

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
STATE INSURANCE COMMITTEE
AND
PROVIDENT LIFE AND ACCIDENT INSURANCE COMPANY**

This Contract, by and between the State of Tennessee, State Insurance Committee, hereinafter referred to as the "State" and Provident Life And Accident Insurance Company, hereinafter referred to as the "Contractor," is for the provision of Optional Universal Life Insurance, as further defined in the "SCOPE OF SERVICES."

The Contractor is a for-profit. The Contractor's address is:
Provident Life And Accident Insurance Company
One Fountain Square
Chattanooga, TN 37402

The Contractor's place of incorporation or organization is Tennessee.

A SCOPE OF SERVICES:

A.1 SERVICES PROVIDED BY THE CONTRACTOR

- A.1.1 Underwrite and administer the State Optional Universal Life Insurance Plan in accordance with this Contract, the Group Master Policy, Amendment 1 to RFP #317.86-029 (the State's Response to Proposer Comments, Questions and Clarifications), RFP #317.86-029, and the Contractor's Technical and Cost proposals submitted in response thereto.
- A.1.2 Provide customary home office services and functions including but not limited to actuarial services, policy and certificate issuance, administration and accounting. Assign an account representative to coordinate the administrative, coverage, and customer service activities.
- A.1.3 Provide a group master policy and individual certificates of insurance, and prepare amendments and riders as needed, which may, from time to time, be deemed appropriate by the State. Upon enrollment, mail the certificate of insurance to employee's home address.
- A.1.4 Prepare, in consultation with and following approval by the State, and provide descriptive employee booklets, enrollment materials, and administrative forms and manuals.
- A.1.5 Provide advice and assistance with regard to questions concerning eligibility, effective dates, benefits and coverage, and cessation of coverage as raised by the State, state departments and agencies, individual employees and retirees and/or survivors.
- A.1.6 Process statements of health for delayed or revised enrollments.
- A.1.7 Provide advice, assistance and information with regard to applicable Federal and State laws, court holdings and regulations affecting group insurance, and other Program related matters as needed.
- A.1.8 Provide for continuation of insurance through individual life policies, converted upon cessation of coverage under the State of Tennessee group policy. Premiums under this arrangement will be collected directly from retirees and employees converted to individual policies. Premium for continuation of individual certificates shall be the same as those for employees. Employees who terminate their employment are to be notified by the Contractor of their options through written correspondence. Such notification shall be the responsibility of the Contractor.
- A.1.9 Make all required reports to the United States Internal Revenue Service.
- A.1.10 Provide a toll-free telephone number for inquiries from state employees.
- A.1.11 Provide all services associated with, and administer, the policy loan provision.

- A.1.12 Calculate surrender values and make cash payments upon surrender of policy.
- A.1.13 Provide an annual statement to participating employees at their home address which indicates, on a month to month basis, at a minimum:
- amount of insurance
 - monthly premium
 - monthly interest credits
 - monthly cost of insurance
 - current cash value
 - policy loans outstanding
 - rates of interest credited during the year
- A.1.14 Provide annual enrollment information to potential or current participants at their home address.
- A.1.15 Provide a full range of actuarial services related to the insurance provided through this Contract in addition to the reports required in Section A.2. Such services shall be certified by a Fellow of the Society of Actuaries or a member of the American Academy of Actuaries.
- A.1.16 In conjunction with the State of Tennessee, conduct orientations and training for personnel of State agencies concerning the provisions of and administration of the Plan.
- A.1.17 Provide all necessary forms for submission and processing of claims.
- A.1.18 Process all claims on a prompt, timely and accurate basis.
- A.1.19 Furnish to each claimant information regarding the payment or rejection of claims.
- A.1.20 Maintain a service office to process claims and assist with inquiries, correspondence, unusual claim situations or problems, employee orientation and related matters.
- A.1.21 Confirm eligibility on each claim as submitted.
- A.1.22 Assess applications for the advanced payment of life insurance benefits as provided in the Group Master Policy.
- A.1.23 Attend quarterly administrative meetings to discuss operational issues, customer service concerns and the planning of annual transfer period activities. The scheduling of such meetings will be the prerogative of the State.
- A.1.24 Provide an annual notification to plan participants which indicates the types of coverage available, premium amounts, policy terms and conditions. Such notification shall be provided to the subscribers home address.

A.2 **Data and Specific Reporting Requirements**

- A.2.1 The Contractor shall maintain, in its computer system, in-force enrollment records of all Universal Term Life Insurance plan insured members.
- A.2.2 Provide, within sixty (60) days of the end of each calendar quarter, Quarterly Management Reports (including year to date data), which shall include the following:
- Number of certificates in force by type of coverage and gender
 - Total amount of insurance in force by type of coverage
 - Premium earned by type of coverage
 - Cost of Insurance amounts earned by type of coverage
 - Gross and net claims paid by type of coverage
- A.2.2.1 Provide, within sixty (60) days of the end of each calendar year, a listing of the number of participant lives and volume of insurance coverage by issue and attained age. The listing will distinguish between

premium payment method (payroll deduction and pay direct) and provide separate counts for employees and spouses. The data will reflect enrollment at December 31.

- A.2.2.2 Provide within sixty (60) days of the end of each calendar year, a monthly listing of the distribution of premium (The Premium Disbursal Report).
- A.2.2.3 Provide within sixty (60) days of the end of each calendar year, a monthly listing of the policies issued including face amount, annual premium, cash value, and tally of policies which were in effect as of the end of the calendar year (The Policy Master Report).
- A.2.3 The Contractor shall submit an Annual Financial Experience Report.
- A.2.4 The Contractor shall submit such ad hoc reports as are deemed by the State to be necessary, to analyze the Optional Universal Life Insurance plan. The exact cost, format, frequency and due dates for such reports shall be mutually agreed with the Contractor.
- A.3 Enrollment and Premium Administration System(s)**
- A.3.1 The Contractor shall support employee payroll deductions and direct payments made to the State. Employees will make premium payments for themselves and their dependent(s) through payroll deductions. The Contractor is responsible for collecting premiums for retirees and employees converted to individual policies.
- A.3.1.1 When refund of premiums to members is necessary, the Contractor shall be responsible for such return.
- A.3.2 The Contractor shall provide, on a date specified by the State, (typically the 10th calendar day of each month) monthly billing statements to the State, which details the premiums due for enrolled active employees. This detail shall be submitted via an electronic means in the Tennessee Insurance System (TIS) records format (RFP Appendix 7.6). Electronic transfer shall be via a State Virtual Private Network (VPN), or other mutually agreed means. Upon payment of the premium by the State, the Contractor shall reconcile the payment and monthly billing statement within 10 business days.
- A.3.2.1 **Batch Transaction Error Report:** For the purpose of maintaining accuracy in premium billing, the Contractor shall:
- monthly submit to the State premium billing data (format and medium to be mutually agreed);
 - reconcile to its Enrollment Data records the State's *Batch Transaction Error Report* (generated by the State, as required under Section A.4.5);
 - provide, with the next premium billing data, any corrections that should be made from the *Batch Transaction Error Report*.
- A.3.3 The Contractor shall provide, on a date specified by the State (typically the 10th calendar day of each month), monthly enrollment updates to the State, which details coverage information adds, changes, and terminations for each enrolled active employee and/or dependents. This detail shall be submitted via electronic means in the Tennessee Insurance System (TIS) records format (RFP Appendix 7.6). Electronic transfer shall be via a State Virtual Private Network (VPN), or other mutually agreed means.
- A.3.4 The Contractor shall maintain an electronic data processing (EDP) and electronic data interface (EDI) environment. The Contractor shall have a disaster recovery plan for restoring the application software and current master files and for hardware backup if the production systems are destroyed.
- A.3.5 The Contractor shall maintain an electronic data interface with the State's Tennessee Insurance System (TIS), for the purpose of accessing State member enrollment information. The Contractor is responsible for equipping itself with the hardware and software necessary for achieving and maintaining access via the Internet, using IBM's Host On Demand software provided by the State.
- A.3.6 The Contractor shall maintain, in its computer system, in-force enrollment records of all Optional Universal Life Insurance plan insured members.

- A.3.7 **Weekly Enrollment Update:** To ensure that the Optional UL Members' enrollment records remain accurate and complete, the Contractor commits to the following:
- To accept weekly enrollment data electronic transfer files, in the Tennessee Insurance System (TIS) records format, from the State, for Optional UL participants (files will include demographic changes, recent additions, changes, and terminations); electronic transfer shall be via a State Virtual Private Network (VPN), or other mutually agreed means;
 - To process updates of all weekly file records within three (3) working days of receipt of the files from the State;
 - To resolve mismatches identified by the processing of weekly files within six (6) calendar days of receipt of the files from the State; and
 - To complete and submit to the State, within five (5) working days of receipt of the weekly files, a *Weekly Enrollment Update Report* (see RFP Appendix 7.6).

For the purpose of this requirement, "mismatches" are defined as: Any difference of values between the State and Contractor's enrollment databases.

- A.3.8 **Quarterly Enrollment Data Reconciliation:** To ensure that Optional UL Members' enrollment records remain accurate and complete, the Contractor commits to the following:
- To accept quarterly enrollment data electronic transfer files, in the Tennessee Insurance System (TIS) records format, from the State, for Optional Term participants; electronic transfer shall be via a State Virtual Private Network (VPN), or other mutually agreed means;
 - To compare the State's full file of State enrollees quarterly with the Contractor's database of State members within five (5) working days of receipt of the file from the State;
 - To resolve all discrepancies identified by the reconciliation processing of the quarterly files within ten (10) calendar days of receipt of the enrollment files from the State; and
 - To complete and submit to the State, within eleven (11) calendar days of receipt of the quarterly files, the *Quarterly Enrollment Update Report* (see RFP Appendix 7.6). For the purpose of this requirement, "mismatches" are defined as: Any difference of values between the State's and Contractor's enrollment databases.

A.4 **SERVICES PROVIDED BY THE STATE**

- A.4.1 Make payroll deduction of the premium, as elected by the participating employees, and remit those funds to the Contractor within forty five (45) days of the effective date of coverage.
- A.4.2 Provide such information to the Contractor as is necessary, in the opinion of the State, for the underwriting and administration of the Plan.
- A.4.3 Assist in the enrollment of state employees in the Plan.
- A.4.4 Provide, on a quarterly basis, the full population enrollment tape for reconciliation purposes.
- A.4.5 Generate and provide to the Contractor, as required under Contract Section A.3.2.1, a *Batch Transaction Error Report*.

B CONTRACT TERM:

- B.1 Contract Term. This Contract shall be effective for the period commencing on September 1, 2005 and ending on June 30, 2008. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.
- B.2 Term Extension. The State reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than five (5) years, provided that the State notifies the Contractor in writing of its intention to do so at least Two Hundred Seventy (270) days prior to the contract expiration date. An extension of the term of this Contract will be effected through an amendment to the Contract. If the extension of the Contract necessitates additional funding beyond that which was included in the original Contract, the increase in the State's maximum liability will also be effected through an amendment to the Contract and shall be based upon rates provided for in the original contract.

| | | | | | |
|----|--------|----|--------|----|--------|
| 15 | \$0.01 | 36 | \$0.02 | 56 | \$0.21 |
| 16 | 0.01 | 37 | 0.02 | 57 | 0.24 |
| 17 | 0.01 | 38 | 0.02 | 58 | 0.27 |
| 18 | 0.01 | 39 | 0.02 | 59 | 0.30 |
| 19 | 0.01 | 40 | 0.03 | 60 | 0.00 |
| 20 | 0.01 | 41 | 0.03 | 61 | 0.00 |
| 21 | 0.01 | 42 | 0.03 | 62 | 0.00 |
| 22 | 0.01 | 43 | 0.03 | 63 | 0.00 |
| 23 | 0.01 | 44 | 0.04 | 64 | 0.00 |
| 24 | 0.01 | 45 | 0.04 | 65 | 0.00 |
| 25 | 0.01 | 46 | 0.05 | 66 | 0.00 |
| 26 | 0.01 | 47 | 0.05 | 67 | 0.00 |
| 27 | 0.01 | 48 | 0.06 | 68 | 0.00 |
| 28 | 0.01 | 49 | 0.07 | 69 | 0.00 |
| 29 | 0.01 | 50 | 0.08 | 70 | 0.00 |
| 30 | 0.01 | 51 | 0.09 | 71 | 0.00 |
| 31 | 0.01 | 52 | 0.11 | 72 | 0.00 |
| 32 | 0.01 | 53 | 0.13 | 73 | 0.00 |
| 33 | 0.01 | 54 | 0.15 | 74 | 0.00 |
| 34 | 0.02 | 55 | 0.17 | 75 | 0.00 |
| 35 | 0.02 | | | | |

C.3.2 Monthly Cost of Insurance Rates/\$1000 of Coverage

| Attained Age | COI Rate/\$1000 (Employees & Spouses) | Attained Age | COI Rate/\$1000 (Employees & Spouses) | Attained Age | COI Rate/\$1000 (Employees & Spouses) |
|--------------|---------------------------------------|--------------|---------------------------------------|--------------|---------------------------------------|
| 15 | \$.04356 | 42 | \$.13033 | 69 | \$1.61533 |
| 16 | .05313 | 43 | .14415 | 70 | 1.77241 |
| 17 | .05808 | 44 | .15938 | 71 | 1.94491 |
| 18 | .06198 | 45 | .17638 | 72 | 2.13566 |
| 19 | .06517 | 46 | .19479 | 73 | 2.34849 |
| 20 | .06765 | 47 | .21427 | 74 | 2.58796 |
| 21 | .06871 | 48 | .23552 | 75 | 2.85794 |
| 22 | .06871 | 49 | .25819 | 76 | 3.16088 |
| 23 | .06800 | 50 | .28298 | 77 | 3.49994 |
| 24 | .06694 | 51 | .30990 | 78 | 3.87651 |
| 25 | .06552 | 52 | .34000 | 79 | 4.28955 |
| 26 | .06375 | 53 | .37294 | 80 | 4.74010 |
| 27 | .06198 | 54 | .40871 | 81 | 5.22572 |
| 28 | .06127 | 55 | .44838 | 82 | 5.74674 |
| 29 | .06056 | 56 | .49194 | 83 | 6.30914 |
| 30 | .06021 | 57 | .53975 | 84 | 6.92063 |
| 31 | .06092 | 58 | .59288 | 85 | 7.58051 |
| 32 | .06198 | 59 | .65167 | 86 | 8.28948 |
| 33 | .06410 | 60 | .71613 | 87 | 9.04683 |
| 34 | .06729 | 61 | .78660 | 88 | 9.85010 |
| 35 | .07119 | 62 | .86240 | 89 | 10.69091 |
| 36 | .07579 | 63 | .94421 | 90 | 11.56607 |
| 37 | .08146 | 64 | 1.03346 | 91 | 12.47489 |
| 38 | .08854 | 65 | 1.11990 | 92 | 13.41806 |
| 39 | .09669 | 66 | 1.22648 | 93 | 14.39491 |
| 40 | .10625 | 67 | 1.34394 | 94 | 15.40611 |
| 41 | .11794 | 68 | 1.47297 | | |

C.3.3 Administrative Fee

The Contractor's per payment Administrative Fee for the administration of the Optional Universal Life Insurance coverage is:

- \$1.00 per month employee coverage

- \$1.00 per month spouse coverage

C.3.4 Percent of Premium Loads

The Contractor shall maintain the following percent of Premium Loads throughout the term of the contract:

| | | | |
|------------|----|-----------|----|
| Year One | 0% | Year Four | 0% |
| Year Two | 0% | Year Five | 0% |
| Year Three | 0% | | |

C.3.5 Asset Based Charges

The Contractor shall maintain the following Asset Based Charges, expressed as percent of Cash Values, throughout the term of the contract:

| | | | |
|------------|----|-----------|----|
| Year One | 0% | Year Four | 0% |
| Year Two | 0% | Year Five | 0% |
| Year Three | 0% | | |

C.3.6 Surrender Charges

The Contractor's Surrender Charges, as a percent of accumulated cash value, for individuals canceling participation in Optional Universal Life Insurance coverage are:

| | | | |
|------------|-----|-----------|-----|
| Year One | 40% | Year Four | 40% |
| Year Two | 40% | Year Five | 20% |
| Year Three | 40% | | |

C.3.7 Interest Crediting Rates

The monthly interest crediting rate, beginning September 1, 2005 and ending June 30, 2008 shall be equal to one twelfth of the greater of:

- a minimum effective interest crediting rate of Five percent (5%) for year one of the contract; five percent (5%) for year two of the contract; and five percent (5%) for year three of the contract (Absolute Minimum); OR
- the published six month U. S. treasury bill discount rate, established as a result of the auction coinciding with or immediately following the 15th day of the month preceding the monthly anniversary date, plus ten basis points (Variable Rate); OR
- a rate declared quarterly, in advance, by the Contractor; OR
- four and one half percent (4.5%).

C.3.8 Certificate Loan Interest Rate

The Contractor agrees to the following annual Loan Interest Rates, for each of the first three years of the contract – September 1, 2005 through June 30, 2008.

| | |
|------|------|
| 2005 | 7.5% |
| 2006 | 7.5% |
| 2007 | 7.5% |

If the contract is extended for 2008 and 2009, we agree that the annual Loan Interest Rate presented for 2007 will be the maximum interest rate for the period of the extension.

C.4 The Contractor shall submit invoices for completed work, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Payments to the Contractor shall be based upon payroll deduction information provided by the Contractor and payment of premium by former employees who are paying premium directly to the Contractor. The payroll deduction information shall be provided in a form and medium acceptable to the State and, at a minimum, shall include employees' identification numbers, the type(s) and amount(s) of coverage, and the deduction amounts.

The payroll deduction information and the individual statements to former employees continuing participation shall be considered invoices for services.

C.5 The monthly premium rates multiplied by the volumes of insurance, plus the appropriate administrative fee(s) constitute the maximum payment from each of the participating employees.

- C.6 Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.7 Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.8 Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this contract, not to constitute proper remuneration for compensable services.
- C.9 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 which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.10 Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

D STANDARD TERMS AND CONDITIONS:

- D.1 Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2 Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3 Termination for Convenience. The Contract may be terminated by either party, with the following notification requirements: the Contractor shall give written notice to the State at least Two Hundred Seventy (270) days before the effective date of termination; the State shall give written notice to the Contractor at least Ninety (90) days before the effective date of termination. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4 Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. 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.
- D.5 Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest" and "Nondiscrimination" (sections D.6. and D.7.). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6 Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount 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 relative to this Contract.

- D.7 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 disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8 Records. The Contractor shall maintain documentation for all charges against the State under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this contract, shall be maintained for a period of three (3) 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.9 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.10 Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.11 Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon 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 such 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 hereto.
- D.12 Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either 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 shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.13 State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.14 Force Majeure. The obligations of the parties to this contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.
- D.15 State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.16 Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under **Tennessee Code Annotated**, Sections 9-8-101 through 9-8-407.

- D.17 Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, 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 relating hereto, whether written or oral.
- D.18 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 hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.19 Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part 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, these special terms and conditions shall control.
- E.2 The maximum issue amount of insurance under the Optional Life Insurance Program shall be five (5) times annual base salary, then rounded to the next highest \$5,000 increment up to a maximum of \$300,000. The guarantee issue amount of insurance under the Optional Life Insurance Program shall be sixty percent (60%) of the maximum issue amount rounded to the next highest \$5,000 increment. The minimum issue amount is \$5000 for each employee.
- The State reserves the right to negotiate with the Contractor to increase the maximum issue amounts and to adjust the unit rates based on the increase in coverage. Such changes would be effected through an amendment to the contract.
- E.3 The Contractor will allow for cash value transfer from existing Permaplan program (as provided through Contract No. FA 1051, State of Tennessee and Group Policy No. 6288, Provident), with such transfer used to increase cash value. Such transfers of Permaplan cash values will not be subject to any loading charges, including surrender charges. If the Universal Life is surrendered, the surrender charge will not serve to reduce the cash value beyond the transferred Permaplan cash value. Further, the provisions of the contract between the State and Provident relative to payment of Permaplan cash values in twelve equal monthly installments in the event of termination of the contract will not be invoked at this transfer.
- E.4 All current and former employees enrolled in the State-sponsored optional universal life coverage on August 31, 2005 shall be transferred to the coverage established in this contract.
- E.4.1 Employees employed on and after June 1, 2005 may enroll within a full calendar month of the first day of work on a guaranteed issue and maximum issue basis. Coverage shall become effective on the first day of the month following three full months of employment.
- E.4.2 During the State's Annual Enrollment/Transfer Period (generally between October 15 and November 15 of each year), employees may qualify to participate in the Plan or to increase amounts of coverage by demonstrating insurability through the response to health questions. Coverage shall become effective the first of January, February or March of the following year. Employees may also elect to decrease the face amount.
- E.4.3 Each year, beginning January 1, current participants may increase the face amount of their coverage by up to \$5,000 if that action will not exceed the guarantee issue amount or the combined maximum coverage amount for the Optional Term and Optional Universal life insurance.
- E.5 Upon termination of this Contract, the Contractor shall provide an indication of the amount of insurance maintained by individual participants, the accumulated cash value and other pertinent data to the State or its designated agent. The information shall be furnished on an electronic data processing tape or such other data processing format as is compatible with the data processing system maintained by the State as described in the RFP. Additionally, the Contractor shall provide all information necessary to properly interpret the data supplied. To insure the continuous operation of the program and upon 30 days notice, this information shall be provided to the State or its designated agent at least 45 days prior to the

termination date of this Contract; further, the State may require the Contractor to provide this information at various other times prior to or after the termination date of this Contract. It shall be the responsibility of the Contractor to process all claims delivered to it on or before the termination of this Contract. No compensation, beyond that specified in this Contract, shall be paid for completion of this task as it is recognized to be part of the Administrator's responsibilities.

E.6 Upon termination of this Contract, the Contractor agrees to transfer to the State, or a party designated by the State – in up to twelve (12) successive monthly installments, payable on the first day of the month – all sums accumulated by the Contractor on behalf of participants in accordance with the provisions of this Contract and the group policy. Such transfers will be designated transfers under Internal Revenue Code 1035. Cost basis in existing policies will be transferred to new policies.

The first installment of the transfer payments shall take place on the first day of the successor contract. During the period that cash values remain with the Contractor, at the end of each month, the accumulated cash values will be credited interest at the rate of four and one half percent (4.5%).

E.6.1 Notwithstanding the above, if the successor Contractor is the incumbent Contractor, all cash values will remain with the Contractor, and the interest crediting provision of the successor contract shall apply at the effective date of the new contract.

E.7 The contractor shall forego any surrender charges in the event of a transfer of the universal life insurance to another carrier or in the event of termination of the coverage.

E.8 The Contractor and the State shall permit participants in the State sponsored Permaplan coverage to roll over into the universal life insurance coverage. In the event of a participant rollover, the Contractor shall credit (amount) years of participation toward the surrender charges.

E.9 For the purpose of determining eligibility for coverage, upon each election, the Governor, Members of the General Assembly, State Judges, District Attorneys, Public Defenders, the State Treasurer, the Comptroller, and the Secretary of State shall be considered newly eligible employees.

E.10 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 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.

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| <p>The State: Paul Hauser, RFP Coordinator Tennessee Department of Finance & Administration Division of Insurance Administration 312 Eighth Ave. No., 13th Floor WRS Tennessee Tower Nashville, TN 37243-0295 Phone: 615-741-9896 Fax: 615-741-8196 Email: paul.c.hauser@state.tn.us</p> | <p>The Contractor: Gail Raines Provident Life And Accident Insurance Company One Fountain Square Chattanooga, TN 37402 Phone: 423-755-2483 Fax) 423-209-4689 Email: GRaines@unumprovident.com</p> |
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All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of 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 telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

E.11 Breach. A party shall be deemed to have breached the Contract if any of the following occurs:
— failure to perform in accordance with any term or provision of the Contract;
— partial performance of any term or provision of the Contract;
— any act prohibited or restricted by the Contract, or
— violation of any warranty.

For purposes of this contract, these items shall hereinafter be referred to as a "Breach."

a. Contractor Breach— The State shall notify Contractor in writing of a Breach.

(1) In event of a Breach by Contractor, the state shall have available the remedy of Actual Damages and any other remedy available at law or equity.

(2) Partial Default— In the event of a Breach, the State may declare a Partial Default. In which case, the State shall provide the Contractor written notice of: (1) the date which Contractor shall terminate providing the service associated with the Breach; and (2) the date the State will begin to provide the service associated with the Breach. Notwithstanding the foregoing, the State may revise the time periods contained in the notice written to the Contractor.

In the event the State declares a Partial Default, the State may withhold, together with any other damages associated with the Breach, from the amounts due the Contractor the greater of: (1) amounts which would be paid the Contractor to provide the defaulted service; or (2) the cost to the State of providing the defaulted service, whether said service is provided by the State or a third party. To determine the amount the Contractor is being paid for any particular service, the Department shall be entitled to receive within five (5) days any requested material from Contractor. The State shall make the final and binding determination of said amount.

The State may assess Liquidated Damages against the Contractor for any failure to perform which ultimately results in a Partial Default with said Liquidated Damages to cease when said Partial Default is effective. Upon Partial Default, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount. Contractor agrees to cooperate fully with the State in the event a Partial Default is taken.

(3) Contract Termination— In the event of a Breach, the State may terminate the Contract immediately or in stages. The Contractor shall be notified of the termination in writing by the State. Said notice shall hereinafter be referred to as Termination Notice. The Termination Notice may specify either that the termination is to be effective immediately, on a date certain in the future, or that the Contractor shall cease operations under this Contract in stages. In the event of a termination, the State may withhold any amounts which may be due Contractor without waiver of any other remedy or damages available to the State at law or at equity. The Contractor shall be liable to the State for any and all damages incurred by the State and any and all expenses incurred by the State which exceed the amount the State would have paid Contractor under this Contract. Contractor agrees to cooperate with the State in the event of a Contract Termination or Partial Takeover.

b. State Breach— In the event of a Breach of contract by the State, the Contractor shall notify the State in writing within 30 days of any Breach of contract by the State. Said notice shall contain a description of the Breach. Failure by the Contractor to provide said written notice shall operate as an absolute waiver by the Contractor of the State's Breach. In no event shall any Breach on the part of the State excuse the Contractor from full performance under this Contract. In the event of Breach by the State, the Contractor may avail itself of any remedy at law in the forum with appropriate jurisdiction; provided, however, failure by the Contractor to give the State written notice and opportunity to cure as described herein operates as a waiver of the State's Breach. Failure by the Contractor to file a claim before the appropriate forum in Tennessee with jurisdiction to hear such claim within one (1) year of the written notice of Breach shall operate as a waiver of said claim in its entirety. It is agreed by the parties this provision establishes a contractual period of limitations for any claim brought by the Contractor.

E.12 Incorporation of Additional Documents. Included in this Contract by reference are the following documents:

- a. The Contract document and its attachments
- b. The Group Master Policy
- c. All Clarifications and addenda made to the Contractor's Proposal
- d. Amendment 1 to Request for Proposals #317.86-029
- e. Request for Proposal #317.86-029

- f. Technical Specifications provided to the Contractor
- g. The Contractor's Proposal in Response to RFP #317.86-029

In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these documents shall govern in order of precedence detailed above.

- E.13 Confidentiality of Records. Strict standards of confidentiality of records shall be maintained in accordance with the law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of State law and ethical standards and shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with State law and ethical standards.

The Contractor will be deemed to have satisfied its obligations under this section by exercising the same level of care to preserve the confidentiality of the State's information as the Contractor exercises to protect its own confidential information so long as such standard of care does not violate the applicable provisions of the first paragraph of this section.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.14 Date/Time Hold Harmless. As required by **Tennessee Code Annotated**, Section 12-4-118, the contractor shall hold harmless and indemnify the State of Tennessee; its officers and employees; and any agency or political subdivision of the State for any breach of contract caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort or otherwise process dates or times.
- E.15 Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in **Tennessee Code Annotated**, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System, provides that if a retired member returns to 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 may be required to repay to the Tennessee Consolidated Retirement System the amount of retirement benefits the Contractor received from the Retirement System during the period of this Contract.
- E.16 Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it and its 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 offence 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 for 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

**Contract Attachment A
Performance Guarantees**

| 1. Program implementation: Systems | |
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| Guarantee | Preparation for On-line enrollment administration and claims processing, as well as Customer Service operations shall be completed by August 1, 2005. |
| Definition | The Contractor shall have in place no later than August 1, 2005 the systems configuration(s) and programming, hardware, software, and staff necessary for on-line enrollment administration, premium administration, claims processing and Customer Services operations (including toll-free telephone line staffing by trained customer service representatives). |
| Non-performance amount | \$ 5,000.00 for failure to have all of the above listed functions ready by August 1, 2005. |
| Measurement | Documentation of compliance will be submitted by the Contractor on or shortly after August 1, 2005 to the State. This guarantee shall be measured once at initial implementation. |

| 2. Tennessee Insurance System Interface: Billing and Enrollment Interface | |
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| Guarantee | For the billing and enrollment feed , the Contractor's interface to the Tennessee Insurance system (TIS) shall be fully operational no less than 30 calendar days prior to commencement of insurance coverage. |
| Definition | Fully operational with the TIS interface shall mean that electronic files received by the Contractor from the State of Tennessee via email, Internet web posting, compact disc, or any other acceptable electronic medium will be processed and the data loaded directly into the Contractor's production database. The production database will be the source of reference for the contractor's business processes, including but not limited to claims processing and customer service. This shall include electronic transmissions of enrollment and billing records to the State of Tennessee (first electronic feed being August 10, 2005). |
| Penalty | Should the TIS interface, for Billing and Enrollment, not be fully operational – as defined above – by August 1, 2005, the contractor shall pay to the State of Tennessee a penalty of \$500 per day, for every day past the stated deadline, until the corresponding interface is fully operational. |
| Measurement | The benchmark for determining compliance shall be measured and reported beginning August 1, 2005. |