractor shall be responsible for processing all Claims for medical services rendered or medical supplies purchased with an incurred date of January 1, 2022 (go-live date) through December 31, 2026. The Claims payment run-out period shall extend from January 1, 2027 through the final day of the Term of the Contract in section B.1. There shall be no additional administrative cost to the State during the Claims payment run-out period. In addition, in the event of termination of this Contract, the Contractor shall continue to provide and pay Claims for services to any Member who is hospitalized on the effective date of termination or the end of the contracted benefit period; whichever is earlier. Said coverage shall discontinue when the Member is discharged from the hospital.
- q. The Contractor shall issue to the Member an Explanation of Benefit (EOB) upon final adjudication of a Claim. The EOB shall be in sufficient detail describing to the Member the Plan Benefits applied to the Claim or the rejection of the Claim. The EOB shall be mailed to the Member unless the Member agrees to an alternative

delivery method, e.g. being available to view and print by the Member on the Contractor's website.

- r. The Contractor shall maintain an annual average rate of ninety-eight percent (98%) or higher for Claims Payment Accuracy, ninety-seven percent (97%) or higher for Claims Processing Accuracy, and ninety-eight percent (98%) or higher within twenty-one (21) days for Claims Processing Turnaround. The contractor shall report the results to the State on a quarterly and annual basis as required in Contract Attachment D.13.
- s. Fraud and Abuse
  - (1) The Contractor shall implement procedures to prevent and detect fraud or abuse by providers or Members and shall perform fraud investigations of Members and providers, in consultation with the State, for the purpose of recovery of overpayments due to fraud.
  - (2) The Contractor's procedures for preventing and detecting fraud and abuse shall include, at a minimum, Claims edits, post-processing review of Claims, and utilization management. The Contractor's Claim edits shall include, at minimum, edits to identify upcoding and duplicate Claims.
  - (3) In the event the Contractor discovers evidence that an unusual transaction has occurred that merits further investigation, the Contractor shall simultaneously inform Benefits Administration and the Division of State Audit, in the Office of the Comptroller of the Treasury. The State will review the information and inform the Contractor whether it wishes the Contractor to:
    - i. Discontinue further investigation if there is insufficient justification; or
    - ii. Continue the investigation and report back to Benefits Administration and the Division of State Audit; or
    - iii. Continue the investigation with the assistance of the Division of State Audit; or
    - iv. Discontinue the investigation and turn the Contractor's findings over to the Division of State Audit for its investigation.
  - (4) The Contractor shall submit to the State, at least two (2) months prior to the go-live date, a description of its fraud and abuse program. The State reserves the authority to review the document(s) and recommend changes, where appropriate. The Contractor shall notify the State, In Writing, within thirty (30) calendar days of any significant changes to its programs related to insurance or provider fraud, abuse, and waste. The State reserves the authority to review the change and recommend changes, where appropriate.
  - (5) The Contractor shall provide a written narrative or report to the State on a quarterly basis regarding the effectiveness of the Contractor's fraud and abuse program, including its fraud and abuse detection activities, findings from those activities, follow-up on findings, proposed improvement activities, and any estimated savings to the Plan associated with the Contractor's detection of such fraudulent or wasteful activities.
- t. The Contractor shall notify the State on a weekly basis of receipt of any notices from Medicare that Medicare may have made primary payments for services when it should have been the secondary payer (a Medicare Secondary Payer demand letter). The Contractor shall resolve issues as to whether Medicare is

the primary or secondary payer within thirty-one (31) days of receiving the demand letter.

- u. Unless otherwise directed by the State, the Contractor shall comply with the State's requirements regarding Subrogation. The Contractor shall implement new or revised requirements received from the State within sixty (60) calendar days of receipt of the requirements from the State, unless otherwise directed by the State.

A.10. Information Systems

- a. All Contractor systems shall maintain linkages and Subscriber - dependent (e.g., spouse to spouse and parent to child) relationships between initial and related subsequent interactions/transactions/events/activities. Additionally, when the Contractor houses indexed images of documents used by Members and subcontractors to transact with the Contractor, the Contractor shall ensure that these documents maintain logical relationships to certain key data such as Member identification and subcontractor identification numbers. The Contractor shall also ensure that records associated with a common event, transaction or customer service issue have a common index that facilitates search, retrieval and analysis of related activities, e.g., interactions with a particular Member about the same matter/problem/issue.
- b. Upon the State's request, the Contractor shall be able to generate a listing of all Members (including each Member's Edison identification number) that were sent a particular document, the date and time that the document was generated, and the date and time that it was sent to particular Members or groups thereof. The Contractor shall also be able to generate a sample of said document.
- c. Information Ownership. All information, whether data or documents, and reports that contain or make references to said information, involving or arising out of this Contract is owned by the State. The Contractor is expressly prohibited from sharing or publishing State information and reports or releasing such information to external entities, affiliates, parent company, or subsidiaries without the prior written consent of the State.
- d. Upon termination of this Contract and request by the State, the Contractor shall provide to the State or its designated agent, pertinent data identified by the State for Members to effect a transition of the Plan from the Contractor. The information shall be furnished in a format and medium as is compatible with the data processing system maintained by the State or its designated agent. Additionally, the Contractor shall provide all information necessary to properly interpret the data supplied.
- e. Prior to implementing any major modifications to or replacement of the Contractor's core information systems functionality and/or associated operating environment, the Contractor shall notify the State In Writing of the change or modification within a reasonable amount of time (commensurate with the nature and effect of the change or modification) if the change or modification; (a) would affect the Contractor's ability to perform one or more of its obligations under this Contract; (b) would be visible to State system users and Members; (c) might have the effect of putting the Contractor in noncompliance with the provisions or substantive intent of this Contract; or (d) would materially reduce the coverage amounts payable or services provided to the average Member. If so directed by the State, the Contractor shall discuss the proposed change with the State prior

to implementing the change. Subsequent to this discussion, the State may require the Contractor to demonstrate the readiness of the impacted systems prior to the effective date of the actual modification or replacement.

- f. Upon request by the State, the Contractor shall provide designated State employees with access and update authority to the Contractor's enrollment system by the date specified in Contract Section A.16. Additional users may be added at any time at the State's request.

A.11. Data Integration and Technical Requirements

- a. The Contractor shall maintain an electronic data interface with the State's Edison System for the purpose of retrieving and processing Member enrollment records and any other files which may be identified and generated by the State. The Contractor shall be responsible for providing and installing the hardware and software necessary. The State requires the use by the Contractor of second level authentication for the exchange of Member personal information. This is accomplished using the State's standard software product, which supports PKI. The Contractor shall design a solution, in coordination with the State, to connect to the State's Secure File Transfer Protocol (SFTP) server using a combination of the password and the authentication certificate. The initial sign-on and transmission testing will use a password. Certificate testing may also be performed during the test cycle. Subsequent production sign-on will be done using the authentication certificate. The Contractor will then download the file and decrypt the file in its secure environment. The State of Tennessee uses public key encryption with Advanced Encryption Standard (AES) to encrypt PHI. If the State adopts a different or additional encryption standard or tool in the future, the Contractor shall, with adequate notice, cooperate with the State to maintain the security of protected information according to all applicable State and Federal standards.
- b. The Contractor shall accept confirmation from the State of the in-force status of each Member's coverage on the basis of enrollment information maintained electronically in the State's computer system Edison and provided electronically to the Contractor for housing in the Contractor's computer system.
- c. The Contractor shall accept all current Members' coverage transferred from the prior contract, without any break or lapse in coverage.
- d. Notwithstanding the requirement to maintain enrollment data, the Contractor shall not perform changes to enrollment data without the State's approval. This prohibition shall include, but not be limited to initiation, termination, and/or changes of coverage.
- e. The Contractor shall save in its computer system the State's Edison employee identification number for Members and shall include the Edison identification number when communicating with the State about a particular Member.
- f. At least two (2) months prior to the go-live date, the Contractor shall complete testing of the transmission, receipt, and loading of the test enrollment file from the State.
- g. At least one (1) month prior to the go-live date, the Contractor shall load, test, verify, and make available online for use the State's enrollment information. The

Contractor shall certify, In Writing, to the State that the Contractor understands and can fully accept and utilize the enrollment files as provided by the State.

- h. The Contractor shall maintain, in its systems, in-force enrollment records of all individuals covered by the Plan.
  - (1) Weekly Enrollment Update: To ensure that the State's enrollment records remain accurate and complete, the Contractor shall, unless otherwise directed by the State, retrieve, via secure medium, the weekly enrollment file from the State, in the State's Edison 834 (5010 file format), which may be revised. Files will include full population records for all Members and will be in the format of ANSI ASC X12N, Benefit Enrollment and Maintenance 834 (5010), version 005010X220A1, with several fields customized by the State. Change files will not be sent.
  - (2) The Contractor shall electronically process the State's electronically retrieved enrollment update file within two (2) Business Days of receipt of the weekly file.
  - (3) The Contractor shall complete and submit to the State a Weekly File Enrollment Processing Report utilizing the template provided by the State or other approved report produced by the Contractor or subcontractor's system processing within three (3) Business Day of processing the enrollment file from the State. The Contractor shall submit this report via email to designated State staff. (See Contract Attachment D.8.)
  - (4) The Contractor shall submit to the State within one (1) Business Day of processing the weekly enrollment file a Weekly Enrollment File Error Report, in a format agreed upon by the State In Writing. The error report shall contain a) only errors that require correction by the State and b) an indication of the correction required to resolve the error. (See Contract Attachment D.21.)
  - (5) The Contractor shall resolve all enrollment discrepancies identified by the Contractor for internal correction within two (2) Business Days of identification. The Contractor or its shall process all error corrections received from the State within two (2) Business Days of receipt of the correction information.
  - (6) State Enrollment Data Match: Upon request by the State, not to exceed two (2) times annually, the Contractor shall submit to the State, in a secure manner, its full file of State Members, by which the State may conduct a data match against the State's Edison database. The purpose of this data match will be to determine the extent to which the Contractor is maintaining its database of State Members. The State will communicate results of this match to the Contractor, including any Contractor requirements, and associated timeframes, for resolving the discrepancies identified by the data match.
- i. Decision Support System:
  - (1) Contractor shall provide the State's DSS contractor with all of the State's Claim data, data layouts, and data dictionaries in the formats, layouts and specifications mutually agreed upon.
  - (2) Contractor shall submit complete and accurate data to the State's DSS

contractor by the fifteenth (15<sup>th</sup>) day after the end of each month. Complete and accurate data is defined to be data that:

- i. Contains records for all finalized Claims activity within the specified time periods;
  - ii. Has the same format and content as the agreed-upon record layout and data dictionary;
  - iii. Does not have unreported changes in either format or content; and is submitted in a single record format.
- (3) Contractor shall provide the data files at no charge to the State or the State's DSS contractor. Any charge by the DSS contractor to set up the Contractor shall be borne by the Contractor. The Contractor is responsible for the fee charged by the DSS contractor to develop, test and implement conversion programs for the Contractor's Claims data. Furthermore, the Contractor shall pay during the term of this contract all applicable fees as assessed by the State's DSS contractor related to any data format changes or additions, which are Contractor-initiated or are due to meeting compliance with new regulations. The Contractor shall also pay all applicable fees related to any DSS contractor efforts to correct Contractor data quality errors that occur during the term of this contract.
- (4) If Contractor's Contract with the State is terminated, Contractor shall continue to provide Claims data to the State's DSS contractor until all Claims processed prior to the Contract termination date have been submitted.
- (5) Contractor shall provide the data without any restrictions on its use and recognize that the Claims data transmitted pursuant to the provision of this Contract is owned by the State of Tennessee.
- (6) Contractor shall ensure that production data matches the test data in format, layout, and content.
- (7) Contractor shall update valid values and maps in a timely manner and notify the State's DSS contractor of any such updates at least ten (10) Business Days before the scheduled data submission date.
- (8) The Contractor's Claims paid data sent to the DSS contractor shall match the Contractor's data on the Claims Paid report (see Contract Attachment D.2.) sent to the State within the quality standards noted below for each quarter. Measured by the State on a quarterly basis, the Contractor's data submission to the DSS contractor as reported by the DSS contractor to the State compared to the Contractor's data sent to the State on the required quarterly report shall meet the following measures:
- i. Plan covered expense (allowed amount): Differential between Contractor's financial Claims paid data reported to the State  $\leq$  1.5% of financial Claims paid data received by the State's DSS contractor from the Contractor, and
  - ii. Member deductible: Differential between Contractor's financial Claims paid data reported to the State  $\leq$  1.5% of financial Claims paid data

received by the State's DSS contractor from the Contractor, and

- iii. Member Copayment: Differential between Contractor's financial Claims paid data reported to the State  $\leq$  1.5% of financial Claims paid data received by the State's DSS contractor from the Contractor, and
- iv. Member Coinsurance: Differential between Contractor's financial Claims paid data reported to the State  $\leq$  1.5% of financial Claims paid data received by the State's DSS contractor from the Contractor.

A.12. Audits and Quality Assurance

- a. The Contractor shall cooperate fully with audits the State may conduct related to any aspect of the Plan the State deems appropriate. The State may select any qualified persons or organization to conduct the audits. To the extent allowed by applicable law, the State agrees that persons or organizations conducting audits of the Contractor shall be prohibited from disclosing confidential patient records or proprietary or confidential information reasonably designated as such by the Contractor. For the purpose of audit requirements, Contractor shall include its parents, affiliates, subsidiaries, and subcontractors.
- b. The Contractor shall provide access, at any time during the term of this contract and for five (5) years after final contract payment (longer if required by law), to the State and/or its authorized representative to examine and audit Contractor services, payments, and pricing pursuant to this Contract. The State reserves the right to request that documentation be provided for review at the authorized representative's location, the State's location, or at the Contractor's corporate site.
- c. The Contractor shall provide reasonable cooperation with requests for information, which includes but is not limited to the timing of the audit, deliverables, data/information requests and the Contractor's response time to the State's questions during and after the process. The Contractor shall also provide a response to all "findings" received. Such response shall occur within thirty (30) days, or at a later date if mutually determined with the State to be more reasonable based on the number and type of findings.
- d. The State shall not be responsible for time or any costs incurred by the Contractor in association with an audit including, but not limited to, the costs associated with providing data, reports, documentation, systems access, or space.
- e. If the outcome of the audit results in an amount due to the State, then the State will work with the Contractor to negotiate terms of repayment. In the absence of such agreement, the State will deduct the total amount due from the fees due to the Contractor pursuant to Section C.3. If the Contractor disagrees with a finding resulting in a payment to the State, the State will review the Contractor's comments, but if the State retains the original audit findings the Contractor will be responsible for any payment to the State.
- f. The Contractor shall maintain an internal quality assurance plan. The Contractor shall provide by the date specified in Contract Section A.16. a summary of the internal quality assurance plan indicating areas addressed, established criteria

and standards and those methods employed to evaluate results.

- g. The Contractor shall submit to the State by the date specified in Contract Section A.16. a summary of its methodology for conducting internal Claims and operational audits, including audits to determine Claims payment and processing accuracy and Claims payment turnaround. The Contractor shall notify the State In Writing at least thirty (30) calendar days in advance of any significant changes to its methodology. The State reserves the authority to review the change and require changes, where appropriate.

A.13. Reporting

- a. The Contractor shall submit reports to the State electronically, in the format specified by the State (e.g. Excel instead of PDF), and shall be of the type and at the frequency indicated in Contract Attachment D. As appropriate, reporting shall continue during the Claims runout period. The State reserves the right to modify reporting requirements as deemed necessary to monitor the Plan. The State will provide the Contractor with at least ninety (90) days' notice prior to implementation of a report modification.
- b. Unless prior approved In Writing by the State, each report required in Contract Attachment D shall be specific to the Plan (not the Contractor's book of business).
- c. The Contractor shall ensure that reports submitted by the Contractor to the State shall meet the following standards:
  - (1) The Contractor shall verify the accuracy and completeness of data and other information in reports submitted.
  - (2) The Contractor shall ensure delivery of reports or other required data on or before scheduled due dates.
  - (3) Reports or other required data shall conform to the State's defined written standards.
  - (4) All required information shall be fully disclosed in a manner that is responsive and with no material omission.
  - (5) Each report shall be accompanied by a brief narrative that describes the content of the report, statistics relevant to the data that supports the final level of results, and highlights salient findings of the report.
  - (6) As applicable, the Contractor shall analyze the reports for any early patterns of change, identified trend, or outliers and shall submit a written summary with the report including such analysis and interpretation of findings. At a minimum, such analysis shall include the identification of change(s), the potential reasons for change(s), and the proposed action(s).
  - (7) The Contractor shall notify the State regarding any significant changes in its ability to collect information relative to required data or reports.
  - (8) The submission of late, inaccurate or otherwise incomplete reports shall be considered failure to report within the specified timeframe (see Contract

Attachment D).

- (9) State requirements regarding reports, report content and frequency of submission may change during the term of the Contract. The Contractor shall have at least forty- five (45) days to comply with changes specified In Writing by the State.
- d. The Contractor shall notify the State, within three (3) Business Days of identification, about any situation that appears to negatively impact the administration or delivery of the Plan or Benefits. Failure to do so may result in Liquidated Damages as specified in Attachment B The situation shall be researched and resolved in a timeframe mutually agreed upon with the State.

#### A.14. Implementation

- a. The Contractor shall provide to the State a comprehensive Implementation plan no later than ten (10) Business Days after the Contract Effective Date as specified in Contract Section B. or upon another date established by the State. The plan shall outline the steps necessary for the Contractor to submit deliverables by the dates specified in Contract Section A.16. for the Contractor to be fully operational by the go-live date. This plan shall include a detailed timeline description of all work to be performed both by the Contractor and the State. The implementation plan shall also provide specific details on the following:
  - (1) Identification, timing, and assignment of significant responsibilities and tasks;
  - (2) Names and titles of key implementation staff;
  - (3) Identification and timing of the State's responsibilities;
  - (4) Processing of test data for appropriate interpretation of data values;
  - (5) Identification and timing for the testing, acceptance and certification of exchange of data between the Contractor and Edison and other relevant information systems;
  - (6) Member communications and their timing (consistent with BA's larger Member communication strategy); and
  - (7) Schedule of in-person meetings and conference calls with the State.
- b. The State may conduct a comprehensive readiness review of the Contractor at least sixty (60) days prior to January 1, 2022, in order to ensure that the Contractor is able and prepared to perform all functions and to provide high quality services to Members. Such review by the State may include an on-site review of the Contractor's customer service and operations facilities. Contractor shall participate in all readiness review activities conducted by the State staff and/or the State's benefit consultants to ensure the Contractor's operational readiness for all products and services (e.g. enrollment, Member services, reporting requirements, Edison interface, etc.). The State will provide the Contractor with a summary of findings that may include areas requiring corrective action prior to January 1, 2022.

#### A.15. Regulatory Requirements

- a. The Contractor shall immediately notify the State of any pending disciplinary action initiated by the State of Tennessee Department of Commerce and Insurance or other state or federal agency that may materially impact its ability to

perform under this Contract.

- b. The Contractor shall perform, if applicable, the administration of tax calculations, payments, and filing of appropriate federal and/or state tax forms.

A.16. Due Dates for Key Contract Deliverables/Milestones.

- a. Unless otherwise specified In Writing by the State, the Contractor shall adhere to the following schedule for the key deliverables and milestones for which it is responsible under this Contract:

Key Deliverables/Milestones		Contract Reference(s)	Milestone/Deliverable Due Dates
<b>Implementation</b>			
1.	Provide a comprehensive implementation plan	A.14.a.	Within ten (10) Business Days after the Contract Effective Date or on a date established by the State
2.	Submit to the State for review and approval a detailed staffing plan	A.3.b.	Within ten (10) Business Days after the Contract Effective Date or on a date established by the State
3.	Kick-off meeting for all key Contractor Staff	A.3.h.	Within ten (10) Business Days after Contract Effective Date or on a date determined by the State
4.	Submit list of all subcontractors to be utilized in connection with this Contract	A.3.k.	Within ten (10) Business Days after the Contract Effective Date or on a date determined by the State
5.	Information systems project coordinator in place	A.3.g.	August 2, 2021
6.	Provide written marketing and communications plan	A.5.a.	August 2, 2021
7.	Submit the text and screenshots of the Splash Page and website to the State for review and approval	A.8.f.	August 2, 2021
8.	Grant the State access to the customized developed Splash Page for review and approval	A.8.g.	August 16, 2021
9.	Account manager and backup in place	A.3.e.	September 1, 2021
10.	Customer service manager in place	A.3.f.	September 1, 2021
11.	Contractor's representatives/operators and other staff trained on State's Plan	A.3.i.	September 1, 2021
12.	Call center open and accepting calls	A.4.a.	September 1, 2021

13.	Member materials shall be finalized and ready for distribution	A.5.c	September 1, 2021
14.	Write, update, print and distribute, upon the State's request Member handbook(s)	A.7.a.	September 1, 2021
15.	Splash Page and Contractor website fully operational, including posting of Member materials and the Plan document.	A.8.h.	September 1, 2021
16.	Provide State with a written copy of grievance procedure description	A.9.h.	October 1, 2021
17.	Provide a summary of the internal quality assurance plan indicating areas addressed, established criteria and standards and those methods employed to evaluate results	A.12.f.	October 1, 2021
18.	Provide a summary of methodology for conducting internal Claims and operational audits, including audits to determine Claims payment and processing accuracy and Claims payment turnaround.	A.12.g.	October 1, 2021
19.	Confirm with State the format, data needed, and due dates for each required report	A.13.a.	October 1, 2021
20.	Completion of enrollment file testing	A.11.f.	November 1, 2021
21.	State readiness review of Contractor if requested by State	A.14.b.	November 1, 2021
22.	Load, test, verify, and make available online for use the State's enrollment information	A.11.g.	December 6, 2021
23.	Mail a welcome kit to Subscribers	A.6.a.	December 17, 2021
24.	Provide Subscribers with ID cards	A.7.e.	December 17, 2021
25.	Provide requested State employees with access and update authority to the Contractor's enrollment system	A.10.f.	December 28, 2021
26.	Enable Transport Layer Security (TLS) on the mail server	A.9.i.	January 1, 2022
27.	Go-live	A.9.p.	January 1, 2022

A.17. Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.

Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor's industry.

If Contractor fails to provide the goods or services as warranted, then Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide the goods or services as warranted, then the State shall be entitled to recover the fees paid to Contractor for the Defective goods or services. Any exercise of the State's rights under this Section shall not prejudice the State's rights to seek any other remedies available under this Contract or applicable law.

- A.18. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

**B. TERM OF CONTRACT:**

This Contract shall be effective on April 1, 2021 ("Effective Date") and extend for a period of eighty-six (86) months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

The Term shall include eighteen (18) months (January 1, 2027-June 30, 2028) for a runout period to adjudicate claims with expenses incurred during the benefit period (January 1, 2022 through December 31, 2026).

**C. PAYMENT TERMS AND CONDITIONS:**

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed twenty-four million (\$24,000,000) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.
- C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.
- a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
  - b. The Contractor shall be compensated based upon the following payment methodology:

Guaranteed Monthly Administrative Fee	CY 2022 1/1/2022 – 12/31/2022	CY 2023 1/1/2023 – 12/31/2023	CY 2024 1/1/2024 – 12/31/2024	CY 2025 1/1/2025 – 12/31/2025	CY 2026 1/1/2026 – 12/31/2026
		\$7.35/PMP M	\$7.35/PMP M	\$7.35/PMP M	\$7.35/PMP M

The State shall compensate the Contractor monthly for all services outlined in this Contract, at the PMPM rates indicated above, based upon the number of Members certified by the State to the Contractor. The Contractor shall be paid based on enrollment counts calculated by the State's Edison system.

- c. Claims Payments. The State will fund the Contractor for the total issue amount of the Claims payments, net of cancellations, voids or other payment credit adjustments. Unless otherwise mutually agreed In writing by the parties, the Contractor shall notify the State of the funding amount required and the State will fund the Contractor weekly, provided that the Contractor's payment process includes timely settlement of ACH transactions. As the parties shall mutually agree In Writing, the transfer of said funding to the Contractor for Claims payments shall be effected weekly by ACH debit from the Contractor to a designated State bank account.
  - (1) The Contractor acknowledges and agrees that since the State intends to fund payments at the time of issuance, the State will not maintain a separate bank account or an escrow account with the Contractor or to otherwise pre-fund an account.
  - (2) The State reserves the right to review documentation either before or after the transfer of funding for Claims payments and, as the State may deem appropriate, to adjust the funding amount to be transferred or withhold the amount of any overpaid funding from another funding transfer.
  - (3) The Contractor acknowledges that funding for Claims Payments shall be adjusted in full consideration of the Contract Scope of Service requirement that the Contractor shall identify and pursue Claims that may be subject to coordination of benefits (COB) and recovery of overpayments.
- d. The State authorizes the Contractor to retain monies received through Subrogation, on a per patient basis, of no more than 5% of the gross recoveries received. If the Contractor utilized a Subrogation subcontractor, the Contractor may retain an additional 20% of the gross recoveries, on a per patient basis. The Contractor's Subrogation processes shall include the recovery of Claims paid as a result of work related illnesses or injuries relative to worker's compensation Claims. The net Subrogation recoveries will be remitted to the State within 90 days of final settlement and receipt of funds by payment as agreed on by the State. Additionally, the Contractor will provide a report that itemizes cases information (including cases opened, pending and closed), year to date summary of recoveries, monthly non-response information, quarterly cases closed by Contractor, quarterly 'made whole' closures, and any other information deemed necessary by the State, to be submitted to the State monthly.
- e. If Member materials containing an error were approved by the State In Writing and the error was detected after the materials were mailed, the State will reimburse the Contractor the production and postage cost of mailing the corrected version pursuant to Contract Section C.3.f.

- f. For mailings in addition to those identified in the contract, the State shall reimburse the Contractor for the following, selected actual costs in the performance of this Contract upon Contractor providing documentation of actual costs incurred.
- (1) Postage. The State shall reimburse the Contractor for the actual cost of postage for mailing materials produced under the terms of this Contract and as directed and authorized by the State.
  - (2) Printing/Production. The State shall reimburse the Contractor an amount equal to the actual cost of document printing/production as required and authorized by the State and as detailed by the Contract Scope of Services as referred to in A.5.e.

Notwithstanding the foregoing, the State retains the option to authorize the Contractor to deliver a product to be printed. The State also retains the option to approve and accept the product but not use the Contractor to print the material. In those situations, the State shall have the discretion to use other printing and production services at its disposal.

- C.4. At-Risk Performance Payments and SLA Scorecard. The Parties shall conduct a scorecard assessment (Contract Attachment C), beginning after the go-live date, on a quarterly basis (every three months) during the Term. Based on the SLA Scorecard, Contractor shall send the State an At-Risk Performance Payment (if applicable) quarterly (every three months) during the Term in accordance with Contract Attachment C. This payment is due within forty-five (45) calendar days of the quarterly SLA scorecard assessment.
- C.5. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.
- C.6. Purchase Order in lieu of Invoice. The State will generate a monthly purchase order and initiate payment of the purchase order for the administration fees, based upon the State's record of enrolled Members as of the last day of the prior month, utilizing the rates listed in C.3. above. Enrollment shall be calculated through the State's Enterprise Resource Planning (ERP) solution, otherwise known as Edison.
- C.7. Reconciliation of Payment. The Contractor shall reconcile, within ten (10) Business Days of receipt, payment information provided by the State. Upon identification of any discrepancies, the Contractor shall immediately advise the State.
- C.8. Payment of Purchase Order. A payment by the State shall not prejudice the State's right to object to or question any payment, purchase order, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount reflected on the purchase order.
- C.9. Payment Reductions. The Contractor's payment shall be subject to reduction for amounts included in any purchase order or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.
- C.10. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.
- C.11. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.

- a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
- b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

C.12. Unclaimed Property. The Contractor is holder as defined by Tenn. Code Ann. § 66-29-102 for purposes of unclaimed property arising from the performance of this Contract. The Contractor shall comply with all applicable escheat state laws and regulations including but not limited to the Uniform Unclaimed Property Act, Tenn. Code Ann. § 66-29-101 et. seq. The Contractor shall be responsible for compiling reports which meet National Association of Unclaimed Property Administrators (NAUPA) specifications and filing any required reports with the State through the ReportItTN.gov online portal.

- 1) The Contractor shall provide notice In Writing to Benefits Administration when a report has been filed through the ReportItTN.gov online portal.
- 2) Upon request In Writing by the State, the Contractor shall provide copies of all escheat reports and supporting documentation to Benefits Administration.

**D. MANDATORY TERMS AND CONDITIONS:**

D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.

D.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be In Writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided In Writing by a Party.

The State:

Seannalyn Brandmeir, Procurement and Contracting Director  
Tennessee Department of Finance & Administration  
Division of Benefits Administration  
312 Rosa L. Parks Avenue, Suite 1900  
Nashville, Tennessee 37243  
[Seannalyn.Brandmeir@tn.gov](mailto:Seannalyn.Brandmeir@tn.gov)  
Telephone: 615.532.4598  
Fax: 615.253.8556

The Contractor:

Janice Webb, Strategic Account Executive

2425 James Street  
Syracuse, NY 13206  
[Janice.webb@umr.com](mailto:Janice.webb@umr.com)  
Telephone: 315-937-2910

All instructions, notices, consents, demands, or other communications shall be considered effective upon receipt or recipient confirmation as may be required.

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall provide written notice to Contractor specifying the Breach Condition. If within thirty (30) days of notice, the Contractor has not cured the Breach Condition, the State may terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor and the State may seek other remedies allowed at law or in equity for breach of this Contract.
- D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if

the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

- D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
  - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
  - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
  - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
  - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.

- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless from any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death. For clarity, except as otherwise expressly set forth in this Section, Contractor's indemnification obligations and other remedies available under this Contract are subject to the limitations on liability set forth in this Section.
- D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys' fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys,

the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

- D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), Health Information Technology for Economic and Clinical Health (“HITECH”) Act and any other relevant laws and regulations regarding privacy (collectively the “Privacy Rules”). The obligations set forth in this Section shall survive the termination of this Contract.
- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
  - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
  - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT “protected health information” as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
  - d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.
  - e. The Contractor shall not sell Public Sector Plan Member information or use Member information unless it is aggregated blinded data, which is not identifiable on a Member basis. The State must approve, In Writing, the use of and sale of any of our Member or Plan data, even if being used in an aggregated, blinded data format.
  - f. The Contractor shall not use Public Sector Plan Member identified or non-aggregated information for advertising, marketing, promotion or any activity intended to influence sales or market share of any product or service except when permitted by the State, such as advertisements of the Plan for enrollment purposes.
  - g. The Contractor shall have full financial responsibility for any penalties, fines, or other payments imposed or required as a result of the Contractor’s non-compliance with or violation of HIPAA or HITECH requirements, and the Contractor shall indemnify the State with respect to any such penalties, fines, or payments, including the cost of credit protection. At the request of the State, the Contractor shall offer credit protection for those times in which a Member’s PHI is accidentally or inappropriately disclosed.
- D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System (“TCRS”), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member’s retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of “employee/employer” and not that of an

independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.

- D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
  - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
  - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
  - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded, disqualified, or presently fall under any of the prohibitions of sections a-d.

- D.24. Force Majeure. “Force Majeure Event” means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor’s representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor’s performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees for the affected obligations until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.

- D.25. State and Federal Compliance. The Contractor shall comply with all State and federal laws and regulations applicable to Contractor in the Contractor's performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 408.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
  - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes:
    - i. Contract Attachment A Attestation;
    - ii. Contract Attachment B Liquidated Damages;
    - iii. Contract Attachment C Service Level Agreement Scorecard;
    - iv. Contract Attachment D Reporting Requirements; and
    - v. Contract Attachment E HIPAA Business Associate Agreement.
  - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
  - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
  - e. any technical specifications provided to proposers during the procurement process to award this Contract;
  - f. the Contractor's response seeking this Contract; and
  - g. any Contractor rules or policies contained in insurance policy filings by the Contractor with State regulators.
- D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101, *et seq.*, addressing contracting with persons as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.

D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible or self insured retention ("SIR") over fifty thousand dollars (\$50,000) must be approved by the State. The deductible or SIR and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an aggregate meeting or exceeding the required coverage amounts is acceptable. For example: If the required policy limit under this Contract is for two million dollars (\$2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars (\$1,000,000) combined with an umbrella policy for an additional one million dollars (\$1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers' Liability Accident), Contractor shall provide a copy of the umbrella insurance policy documents to ensure that no aggregate limit applies to the umbrella policy for that coverage area. In the event that an umbrella policy is being provided to achieve any required coverage amounts, the umbrella policy shall be accompanied by an endorsement at least as broad as the Insurance Services Office, Inc. (also known as "ISO") "Noncontributory—Other Insurance Condition" endorsement or shall be written on a policy form that addresses both the primary and noncontributory basis of the umbrella policy if the State is otherwise named as an additional insured.

Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer's National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3<sup>rd</sup> floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) business days prior to the Effective Date and again thirty (30) calendar days before renewal or replacement of coverage. Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor's policy. At any time, the State may require Contractor to provide a valid COI. The Parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor's letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses. The State reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

**The insurance obligations under this Contract shall be: (1)—all the insurance coverage and policy limits carried by the Contractor; or (2)—the minimum insurance coverage requirements and policy limits shown in this Contract; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and minimum required policy limits, which are applicable to a given loss, shall be available to the State. No representation is made that the minimum insurance requirements of the Contract are sufficient to cover the obligations of the Contractor arising under this Contract. The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.**

a. Commercial General Liability (“CGL”) Insurance

- 1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises and operations products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).  
The Contractor shall maintain single limits not less than one million dollars (\$1,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this policy or location of occurrence or the general aggregate limit shall be twice the required occurrence limit.

b. Workers’ Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers’ compensation and employer liability insurance, the Contractor shall maintain:
  - i. Workers’ compensation in an amount not less than one million dollars (\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit by disease, and one million dollars (\$1,000,000) per employee for bodily injury by disease.
- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
  - i. The Contractor employs fewer than five (5) employees;
  - ii. The Contractor is a sole proprietor;
  - iii. The Contractor is in the construction business or trades with no employees;
  - iv. The Contractor is in the coal mining industry with no employees;
  - v. The Contractor is a state or local government; or
  - vi. The Contractor self-insures its workers’ compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

c. Professional Liability Insurance

- 1) Professional liability insurance shall be written on an occurrence basis or on a claims-made basis. If this coverage is written on a claims-made basis, then:



law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

The obligations set forth in this Section shall survive the termination of this Contract.

**E. SPECIAL TERMS AND CONDITIONS:**

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.
- E.2. Additional lines, items, or options. At its sole discretion, the State may make written requests to the Contractor to add lines, items, or options that are needed and within the Scope but were not included in the original Contract. Such lines, items, or options will be added to the Contract through a Memorandum of Understanding ("MOU"), not an amendment.
- a. After the Contractor receives a written request to add lines, items, or options, the Contractor shall have ten (10) business days to respond with a written proposal. The Contractor's written proposal shall include:
    - (1) The effect, if any, of adding the lines, items, or options on the other goods or services required under the Contract;
    - (2) Any pricing related to the new lines, items, or options;
    - (3) The expected effective date for the availability of the new lines, items, or options; and
    - (4) Any additional information requested by the State.
  - b. The State may negotiate the terms of the Contractor's proposal by requesting revisions to the proposal.
  - c. To indicate acceptance of a proposal, the State will sign it. The signed proposal shall constitute a MOU between the Parties, and the lines, items, or options shall be incorporated into the Contract as if set forth verbatim.
  - d. Only after a MOU has been executed shall the Contractor perform or deliver the new lines, items, or options.
- E.3. Software Support and Maintenance Warranty. Contractor shall provide to the State all software upgrades, modifications, bug fixes, or other improvements in its software that it makes generally available to its customers.
- E.4. Prohibited Advertising or Marketing. The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.
- E.5. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's Response to RFP #31786-00156 (Attachment 6.2, Section B.15) and resulting in this Contract.

The Contractor shall assist the State in monitoring the Contractor's performance of this commitment by providing, as requested, a monthly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, service-disabled veterans, and persons with disabilities. Such reports shall be provided to the State of Tennessee Governor's Office of Diversity Business Enterprise in the TN Diversity Software available online at: <https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810>.

- E.6. Liquidated Damages. If the Contractor fails to perform in accordance with any term or provision of this contract, only provides partial performance of any term or provision of the Contract, violates any warranty, or any act prohibited or restricted by the Contract occurs, ("Liquidated Damages Event"), the

State may assess damages on Contractor (“Liquidated Damages”). The State shall notify the Contractor of amounts to be assessed as Liquidated Damages. The Parties agree that due to the complicated nature of the Contractor’s obligations under this Contract it would be difficult to specifically designate a monetary amount for Contractor’s failure to fulfill its obligations regarding the Liquidated Damages Event as these amounts are likely to be uncertain and not easily proven. Contractor has carefully reviewed the Liquidated Damages contained in Attachment B and agrees that these amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of a Liquidated Damages Event, and are a reasonable estimate of the damages that would occur from a Liquidated Damages Event. The Parties agree that the Liquidated Damages represent solely the damages and injuries sustained by the State in losing the benefit of the bargain with Contractor and do not include any injury or damage sustained by a third party. The Contractor agrees that the Liquidated Damages are in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or any other sections of this Contract.

The State is not obligated to assess Liquidated Damages before availing itself of any other remedy. The State may choose to discontinue Liquidated Damages and avail itself of any other remedy available under this Contract or at law or equity.

- E.7. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State (“PII”). For the purposes of this Contract, “PII” includes “Nonpublic Personal Information” as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time (“GLBA”) and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information (“Privacy Laws”). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor’s policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify or ensure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State’s direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

The Contractor shall report to the State any instances of unauthorized access to or potential disclosure of PII in the custody or control of Contractor (“Unauthorized Disclosure”) that come to the Contractor’s attention. Any such report shall be made by the Contractor within twenty-four (24) hours after the Unauthorized Disclosure has come to the attention of the Contractor. Contractor shall take all necessary measures to halt any further Unauthorized Disclosures. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals whose PII was affected by the Unauthorized Disclosure. The Contractor shall bear the cost of notification to all individuals affected by the Unauthorized Disclosure, including individual letters and public notice. The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to this State under this Contract or otherwise available at law. The obligations set forth in this Section shall survive the termination of this Contract.

- E.8. Contractor Hosted Services Confidential Data, Audit, and Other Requirements

- a. "Confidential State Data" is defined as data deemed confidential by State or Federal statute or regulation. The Contractor shall protect Confidential State Data as follows:
- (1) The Contractor shall ensure that all Confidential State Data is housed in the continental United States, inclusive of backup data.
  - (2) The Contractor shall encrypt Confidential State Data at rest and in transit using the current version of Federal Information Processing Standard ("FIPS") 140-2 validated encryption technologies.
  - (3) The Contractor must annually perform Penetration Tests and Vulnerability Assessments against its Processing Environment. "Processing Environment" shall mean the combination of software and hardware on which the Application runs. "Application" shall mean the computer code that supports and accomplishes the State's requirements as set forth in this Contract. "Penetration Tests" shall be in the form of attacks on the Contractor's computer system, with the purpose of discovering security weaknesses which have the potential to gain access to the Processing Environment's features and data. The "Vulnerability Assessment" shall be designed and executed to define, identify, and classify the security holes (vulnerabilities) in the Processing Environment. The Contractor shall allow the State, at its option, to perform Penetration Tests and Vulnerability Assessments on the Processing Environment. The Contractor shall allow the State, at its option, to perform Penetration Tests and Vulnerability Assessments on the Processing Environment or the Contractor shall commission an independent third party to perform the risk assessment which must include penetration testing and vulnerability assessments. The Contractor shall provide the results of the third party testing to the State.
  - (4) Upon State request, the Contractor shall provide a copy of all Confidential State Data it holds. The Contractor shall provide such data on media and in a format determined by the State. The Contractor shall maintain a duplicate set of all records relating to this Contract in electronic medium, usable by the State and the Contractor for the purpose of Disaster recovery. Such duplicate records are to be stored at a secure fire, flood, and theft-protected facility located away from the storage location of the originals. The Contractor shall update duplicate records, at a minimum, on a daily basis and shall retain said records for a period of sixty (60) days from the date of creation.
  - (5) In accordance with the timeframe for audits listed in Contract Section D.11 and in consultation with the State, the Contractor shall destroy all Confidential State Data it holds (including any copies such as backups) in accordance with the current version of National Institute of Standards and Technology ("NIST") Special Publication 800-88. The Contractor shall provide a written confirmation of destruction to the State within ten (10) business days after destruction.
  - (6) Contractor must enter into a Business Associate Agreement (BAA) with the State. See Contract Attachment E.

b. Minimum Requirements

- (1) The Contractor and all data centers used by the Contractor to host State data, including those of all Subcontractors, must comply with the State's Enterprise Information Security Policies as amended periodically. The State's Enterprise Information Security Policies document is found at the following URL:  
<https://www.tn.gov/finance/strategic-technology-solutions/strategic-technology-solutions/sts-security-policies.html>.

- (2) The Contractor agrees to maintain the Application so that it will run on a current, manufacturer-supported Operating System. "Operating System" shall mean the software that supports a computer's basic functions, such as scheduling tasks, executing applications, and controlling peripherals.
- (3) If the Application requires middleware or database software, Contractor shall maintain middleware and database software versions that are at all times fully compatible with current versions of the Operating System and Application to ensure that security vulnerabilities are not introduced.

c. Comptroller Audit Requirements

Upon reasonable notice and at any reasonable time, the Contractor and Subcontractor(s) agree to allow the State, the Comptroller of the Treasury, or their duly appointed representatives to perform information technology control audits of the Contractor and all Subcontractors used by the Contractor. Contractor will maintain and cause its Subcontractors to maintain a complete audit trail of all transactions and activities in connection with this Contract. Contractor will provide to the State, the Comptroller of the Treasury, or their duly appointed representatives access to Contractor and Subcontractor(s) personnel for the purpose of performing the information technology control audit.

The information technology control audit may include a review of general controls and application controls. General controls are the policies and procedures that apply to all or a large segment of the Contractor's or Subcontractor's information systems and applications and include controls over security management, access controls, configuration management, segregation of duties, and contingency planning. Application controls are directly related to the application and help ensure that transactions are complete, accurate, valid, confidential, and available. The audit shall include the Contractor's and Subcontractor's compliance with the State's Enterprise Information Security Policies and all applicable requirements, laws, regulations or policies.

The audit may include interviews with technical and management personnel, physical inspection of controls, and review of paper or electronic documentation.

For any audit issues identified, the Contractor and Subcontractor(s) shall provide a corrective action plan to the State within 30 days from the Contractor or Subcontractor receiving the audit report.

Each party shall bear its own expenses incurred while conducting the information technology controls audit.

d. Business Continuity Requirements. The Contractor shall maintain set(s) of documents, instructions, and procedures which enable the Contractor to respond to accidents, disasters, emergencies, or threats without any stoppage or hindrance in its key operations ("Business Continuity Requirements"). Business Continuity Requirements shall include:

- (1) The BC-DR plan shall encompass all Information Systems supporting this Contract. At a minimum the Contractor's BC-DR plan shall address and provide the results for the following scenarios:
  - i. Central and/or satellite data processing, telecommunications, print and mailing facilities and functions therein, hardware and software are destroyed or damaged;
  - ii. System interruption or failure resulting from network, operating hardware, software, communications infrastructure or operational errors that compromise

- the integrity of transactions that are active in a live system at the time of the outage;
- iii. System interruption or failure resulting from network, operating hardware, software, communications infrastructure or operational errors that compromise the integrity of data maintained in a live or archival system; and
  - iv. System interruption or failure resulting from network, operating hardware, software, communications infrastructure or operational errors that does not compromise the integrity of transactions or data maintained in a live or archival system but does prevent access to the system.
- (2) "Disaster Recovery Capabilities" refer to the actions the Contractor takes to meet the Recovery Point and Recovery Time Objectives defined below. Disaster Recovery Capabilities shall meet the following objectives:
- i. Recovery Point Objective ("RPO"). The RPO is defined as the maximum targeted period in which data might be lost from an IT service due to a major incident: one (1) hour.
  - ii. Recovery Time Objective ("RTO"). The RTO is defined as the targeted duration of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity: seventy-two (72) hours.
- (3) The Contractor shall perform at least one Disaster Recovery Test every three hundred sixty-five (365) days. A "Disaster Recovery Test" shall mean the process of verifying the success of the restoration procedures that are executed after a critical IT failure or disruption occurs. The Disaster Recovery Test shall use actual State Data Sets that mirror production data, and success shall be defined as the Contractor verifying that the Contractor can meet the State's RPO and RTO requirements. A "Data Set" is defined as a collection of related sets of information that is composed of separate elements but can be manipulated as a unit by a computer. The Contractor shall provide written confirmation to the State after each Disaster Recovery Test that its Disaster Recovery Capabilities meet the RPO and RTO requirements. The Contractor shall submit a written summary of its annual BC-DR test results to the State (see item #7 in Contract Attachment D).
- e. The Contractor and any Subcontractor used by the Contractor to host State data, including data center vendors, shall be subject to an annual engagement by a CPA firm in accordance with the standards of the American Institute of Certified Public Accountants ("AICPA") for a System and Organization Controls for service organizations ("SOC") 2 Type II audit. The SOC audit control objectives shall include all five trust-services principles. The State shall approve the SOC audit control objectives. The Contractor shall provide the State with the Contractor's and Subcontractor's annual audit report within 30 days from when the CPA firm provides the audit report to the Contractor or Subcontractor and in addition to periodic bridge reports as requested by the State, see #10 Contract Attachment D. The Contractor shall submit corrective action plans to the State for any issues included in the audit report within 30 days after the CPA firm provides the audit report to the Contractor and Subcontractor.
- E.9. Extraneous Terms and Conditions. Contractor shall fill all orders submitted by the State under this Contract. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this Contract shall contain any terms or conditions other than as set forth in the Contract. Any such extraneous terms and conditions shall be void, invalid and unenforceable against the State. Any refusal by Contractor to supply any goods or services under this Contract conditioned upon the State submitting to any extraneous terms and conditions shall be a material breach of the Contract and constitute an act of bad faith by Contractor.

E.10. Survival. The terms, provisions, representations, and warranties contained in this Contract which by their sense and context are intended to survive the performance and termination of this Contract, shall so survive the completion of performance and termination of this Contract.

**IN WITNESS WHEREOF,**

**UMR, Inc.:**



3/1/2021

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**CONTRACTOR SIGNATURE**

**DATE**

Marja S. Barr, Associate Director, Contracts

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**PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)**

**STATE OF TENNESSEE,  
STATE INSURANCE COMMITTEE:**

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**Howard H. Eley, CHAIRMAN**

**DATE**

**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

<b>SUBJECT CONTRACT NUMBER:</b>	
<b>CONTRACTOR LEGAL ENTITY NAME:</b>	
<b>EDISON VENDOR IDENTIFICATION NUMBER:</b>	

**The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.**



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**CONTRACTOR SIGNATURE**

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NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. Attach evidence documenting the individual's authority to contractually bind the Contractor, unless the signatory is the Contractor's chief executive or president.

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Marja S. Barr, Associate Director, Contracts

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**PRINTED NAME AND TITLE OF SIGNATORY**

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3/1/2021

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**DATE OF ATTESTATION**

**LIQUIDATED DAMAGES**

To effectively manage contractual performance, the State has established Liquidated Damages associated with the Contractor’s obligations with respect to the Contract. The Contractor is expected to perform according to a certain level of standards. If these standards are not met, the State is entitled to impose liquidated damage assessments. Damages are included in this Attachment.

The Parties agree that the Liquidated Damages represent solely the anticipated damages and injuries sustained by the State in losing the benefit of the bargain with Contractor and do not include any injury or damage sustained by a third party.

**Payment of Liquidated Damages:** It is agreed by the State and the Contractor that any liquidated damages assessed by the State shall be due and payable to the State within forty-five (45) calendar days after Contractor receipt of the Invoice containing an assessment of Liquidated Damages. If payment is not made by the due date, the Liquidated Damages amount may be withheld from future payments by the State without further notice.

<b>1. Plan Go-Live Date</b>	
<i>Guarantee</i>	The Plan shall take effect and be fully Operational on the Plan go-live date specified in Contract Section A.16. “Operational” is defined as the ability to accurately capture enrollment records for Members, answer Members’ calls, process Claims, and provide all other services described in the Contract.
<i>Assessment</i>	Twenty-five thousand dollars (\$25,000) for each Business Day beyond the go-live date that the program is not operational up to thirty (30) Business Days.
<i>Justification</i>	Plan go-live is an imperative performance guarantee listed in the Contract. If there is a delay in this, the State is unable to provide Plan Benefits coverage to our Members. This assessment and amount take into account the State’s increased staff time for Member inquiries, resolution of additional Member issues, and increased legislative inquiries.
<i>Measurement</i>	Assessed, reported, and reconciled no later than three (3) months after go-live date.
<b>2. Implementation</b>	
<i>Guarantee</i>	The Contractor shall comply with all tasks, deliverables, and milestones included in the project implementation plan, as required in Contract Section A.14., necessary to install the Plan by the Plan go-live date.
<i>Assessment</i>	One thousand dollars (\$1,000) for each Business Day for each deliverable and/or milestone beyond the deadline up to, and including the Plan go-live date specified in Contract Section A.16.
<i>Justification</i>	Timely and accurate completion of all tasks, deliverables, and milestones in the project implementation plan is critical to the successful implementation of a new contract. This assessment calculates the potential impact of missed or inaccurate implementation milestones.
<i>Measurement</i>	Assessed, reported, and reconciled no later than three (3) months after go-live.
<b>3. Operational Readiness</b>	
<i>Guarantee</i>	The Contractor shall resolve all noncompliance with contract terms identified by the State during its operational readiness review including all milestones required in Contract Section A.16. prior to go-live.
<i>Assessment</i>	Ten thousand dollars (\$10,000) for each Business Day per finding that is not resolved after go-live.
<i>Justification</i>	Operational readiness review requires the Contractor and the State to investigate and navigate any potential issues, deadlines, and milestones leading up to go-live and operations.
<i>Measurement</i>	Assessed and reported no later than three (3) months after go-live.

<b>4. Plan Design</b>	
<i>Guarantee</i>	Plan design per the Contract and the <i>PLAN DOCUMENT AND SUMMARY PLAN DESCRIPTION FOR THE TENNESSEE PLAN (Supplemental Medical Insurance for Retirees with Medicare)</i> will be implemented correctly, as required in Contract Section A.1.
<i>Assessment</i>	Twenty-five thousand dollars (\$25,000) per each incorrect Plan design setup such as, but not limited to, incorrect Coinsurance, incorrect Maximum Allowable Charges, incorrect covered services or excluded services.
<i>Justification</i>	Plan design information must be timely and accurate as to not cause confusion or financial hardship to Members. This assessment and amount take into account the State's increased staff time for Member inquiries, resolution of additional Member issues, and increased legislative inquiries.
<i>Measurement</i>	Assessed and reported three (3) months after go-live and each successive Plan year.
<b>5. Enrollment File Set-Up</b>	
<i>Guarantee</i>	Enrollment information must be loaded, tested, verified and available online for use as required in Contract Section A.11.g.
<i>Assessment</i>	Ten thousand dollars (\$10,000) for each Business Day beyond the date specified in Contract Section A.16.
<i>Justification</i>	Enrollment file set-up is a critical step in providing Member Benefits. Without the accurate and timely set-up of this file, there is a potential harm to Members financially and in receiving services. This assessment and amount take into account the State's increased staff time for Member inquiries, resolution of additional Member issues, and increased legislative inquiries.
<i>Measurement</i>	Assessed, reported, and reconciled no later than three (3) months after go-live.
<b>6. Splash page</b>	
<i>Guarantee</i>	The Contractor's Splash Page shall be available on the internet, fully operational by the date specified in Contract Section A.16. and updated annually no later two (2) weeks prior to the State's annual enrollment period, as required in Contract Section A.8.k.
<i>Assessment</i>	One thousand dollars (\$1,000) per Business Day until operational or updated.
<i>Justification</i>	This assessment and amount take into account the State's increased staff time for Member inquiries, resolution of additional Member issues, and increased legislative inquiries.
<i>Measurement</i>	Assessed, reported, and reconciled annually.
<b>7. Privacy and Security of Protected Health Information Impacting 1 to 499 Members</b>	
<i>Guarantee</i>	In accordance with Contract Section D.20. and Contract Attachment E, the Contractor shall not violate the Privacy and Security Rules (45 CFR Parts 160 and 164) promulgated by the United States Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191 as amended by Public Law 111-5, Division A, Title XIII (the HITECH Act). Pursuant to 45 CFR 164.402, breach is defined as the acquisition, access, use, or disclosure of Protected Health Information in a manner not permitted under subpart E of the Privacy Rule which compromises the security or privacy of the PHI.
<i>Justification</i>	The guarantee and assessment estimate the impact on the State including the unpredictability of the timing of a breach; specifics of the breach's scope; length of time of investigation completion; number of Member calls to the BA service center; and level of legislative inquiries.

<i>Assessment</i>	<p>Four Thousand Eight Hundred dollars (\$4,800) per incident basis.</p> <p>This assessment is based on the previous experience BA has had in responding to similar incidents impacting less than five hundred (500) Members which includes the following predicted costs to BA:</p> <ol style="list-style-type: none"> <li>1. HIPAA Compliance Officer time including investigating the breach, monitoring the HIPAA privacy hotline and email address estimated at seventy-five (75) hours;</li> <li>2. Director of Financial Management and Program Integrity time and work estimated at seven and half (7.5) hours;</li> <li>3. Program Director associated with this contract time and work estimated at fifteen (15) hours;</li> <li>4. Executive Director's time and work estimated at one (1) hour;</li> <li>5. Department attorney time including legal review estimated at one (1) hour; and</li> <li>6. Service Center staff time and work answering Member questions/concerns estimated at fifteen (15) hours.</li> </ol>
<i>Measurement</i>	Assessed, reported, reconciled, and paid after each occurrence.
<b>8. Privacy and Security of Protected Health Information Impacting 500 or more Members</b>	
<i>Guarantee</i>	<p>In accordance with Contract Section D.20. and Contract Attachment E, the Contractor shall not violate the Privacy and Security Rules (45 CFR Parts 160 and 164) promulgated by the United States Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191 as amended by Public Law 111-5, Division A, Title XIII (the HITECH Act).</p> <p>Pursuant to 45 CFR 164.402, breach is defined as the acquisition, access, use, or disclosure of Protected Health Information in a manner not permitted under subpart E of the Privacy Rule which compromises the security or privacy of the PHI.</p>
<i>Justification</i>	<p>The guarantee and assessment estimate the impact on the State including the unpredictability of the timing of a breach; specifics of the breach's scope; length of time of investigation completion; number of Member calls to the BA service center; and level of legislative inquiries.</p> <p>A breach impacting five hundred (500) or more Members has additional required steps and procedures including notification to the Office of Civil Rights ("OCR") with the U.S. Department of Health &amp; Human Services ("HSS"); documentation to OCR for a required investigation; the drafting and mailing of Member notification letters; and a federally-required media release to media outlets across the State.</p>

<i>Assessment</i>	<p>Nineteen Thousand dollars (\$19,000) per incident basis.  This assessment is based on the previous experience BA has had in responding to similar incidents impacting five hundred (500) or more Members which includes the following predicted costs to BA:</p> <ol style="list-style-type: none"> <li>1. HIPAA Compliance Officer time including investigating the breach, monitoring the HIPAA privacy hotline and email address estimated at one hundred thirty (130) hours;</li> <li>2. Director of Financial Management and Program Integrity time and work estimated at thirty (30) hours;</li> <li>3. Program Director associated with this Contract time and work estimated at forty-five (45) hours;</li> <li>4. Executive Director's time and work estimated at eighteen (18) hours;</li> <li>5. Department attorney time including legal review estimated at thirty (30) hours;</li> <li>6. Service Center staff time and work answering Member questions/concerns estimated at one-hundred (100) hours;</li> <li>7. Public Information Officer ("PIO")'s time and work estimated at forty-five (45) hours; and</li> <li>8. Communications Director's time and work estimated at thirty (30) hours.</li> </ol>
<i>Measurement</i>	Assessed, reported, reconciled, and paid after each occurrence.

**Contract Attachment C****Service Level Agreement Scorecard**

Below is the SLA Scorecard and associated KPIs used to measure the Contractor's performance against the desired outcomes. KPIs shall be evaluated, scored, and reconciled quarterly via the SLA Scorecard with relevant documentation. Contractor must submit the SLA Scorecard each calendar quarter documenting the Contractor's outcome for each of the KPI for the previous quarter, in which services were delivered, as well as any At-Risk Performance Payment due (if applicable).

It is agreed by the State and the Contractor that any At-Risk Performance Payment assessed by the State shall be due and payable to the State within forty-five (45) calendar days after Contractor receipt of the Invoice containing an assessment of fees at risk. If payment is not made by the due date, the At-Risk Performance Payment amount may be withheld from future payments by the State without further notice.

Use the following for the quarterly calculations – the Contractor will fill in the Quarterly Score column for each individual KPI. If the individual KPI does not apply for the reported quarter, place 'n/a' in the Quarterly Score column. The total possible score will be adjusted accordingly. The State will calculate the Total Quarterly Score using the following formula: Sum of Quarterly Scores divided by maximum possible quarterly score multiplied by 100%. The At Risk Performance Payment will be determined by this percentage (see table below).

KPI		Description	Performance Requirement	Contractor Performance	Score if Met	Quarterly Score
1.	First Call Resolution	The Contractor's call center shall maintain a monthly average First Call Resolution rate of eighty-five percent (85%) or greater as required in Contract Section A.4.c	85%	85% or greater	10	
				83% - 84.9%	6	
				80%-82.9%	2	
				Less than 80%	0	
2.	Mailing of ongoing welcome kit	Ninety-five percent (95%) of ongoing welcome kits shall be mailed within ten (10) Business Days of new Subscriber enrollment record being received as required in Contract Section A.6.b.	95%	95% or greater	10	
				93%-94.9%	6	
				Less than 93%	0	
3.	Mailing of ongoing ID cards	Ninety-five percent (95%) of ongoing ID cards shall be produced and mailed within ten (10) Business Days of new Subscriber enrollment record being received as required in Contract Section A.7.i.	95%	95% or greater	10	
				93%-94.9%	6	
				Less than 93%	0	

KPI		Description	Performance Requirement	Contractor Performance	Score if Met	Quarterly Score
4.	Member Satisfaction Survey	The level of overall Member satisfaction, as measured annually through the Member satisfaction survey, shall be equal to or greater than eighty-five percent (85%) in the first year of the Contract, and shall be equal to or greater than ninety percent (90%) in all subsequent year(s) within the contract term as required in Contract Section A.9.k.	≥ 85% First year of contract	85% or greater	10	
				83-84.9%	6	
				81-82.9%	2	
				Less than 81%	0	
			≥ 90% in years 2-5 of contract	90% or greater	10	
				88-89.9%	6	
				86-87.9%	2	
				Less than 86%	0	
5.	Enrollment Posting	One hundred percent (100%) of electronically retrieved enrollment files processed within two (2) Business Days of receipt of the weekly file as required in Contract Section A.11.h.(2).	100%	100%	10	
				98-99.9%	6	
				96-97.9%	2	
				Less than 96%	0	
6.	Enrollment Discrepancies	Resolve 100% of enrollment discrepancies as identified by the Contractor for internal correction within two (2) business days of identification and within two (2) Business Days of receiving corrected information from the State as required in Contract Section A.11.h.(5).	100%	100%	10	
				98.0-99.9%	6	
				96.0-97.9%	2	
				Less than 96%	0	
7.	Reporting	The Contractor shall distribute to the State all reports required in the Contract within the time frame and in the format specified in the Contract as required in Contract Section A.13.a.	100%	100%	10	
				98-99.9%	6	
				96-97.9%	2	
				Less than 96%	0	
8.	Average Speed of Answer	The Contractor's call center shall maintain a monthly Average Speed of Answer rate of 30 seconds or less as required in Contract Section A.4.c.(1).	30 seconds or less	30 Sec. or less Avg.	10	
				31-35 Sec, Avg.	6	
				36-40 Sec Avg.	2	
				Greater than 40 Sec Avg.	0	
9.	Claims Payment	The Contractor shall maintain an annual average rate of ninety-eight	98% or greater	98% or greater	10	

KPI		Description	Performance Requirement	Contractor Performance	Score if Met	Quarterly Score
	Accuracy	percent (98%) or higher for Claims Payment Accuracy as required in Contract Section A.9.r.		97% - 97.9%	6	
				96% - 96.9%	2	
				Less than 96%	0	
10.	Claims Processing Accuracy	The Contractor shall maintain an annual average rate of ninety-seven percent (97%) or higher for Claims Processing Accuracy as required in Contract Section A.9.r.	97% or greater	97% or greater	10	
				96% - 96.9%	6	
				95% - 95.9%	2	
				Less than 95%	0	
11.	Claims Processing Turnaround	The Contractor shall maintain an annual average rate of ninety-eight percent (98%) or higher within twenty-one (21) days for Claims Processing Turnaround as required in Contract Section A.9.r.	98% or greater	98% or greater	10	
				97% - 97.9%	6	
				96% - 96.9%	2	
				Less than 96%	0	
<b>Calculated Performance Payment</b> (Sum of Quarterly Scores divided by maximum possible quarterly score multiplied by 100%).						

Quarterly Score	At Risk Performance Payment
>=90%	\$0
85-89.9%	\$10,000
80-84.9%	\$20,000
75-79.9%	\$30,000
74.9% or below	\$40,000

KPI	Description	Performance Requirement	At Risk Performance Payment
13.	Unauthorized Usage of Information	Unless prior approved In Writing by the State, and in compliance with state and federal law, the Contractor shall not use information gained through this Contract, including but not limited to utilization and pricing information, in marketing or expanding non-State business relationships or for any pecuniary gain as specified in Contract Section A.9.n.	If Contractor uses data without prior State approval  \$25,000 per incident

	KPI	Description	Performance Requirement	At Risk Performance Payment
14.	Authorization of Member Communications	The Contactor shall not distribute any materials to Members prior to receiving the express, written authorization by the State for the use of such materials, as required in Contract Section A.5.b.	If Contractor distributes materials without prior State approval	\$1,000 per incident
15.	Timely Notification	Contractor shall notify the State, within three (3) Business Days of identification, about any situation that appears to negatively impact the administration or delivery of the Plan or Benefits, as required in Contract Section A.13.d.	If Contractor fails to notify the state within three (3) Business Days	\$10,000 per incident
16.	Call Center Responses	The Contractor shall have sufficient staff to respond to inquiries, correspondence, complaints, and problems related to all aspects of the services required in this contract, as required in Contract Section A.4.a.	If a Member contacts the State with an unresolved issue that they previously attempted to resolve with the Contractor.	\$1,000 per incident
17	DSS Claims Paid Data Quality	<p>The Contractor's Claims paid data sent to the DSS contractor shall match the Contractor's data on the Claims Paid report (see Contract Attachment D, report 2.) sent to the State within the quality standards noted below for each quarter. Measured by the State on a quarterly basis, the Contractor's data submission to the DSS contractor as reported by the DSS contractor to the State compared to the Contractor's data sent to the State on the required quarterly report shall meet the required measures as required in Contract Section A.11.I.(8).</p> <ol style="list-style-type: none"> <li>1. <u>Plan covered expense</u> (allowed amount): Differential between Contractor's financial Claims paid data reported to the State <math>\leq</math> 1.5% of financial Claims paid data received by the State's DSS contractor from the Contractor, and</li> <li>2. <u>Member deductible</u>: Differential between Contractor's financial Claims paid data reported to the State <math>\leq</math> 1.5% of financial Claims paid data received by the State's DSS contractor, and</li> <li>3. <u>Member Copayment</u>: Differential between Contractor's financial Claims paid data reported to the State <math>\leq</math> 1.5% of financial Claims paid data received by the State's DSS contractor from the Contractor, and</li> <li>4. <u>Member Coinsurance</u>: Differential between Contractor's financial Claims paid data reported to the State <math>\leq</math> 1.5% of financial Claims paid data received by the State's DSS contractor from the Contractor.</li> </ol>	If the Contractor does not meet the measurements listed in Contract Section A.11.I.(8).	\$1,500 per measurement missed

## Contract Attachment D

### REPORTING REQUIREMENTS

As required by the Contract, the Contractor shall submit Management Reports to the State. The reports shall be used by the State to assess the Plan costs, as well as reconcile the Liquidated Damages and Service Level Agreements. All reports shall be submitted in Microsoft Excel format, unless otherwise specified by the State, and shall be sent to the State via secure email.

Unless otherwise directed by the State, the Contractor shall submit reports as follows:

- 1) Weekly reports shall be submitted by Tuesday of the following week;
- 2) Monthly reports shall be submitted by the 15<sup>th</sup> of the following month;
- 3) Quarterly reports shall be submitted by the 20<sup>th</sup> of the following month;
- 4) Semi-Annual Reports shall be submitted by the 20<sup>th</sup> of the following month;
- 5) Annual reports shall be submitted within sixty (60) days after the end of the calendar year.

Note: Any report due on a holiday or weekend will then be due on the following Business Day.

Reports shall include:

- 1) **Liquidated Damages and Service Level Agreement Tracking Report**, as detailed in Contract Attachments B and C, each component to be listed with guarantee and actual results, submitted quarterly and annually using the template prior approved In Writing by the State; the report shall also include a narrative statement regarding the status of each item with statistics supporting the results achieved.
- 2) **Claims Paid Summary Report**, submitted quarterly and annually using the template prior approved In Writing by the State to support Contract Section A.11.I.(8).
- 3) **Claims Paid Summary Service Level by Service Category Report**, submitted quarterly and annually using the template prior approved In Writing by the State to support Contract Section A.9.p.
- 4) **Claims Paid Lag Report**, submitted quarterly and annually using the template prior approved In Writing by the State to support Contract Section A.9.p.
- 5) **Call Center Activity Report**, as detailed in Contract Section A.4.c, submitted monthly.
  - a. Average Speed of Answer – statistics to support an Average Speed of Answer (ASA) of thirty (30) seconds or less during each month
  - b. First Call Resolution – statistics to support a monthly average rate of eighty-five percent (85%) or greater for First Call Resolution
- 6) **Member Satisfaction Survey Report**, submitted annually by agreed upon date by secure email using the template prior approved In writing by the State, as required in contract section A.9.k.
- 7) **BC/DR Test Results Report**, submitted annually using the template prior approved In writing by the State, as required in contract section E.8.d.(3).

- 8) **Weekly File Enrollment Processing Report**, submitted within three (3) Business Days of processing the weekly enrollment update file using the template prior approved In writing by the State, as required in contract section A.11.h.(3).
- 9) **AdHoc Reports**, The Contractor shall submit such ad hoc reports as are deemed by the State to be necessary to analyze the Plan. The exact format, frequency and due dates for such reports shall be mutually agreed upon with the Contractor and shall be submitted at no cost to the State.
- 10) **System and Organization Controls for service organizations (“SOC”) 2 Type II audit Report**, submitted annually within thirty (30) days from when the CPA firm provides the audit report and in addition to periodic bridge reports as requested by the State in compliance with contract Section E.8.e.
- 11) **Marketing and Communications Plan and Efforts Report**, submitted annually, as required in contract section A.5.a.(1)
- 12) **Member Issues Log**, submitted monthly until notified by the State In Writing to send quarterly using template agreed to by the State, as required in contract section A.9.d.
- 13) **Claims Processing Activity Report**, submitted quarterly and annually to reflect:  
volume of claims received, adjudicated, and pending to substantiate as required in contract section A.9.r:
  - a. Claims Payment Accuracy,
  - b. Claims Processing Accuracy, and
  - c. Claims Processing Turnaround results (percentages),
- 14) **Reconciliation Report**, submitted monthly, if discrepancy exists, using the template prior approved In Writing by the State as described in Contract Section C.7.
- 15) **Recoveries (Refund) Report**, submitted monthly using the template prior approved In Writing by the State as described in Contract Section C.3.c.(3).
- 16) **Fraud and Abuse Report**, submitted quarterly using the template prior approved In Writing by the State as described in Contract Section A.9.s.(5).
- 17) **Appeals Summary Report**, submitted quarterly using the template prior approved In Writing by the State as described in Contract Section A.9.h.
- 18) **Subrogation Report**, submitted monthly using the template prior approved In Writing by the State as specified in Contract Attachment C.3.d.
- 19) **Claims Funding Request**, submitted weekly using the template prior approved In Writing by the State as described in Contract Section C.3.c.
- 20) **Coordination of Benefits Report**, submitted monthly using the template prior approved In Writing by the State as described in Contract Section C.3.c.(3).
- 21) **Weekly File Enrollment Processing Error Report**, submitted within one (1) Business Day of processing the weekly enrollment update file using the template prior approved In writing by the State, as required in Contract section A.11.h.(4).

**CONTRACT ATTACHMENT E****HIPAA BUSINESS ASSOCIATE AGREEMENT  
COMPLIANCE WITH PRIVACY AND SECURITY RULES**

THIS BUSINESS ASSOCIATE AGREEMENT (hereinafter "Agreement") is between **The State of Tennessee, Finance and Administration, Division of Benefits Administration** (hereinafter "Covered Entity") and **UMR, Inc.** (hereinafter "Business Associate"). Covered Entity and Business Associate may be referred to herein individually as "Party" or collectively as "Parties."

**BACKGROUND**

Parties acknowledge that they are subject to the Privacy and Security Rules (45 CFR Parts 160 and 164) promulgated by the United States Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191 as amended by Public Law 111-5, Division A, Title XIII (the HITECH Act), in certain aspects of its operations.

Business Associate provides services to Covered Entity pursuant to one or more contractual relationships detailed below and hereinafter referred to as "Service Contracts."

**LIST OF AGREEMENTS AFFECTED BY THIS BUSINESS ASSOCIATE AGREEMENT:**

<b>Contract Name:</b>	<b>Execution Date:</b>
<b>The Tennessee Plan</b>	<b>March 1, 2021</b>

In the course of executing Service Contracts, Business Associate may come into contact with, use, or disclose Protected Health Information ("PHI"). Said Service Contract(s) are hereby incorporated by reference and shall be taken and considered as a part of this document the same as if fully set out herein.

In accordance with the federal privacy and security regulations set forth at 45 C.F.R. Part 160 and Part 164, Subparts A, C, D and E, which require Covered Entity to have a written memorandum with each of its Business Associates, the Parties wish to establish satisfactory assurances that Business Associate will appropriately safeguard PHI and, therefore, make this Agreement.

**DEFINITIONS**

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 CFR §§ 160.103, 164.103, 164.304, 164.402, 164.501, and 164.504.

- 1.1 "Breach of the Security of the [Business Associate's Information] System" shall have the meaning set out in its definition at T.C.A. § 47-18-2107
- 1.2 "Business Associate" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.
- 1.3 "Covered Entity" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.
- 1.4 "Designated Record Set" shall have the meaning set out in its definition at 45 C.F.R. § 164.501.
- 1.5 "Electronic Protected Health Information" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.

- 1.6 “Genetic Information” shall have the meaning set out in its definition at 45 C.F.R. § 160.103.
- 1.7 “Health Care Operations” shall have the meaning set out in its definition at 45 C.F.R. § 164.501.
- 1.8 “Individual” shall have the same meaning as the term “individual” in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- 1.9 “Information Holder” shall have the meaning set out in its definition at T.C.A. § 47-18-2107
- 1.10 “Marketing” shall have the meaning set out in its definition at 45 C.F.R. § 164.501.
- 1.11 “Personal information” shall have the meaning set out in its definition at T.C.A. § 47-18-2107
- 1.12 “Privacy Official” shall have the meaning as set out in its definition at 45 C.F.R. § 164.530(a)(1).
- 1.13 “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, subparts A, and E.
- 1.14 “Protected Health Information” shall have the same meaning as the term “Protected Health Information” in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- 1.15 “Required by Law” shall have the meaning set forth in 45 CFR § 164.512.
- 1.16 “Security Incident” shall have the meaning set out in its definition at 45 C.F.R. § 164.304.
- 1.17 “Security Rule” shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Parts 160 and 164, Subparts A and C.

## **2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE (Privacy Rule)**

2.1 Business Associate is authorized to use PHI for the purposes of carrying out its duties under the Services Contract. In the course of carrying out these duties, including but not limited to carrying out the Covered Entity’s duties under HIPAA, Business Associate shall fully comply with the requirements under the Privacy Rule applicable to "business associates," as that term is defined in the Privacy Rule and not use or further disclose PHI other than as permitted or required by this Agreement, the Service Contracts, or as Required By Law. Business Associate is subject to requirements of the Privacy Rule as required by Public Law 111-5, Section 13404 [designated as 42 U.S.C. 17934] In case of any conflict between this Agreement and the Service Contracts, this Agreement shall govern.

2.2 The Health Information Technology for Economic and Clinical Health Act (HITECH) was adopted as part of the American Recovery and Reinvestment Act of 2009. HITECH and its implementing regulations impose new requirements on Business Associates with respect to privacy, security, and breach notification. Business Associate hereby acknowledges and agrees that to the extent it is functioning as a Business Associate of Covered Entity, Business Associate shall comply with HITECH. Business Associate and the Covered Entity further agree that the provisions of HIPAA and HITECH that apply to business associates and that are required to be incorporated by reference in a business associate agreement have been incorporated into this Agreement between Business Associate and Covered Entity. Should any provision not be set forth specifically, it is as if set forth in this Agreement in its entirety and is effective as of the Applicable Effective Date, and as amended.

2.3 Business Associate shall use appropriate administrative, physical, and technical safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement, Services Contract(s), or as Required By Law. This includes the implementation of Administrative, Physical, and Technical Safeguards to reasonably and appropriately protect the Covered Entity’s PHI against any reasonably

anticipated threats or hazards, utilizing the technology commercially available to the Business Associate. The Business Associate shall maintain appropriate documentation of its compliance with the Privacy Rule, including, but not limited to, its policies, procedures, records of training and sanctions of members of its Workforce.

2.4 Business Associate shall require any agent, including a subcontractor, to whom it provides PHI received from, maintained, created or received by Business Associate on behalf of Covered Entity or that carries out any duties for the Business Associate involving the use, custody, disclosure, creation of, or access to PHI or other confidential information, to agree, by written contract with Business Associate, in accordance with 164.502(e)(1)(ii), ensure that any subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of business associate agree to the same restrictions and conditions that apply to the business associate with respect to such information.

2.5 Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

2.6 Business Associate shall require its employees, agents, and subcontractors to promptly (up to 48 hours) report, to Business Associate, immediately upon becoming aware of any use or disclosure of PHI in violation of this Agreement. Business Associate shall report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement. Business Associate will also provide additional information reasonably requested by the Covered Entity related to the breach.

2.7 As required by the Breach Notification Rule, Business Associate shall, and shall require its subcontractor(s) to, maintain systems to monitor and detect a Breach of Unsecured PHI, whether in paper or electronic form.

2.7.1 Business Associate shall provide to Covered Entity notice of a Potential or Actual Breach of Unsecured PHI immediately upon becoming aware of the Breach.

2.7.2 Business Associate shall cooperate with Covered Entity in timely providing the appropriate and necessary information to Covered Entity.

2.7.3 Covered Entity shall make the final determination whether the Breach requires notification and whether the notification shall be made by Covered Entity or Business Associate.

2.8 If Business Associate receives PHI from Covered Entity in a Designated Record Set, Business Associate shall provide access, at the request of Covered Entity, to PHI in a Designated Record Set to Covered Entity, in order to meet the requirements under 45 CFR § 164.524, provided that Business Associate shall have at least 30 Business Days from Covered Entity notice to provide access to, or deliver such information.

2.9 If Business Associate receives PHI from Covered Entity in a Designated Record Set, then Business Associate shall make any amendments to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to the 45 CFR § 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity, provided that Business Associate shall have at least 30 Business Days from Covered Entity notice to make an amendment.

2.10 Business Associate shall make its internal practices, books, and records including policies and procedures and PHI, relating to the use and disclosure of PHI received from, created by or received by Business Associate on behalf of, Covered Entity available to the Secretary of the United States Department of Health in Human Services or the Secretary's designee, in a time and manner designated by the Secretary, for purposes of determining Covered Entity's or Business Associate's compliance with the Privacy Rule.

2.11 Business Associate shall document disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosure of PHI in accordance with 45 CFR § 164.528.

2.12 Business Associate shall provide Covered Entity or an Individual, in time and manner designated by Covered Entity, information collected in accordance with this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528, provided that Business Associate shall have at least 30 Business Days from Covered Entity notice to provide access to, or deliver such information which shall include, at minimum, (a) date of the disclosure; (b) name of the third party to whom the PHI was disclosed and, if known, the address of the third party; (c) brief description of the disclosed information; and (d) brief explanation of the purpose and basis for such disclosure. Business Associate shall provide an accounting of disclosures directly to an individual when required by section 13405(c) of Public Law 111-5 [designated as 42 U.S.C. 17935(c)].

2.13 Business Associate agrees it must limit any use, disclosure, or request for use or disclosure of PHI to the minimum amount necessary to accomplish the intended purpose of the use, disclosure, or request in accordance with the requirements of the Privacy Rule.

2.13.1 Business Associate represents to Covered Entity that all its uses and disclosures of, or requests for, PHI shall be the minimum necessary in accordance with the Privacy Rule requirements.

2.13.2 Covered Entity may, pursuant to the Privacy Rule, reasonably rely on any requested disclosure as the minimum necessary for the stated purpose when the information is requested by Business Associate.

2.13.3 Business Associate acknowledges that if Business Associate is also a covered entity, as defined by the Privacy Rule, Business Associate is required, independent of Business Associate's obligations under this Memorandum, to comply with the Privacy Rule's minimum necessary requirements when making any request for PHI from Covered Entity.

2.14 Business Associate shall adequately and properly maintain all PHI received from, or created or received on behalf of, Covered Entity

2.15 If Business Associate receives a request from an Individual for a copy of the individual's PHI, and the PHI is in the sole possession of the Business Associate, Business Associate will provide the requested copies to the individual and notify the Covered Entity of such action. If Business Associate receives a request for PHI in the possession of the Covered Entity, or receives a request to exercise other individual rights as set forth in the Privacy Rule, Business Associate shall notify Covered Entity of such request and forward the request to Covered Entity. Business Associate shall then assist Covered Entity in responding to the request.

2.16 Business Associate shall fully cooperate in good faith with and to assist Covered Entity in complying with the requirements of the Privacy Rule.

### **3 OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE (Security Rule)**

3.1 Business Associate shall fully comply with the requirements under the Security Rule applicable to "business associates," as that term is defined in the Security Rule. In case of any conflict between this Agreement and Service Agreements, this Agreement shall govern.

3.2 Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of the covered entity as required by the Security Rule and Public Law 111-5. This includes specifically, but is not limited to, the utilization of technology commercially available at the time to the Business Associate to protect the Covered Entity's PHI against any reasonably anticipated threats or hazards. The Business Associate understands that it has an affirmative duty to perform a regular review or assessment of security risks, conduct active risk management and supply best efforts to assure that only authorized persons and devices access its

computing systems and information storage, and that only authorized transactions are allowed. The Business Associate will maintain appropriate documentation to certify its compliance with the Security Rule.

3.3 Business Associate shall ensure that any agent, including a subcontractor, to whom it provides electronic PHI received from or created for Covered Entity or that carries out any duties for the Business Associate involving the use, custody, disclosure, creation of, or access to PHI supplied by Covered Entity, to agree, by written contract (or the appropriate equivalent if the agent is a government entity) with Business Associate, in accordance with 164.502(e)(1)(ii), ensure that any subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of business associate agree to the same restrictions and conditions that apply to the business associate with respect to such information.

3.4 Business Associate shall require its employees, agents, and subcontractors to report to Business Associate within five (5) Business Days, any Security Incident (as that term is defined in 45 CFR § 164.304) of which it becomes aware. 45 CFR 164.314(a)(2)(C) requires that business associate shall report to the covered entity any security incident of which it becomes aware, including breaches of unsecured protected health information as required by 164.410. Business Associate shall promptly (up to 48 hours) report any Security Incident of which it becomes aware to Covered Entity. Provided however, that such reports are not required for attempted, unsuccessful Security Incidents, including trivial and routine incidents such as port scans, attempts to log-in with an invalid password or user name, denial of service attacks that do not result in a server being taken off-line, malware, and pings or other similar types of events.

3.5 Business Associate shall make its internal practices, books, and records including policies and procedures relating to the security of electronic PHI received from, created by or received by Business Associate on behalf of, Covered Entity available to the Secretary of the United States Department of Health in Human Services or the Secretary's designee, in a time and manner designated by the Secretary, for purposes of determining Covered Entity's or Business Associate's compliance with the Security Rule.

3.6 Business Associate shall fully cooperate in good faith with and to assist Covered Entity in complying with the requirements of the Security Rule.

3.7 Notification for the purposes of Sections 2.8 and 3.4 shall be In Writing made by email/fax, certified mail or overnight parcel immediately upon becoming aware of the event, with supplemental notification by facsimile and/or telephone as soon as practicable, to:

State of Tennessee  
Benefits Administration  
Attn: Chanda Rainey  
HIPAA Privacy & Security Officer  
312 Rosa L. Parks Avenue  
1900 W.R.S. Tennessee Towers  
Nashville, TN 37243-1102  
Phone: (615) 770-6949  
Facsimile: (615) 253-8556

With a copy to:

State of Tennessee  
Benefits Administration  
Attn: Seannalyn Brandmeir  
Director, Procurements and Contracts  
312 Rosa L. Parks Avenue  
1900 W.R.S. Tennessee Towers  
Nashville, TN 37243-1102  
Phone: (615) 532-4598  
Facsimile: (615) 253-8556

3.8 Business Associate identifies the following key contact persons for all matters relating to this Agreement:

Janice Webb  
Strategic Account Executive, UMR  
2425 James Street  
Syracuse, NY 13206  
Janice.webb@umr.com  
Phone: (315) 937-2910

UMR, Inc.  
Attn: General Counsel  
115 W. Wausau Ave.  
Wausau, WI 54401

Business Associate shall notify Covered Entity of any change in the key contact during the term of this Agreement In Writing within ten (10) Business Days.

#### **4. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE**

4.1 Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in Service Contract(s), provided that such use or disclosure would not violate the Privacy and Security Rule, if done by Covered Entity. Business Associate's disclosure of PHI shall be subject to the limited data set and minimum necessary requirements of Section 13405(b) of Public Law 111-5, [designated as 42 U.S.C. 13735(b)]

4.2 Except as otherwise limited in this Agreement, Business Associate may use PHI as required for Business Associate's proper management and administration or to carry out the legal responsibilities of the Business Associate.

4.3 Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or provided that, if Business Associate discloses any PHI to a third party for such a purpose, Business Associate shall enter into a written agreement with such third party requiring the third party to: (a) maintain the confidentiality, integrity, and availability of PHI and not to use or further disclose such information except as Required By Law or for the purpose for which it was disclosed, and (b) notify Business Associate of any instances in which it becomes aware in which the confidentiality, integrity, and/or availability of the PHI is breached immediately upon becoming aware.

4.4 Except as otherwise limited in this Agreement, Business Associate may use PHI to provide data aggregation services to Covered Entity as permitted by 45 CFR § 164.504(e)(2)(i)(B).

4.5 Business Associate may use PHI to report violations of law to appropriate Federal and State Authorities consistent with 45 CFR 164.502(j)(1).

4.6 Business Associate shall not use or disclose PHI that is Genetic Information for underwriting purposes. Moreover, the sale, marketing or the sharing for commercial use or any purpose construed by Covered Entity as the sale, marketing or commercial use of Member's personal or financial information with affiliates, even if such sharing would be permitted by federal or state laws, is prohibited.

4.7 Business Associate shall enter into written agreements that are substantially similar to this Business Associate Agreement with any subcontractor or agent which Business Associate provides access to Protected Health Information.

4.8 Business Associates shall implement and maintain information security policies that comply with the HIPAA Security Rule.

## 5. OBLIGATIONS OF COVERED ENTITY

5.1 Covered Entity shall provide Business Associate with the Notice of Privacy Practices that Covered Entity produces in accordance with 45 CFR § 164.520, as well as any changes to such notice. Covered Entity shall notify Business Associate of any limitations in its notice that affect Business Associate's use or disclosure of PHI.

5.2 Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses.

5.3 Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use of PHI.

## 6. PERMISSIBLE REQUESTS BY COVERED ENTITY

6.1 Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy or Security Rule, if done by Covered Entity.

## 7. TERM AND TERMINATION

7.1 Term. The Term of this Agreement shall be effective as of March 1, 2021 and shall terminate on December 31, 2032 as referenced in Contract Sections A.12.b and D.11 or on the date covered entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.

### 7.2 Termination for Cause.

7.2.1. This Agreement authorizes and Business Associate acknowledges and agrees Covered Entity shall have the right to immediately terminate this Agreement and Service Contracts in the event Business Associate fails to comply with, or violates a material provision of, requirements of the Privacy and/or Security Rule or this Memorandum.

7.2.2. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:

7.2.2.1. Provide a reasonable opportunity for Business Associate to cure the breach or end the violation, or

7.2.2.2. If Business Associate has breached a material term of this Agreement and cure is not possible or if Business Associate does not cure a curable breach or end the violation within a reasonable time as specified by, and at the sole discretion of, Covered Entity, Covered Entity may immediately terminate this Agreement and the Service Agreement.

7.2.2.3. If neither cure nor termination is feasible, Covered Entity shall report the violation to the Secretary of the United States Department of Health in Human Services or the Secretary's designee.

### 7.3 Effect of Termination.

7.3.1 Upon termination of this Agreement for any reason, business associate, with respect to protected health information received from covered entity, or created, maintained, or received by business associate on behalf of covered entity, shall:

1. Retain only that protected health information which is necessary for business associate to continue its proper management and administration or to carry out its legal responsibilities;
2. Return to covered entity [or, if agreed to by covered entity, destroy and provide a Certificate of Destruction] the remaining protected health information that the business associate still maintains in any form;
3. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as business associate retains the protected health information;
4. Not use or disclose the protected health information retained by business associate other than for the purposes for which such protected health information was retained and subject to the same conditions set out at [Insert section number related to paragraphs under "Permitted Uses and Disclosures By Business Associate"] which applied prior to termination; and
5. Return to covered entity [or, if agreed to by covered entity, destroy and provide Certificate of Destruction] the protected health information retained by business associate when it is no longer needed by business associate for its proper management and administration or to carry out its legal responsibilities.

## 8. MISCELLANEOUS

8.1 Regulatory Reference. A reference in this Agreement to a section in the Privacy and or Security Rule means the section as in effect or as amended.

8.2 Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy and Security Rules and the Health Insurance Portability and Accountability Act, Public Law 104-191, including any amendments required by the United States Department of Health and Human Services to implement the Health Information Technology for Economic and Clinical Health and related regulations upon the effective date of such amendment, regardless of whether this Agreement has been formally amended, including, but not limited to changes required by the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

8.3 Survival. The respective rights and obligations of Business Associate under Section 7.3. of this Memorandum shall survive the termination of this Agreement.

8.4 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity and the Business Associate to comply with the Privacy and Security Rules.

8.5 Notices and Communications. All instructions, notices, consents, demands, or other communications required or contemplated by this Agreement shall be In Writing and shall be delivered by hand, by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below, or to such other party, facsimile number, or address as may be hereafter specified by written notice.

COVERED ENTITY:  
 State of Tennessee  
 Department of Finance and Administration  
 Benefits Administration  
 ATTN: Chanda Rainey  
 HIPAA Privacy & Security Officer  
 312 Rosa L. Parks Avenue  
 1900 W.R.S. Tennessee Towers  
 Nashville, TN 37243-1102  
 Phone: (615) 770-6949  
 Facsimile: (615) 253-8556  
 E-Mail: [benefits.privacy@tn.gov](mailto:benefits.privacy@tn.gov)

BUSINESS ASSOCIATE:  
 UMR, Inc.  
 Attn: General Counsel  
 115 W. Wausau Ave.  
 Wausau, WI 54401

With a copy to:  
 ATTN: Seannalyn Brandmeir  
 Procurements & Contracting Manager  
 At the address listed above  
 Phone: (615) 532-4598  
 Facsimile: (615) 253-8556  
 E-Mail: [seannalyn.brandmeir@tn.gov](mailto:seannalyn.brandmeir@tn.gov)

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the date of hand delivery; as of the date specified for overnight courier service delivery; as of three (3) Business Days after the date of mailing; or on the day the facsimile transmission is received mechanically by the facsimile machine at the receiving location and receipt is verbally confirmed by the sender.

8.6 Strict Compliance. No failure by any Party to insist upon strict compliance with any term or provision of this Agreement, to exercise any option, to enforce any right, or to seek any remedy upon any default of any other Party shall affect, or constitute a waiver of, any Party's right to insist upon such strict compliance, exercise that option, enforce that right, or seek that remedy with respect to that default or any prior, contemporaneous, or subsequent default. No custom or practice of the Parties at variance with any provision of this Agreement shall affect, or constitute a waiver of, any Party's right to demand strict compliance with all provisions of this Agreement

8.7 Severability. With respect to any provision of this Agreement finally determined by a court of competent jurisdiction to be unenforceable, such court shall have jurisdiction to reform such provision so that it is enforceable to the maximum extent permitted by applicable law, and the Parties shall abide by such court's determination. In the event that any provision of this Agreement cannot be reformed, such provision shall be deemed to be severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.

8.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee except to the extent that Tennessee law has been pre-empted by HIPAA.

8.9 Compensation. There shall be **no** remuneration for performance under this Agreement except as specifically provided by, in, and through, existing administrative requirements of Tennessee State government and services contracts referenced herein.

8.10 Security Breach. A violation of HIPAA or the Privacy or Security Rules constitutes a breach of this Business Associate Agreement and a breach of the Service Contract(s) listed on page one of this agreement, and shall be subject to all available remedies for such breach.

IN WITNESS WHEREOF,

*Maury D. Bauer*

3/1/2021

UMR, Inc.

Date:

3/1/2021

Howard H. Eley, Commissioner of Finance & Administration

Date: