

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF TREASURY
AND
ARTHUR J. GALLAGHER RISK MANAGEMENT SERVICES, INC.**

This Contract, by and between State of Tennessee, Department of Treasury ("State") and Arthur J. Gallagher Risk Management Services, Inc. ("Contractor"), is for the provision of insurance broker services in connection with the acquisition of insurance for the State of Tennessee, 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 a for-profit corporation.
Contractor Place of Incorporation or Organization: Illinois
Contractor Edison Registration ID # 20097

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.
- A.2. Assessment of State's Insurance Needs. During the Term of this Contract and in accordance with the terms herein, the Contractor shall assist the State in ensuring that the State maintains the following insurance policies:
- (i) all-risk, replacement cost coverage for all real property and business personal property for all lines of coverage, including all-risk property insurance, including flood and earthquake;
 - (ii) comprehensive, wall-to-wall fine arts;
 - (iii) government crime with social engineering endorsement;
 - (iv) boiler and machinery, including quality jurisdictional inspection services;
 - (v) cyber liability;
 - (vi) comprehensive aviation;
 - (vii) stand-alone terrorism; and
 - (viii) at the State's option, budget insurance protection.

The Contractor shall perform an in-depth analysis of the State's current insurance programs and make written recommendations to the State regarding areas of concern, if any, and present alternative solutions to address the concerns. The analysis shall include, but not be limited to, specific limits of liability, per occurrence deductibles, annual aggregate deductibles, stop loss provisions, additional coverages, the elimination of any gaps and/or overlaps in coverage, and other related issues as may be agreed to by the Parties. The written recommendations resulting from this analysis shall be provided to the State on or before May 15 of the first year of the Contract and on or before February 1 of each subsequent year of the Contract. The Contractor shall, at such times as the State requests, meet with appropriate State personnel to discuss the results of the analysis. Any such meetings shall be held in person at the State's facilities in Nashville, Tennessee, or with the State's approval, via telephone or web-based conference.

- A.3. Placement of Required Insurance Coverages. The Contractor shall take all steps necessary to place insurance coverages. Such steps shall include, but not be limited to, the development of a submission document and related materials designed to communicate the State's insurance needs to

the insurance marketplace, and communication and negotiation with insurance carriers. Required insurance coverages shall be procured and insurance binders delivered to the State at the address specified in Section D.2 below, on or before June 30 of each year with policies to follow within sixty (60) calendar days after July 1 of each year.

The State requires that non-admitted insurance carriers may be considered eligible proposers only if quotes cannot be obtained through qualified admitted insurance carriers, as determined by receiving two declinations from admitted insurance carriers. The State reserves the right to accept or reject any proposed insurance carrier. No insurance carrier will have an AM Best rating of below A- VI.

- A.4. Declaration of Earned Revenues. Except as provided in Section C.3.c. below, the Contractor shall not be allowed to earn revenue through commissions, contingencies, etc. in the performance of this Contract. The Contractor shall provide the State with a report fully accounting its revenues related to the Contract and verifying its compliance with this requirement upon the initial placement of the State's insurance policies, and annually thereafter at the time of policy renewal, during the Term of this Contract.
- A.5. Policy Maintenance Services. The Contractor shall take such steps as are necessary to ensure that insurance policies purchased meet the State's specifications, including the review of applicable insurance binders, policies, certificates, and other documents to ensure accuracy. The Contractor shall also assist the State, at the State's request, in resolving claim disputes between the State and any company providing insurance or bond coverage procured pursuant to this Contract and such other services as are necessary to ensure that coverages procured are maintained.
- A.6. Policy Evaluation Services. During the period of this Contract, the Contractor shall assist the State in evaluating whether the State's best interest is served by the renewal of existing insurance policies or the procurement of new policies and/or insurance carriers. By no later than one hundred twenty (120) calendar days prior to the renewal date of any policy or bond procured pursuant to this Contract, the Contractor shall evaluate the existing insurance market for such policy or bond, as well as the condition of the insurance market generally, and report its findings to the State in a manner and method mutually agreed to in writing by the Parties. Within that one hundred twenty (120) day period, the Contractor shall also ascertain and report to the State on whether the State's existing insurance carriers propose premium rate increases, coverage modifications and/or anticipate other renewal problems. The evaluation services shall also include, at the State's request, risk assessment, alternative risk financing review and risk control.
- A.7. Policy Renewal; New Policy; Reassessment of Insurance Needs.
- a. Policy Renewal. If during the term of this Contract the State elects to renew any policy or bond or to replace any insurance carrier procured pursuant hereto, the Contractor shall take such steps as are necessary to renew any such policy or bond or to replace any such insurance carrier, without compromising policy terms, conditions, and/or coverages. Such steps shall be taken in accordance with this Contract and subject to the State's approval. Once the policy or bond is renewed or the carrier is replaced, the Contractor shall provide the declaration of earned revenues report, and the policy maintenance and policy evaluation services described in Sections A.4 – A.6 above.
 - b. New Policy. If during the term of this Contract the State elects to procure a new insurance policy or bond that is not listed in Section A.2(i) – (viii) above, the Contractor shall take such steps as are necessary to place the new insurance coverages in accordance with Section A.3 above. Any new insurance coverage requirements shall be procured by a date mutually agreed to in writing by the Parties. Upon procurement of the new policies, the Contractor shall provide the policy maintenance and policy evaluation services described in Sections A.5 and A.6 above.
 - c. Reassessment of Insurance Needs. At the State's request, the Contractor shall reassess the State's insurance needs pursuant to Section A.2 above in any subsequent year during the term of this Contract. The written recommendations resulting from the reassessment shall be provided to the State by a date mutually agreed to in writing by the Parties. The Contractor shall, at such times as the State requests, meet with appropriate State personnel to discuss the results of the

reassessment. Any such meetings shall be held in person at the State's facilities in Nashville, Tennessee, or with the State's approval, via telephone or web-based conference.

- A.8. Audit of Workers' Compensation TPA Performance Levels. The Contractor shall audit on an annual basis the performance levels of the State's workers' compensation third party administrator ("TPA") against the respective performance goals and criteria set forth in the contract between the State and the TPA to determine if the TPA is entitled to an incentive payment and the amount of the incentive. A copy of the current contract is attached as Contract Attachment 1. The results of each audit along with its supporting documentation shall be provided to the State by a date mutually agreed to in writing by the Parties.
- A.9. Predictive Modeling. At the State's request, the Contractor shall perform predictive modeling for disasters that can impact the state of Tennessee's property insurance program and make recommendations based on that analysis to assist the State in determining the amount of excess property insurance to be procured. The analysis and recommendations shall be provided to the State by a date mutually agreed to in writing by the Parties.
- A.10. Support Services for State's Property Program. With respect to the state of Tennessee's property program, the Contractor shall perform the following services as may be requested by the State:
- a. Building valuations
 - b. Business interruption valuations
 - c. Flood analysis & flood emergency response planning
 - d. Property risk control surveys – including recommendations to reduce the risk of a loss
 - e. Guidance on fire protection requirements for new occupancies
 - f. Emergency response procedures – guidelines, testing, templates
 - g. Business Continuity Planning – guidelines, testing, templates
 - h. Disaster Recovery Planning – guidelines, testing, templates

The services and resulting deliverables shall be provided to the State in the manner and within the timeframes as shall be mutually agreed to in writing by the Parties.

- A.11. Other Professional Risk Management Consulting Services. At the State's request, the Contractor shall provide to the State up to 500 hours of professional risk management consulting services that are described in pages 193 – 198 of the Contractor's Proposal. The services and any resulting deliverables shall be provided to the State in the manner and within the timeframes as shall be mutually agreed to in writing by the Parties.
- A.12. Key Project Team.
- a. Personnel Assignment. The Contractor agrees to assign the individuals named in the Contractor's Proposal as the key project team to the State under this Contract. Should any of the named individuals assigned to this Contract be reassigned, or otherwise removed (whether voluntary or involuntary) as the key project team under this Contract, the Contractor shall promptly notify the State and give the State the right to approve the appointment of the person designated to replace that individual.
 - b. Reassignment or Removal of Personnel. During the term of this Contract, the State reserves the right to require the Contractor to reassign or otherwise remove from performance of this Contract any key project team member found unacceptable by the State and to substitute another individual in his/her place that is acceptable to the State.
- A.13. Representations and Warranties. The Contractor represents and warrants that (1) it has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services under this Contract; (2) with respect to the services provided under this Contract, it shall not engage in transactions with either itself, including any affiliates or parent companies, except upon the prior written approval of the State; (3) it is duly authorized to execute and deliver this Contract, and to perform its obligations hereunder and has taken all necessary action to authorize such execution, delivery and performance; (4) the person signing this Contract on its

behalf is duly authorized to do so on its behalf; (5) it has obtained all authorizations of any governmental body required in connection with this Contract and the transactions hereunder and such authorizations are in full force and effect; and (6) the execution, delivery and performance of this Contract will not violate any law, ordinance, charter, by-law or rule applicable to it or any agreement by which it is bound or by which any of its assets are affected. The Contractor shall promptly notify the State in writing if any of the above representations change or cease to be true and correct in all respects.

A. 14. Back-up Procedures and Disaster Recovery. The Contractor shall maintain business interruption plans in the event of a loss of the Contractor's principal place of business due to natural or manmade causes, including back-up systems for data and other records, office space and other technology needed to perform the services hereunder. The Contractor shall resume services hereunder within seventy-two (72) hours of the disaster or malfunction. The Contractor shall provide notification of an incident to the State within two (2) hours after the beginning of operation of the Contractor's Emergency Operations Command Post.

A. 15. On-Site Visits. The State or its duly appointed representatives shall be entitled to visit the Contractor's operational headquarters or other offices where the State's account is serviced and to examine all records pertaining to the account, and to make reasonable request for copies of such records.

A. 16. Transfer of Contractor's Obligations.

a. The Contractor shall immediately notify the State in writing of a proposed merger, acquisition or sale of its business operation, or the part of its business operation that provides services under this Contract, or that this Contract will be sold to or assumed by another entity. The entity that is proposed to assume the Contractor's duties under this Contract, whether through merger, acquisition, sale or other transaction, will be hereinafter described as the "New Entity."

b. The Contractor (or, if the Contractor no longer exists as a legal entity, the New Entity) will provide to the State within a reasonable time, information that the State may require about the merger, acquisition or sale, which may include, but not be limited to, the following:

i. the date and terms of the merger, acquisition or sale, including specifically, but not limited to, adequate documentation of the financial solvency and adequate capitalization of the proposed New Entity;

ii. a complete description of the relationship of any New Entity to any parent company or subsidiary or division resulting from the merger, acquisition or sale of the original Contractor's business or the part of the original Contractor's business that provides services under this Contract or from assumption by, or sale to, another entity of the contract itself, including, but not limited to:

(1) the names and positions of corporate or company officers, project managers, other Contractor management staff with responsibilities under the Contract, and numbers and the type of technical or other personnel who will be responsible for fulfilling the obligations of the Contract, and any subcontracts that will be used to provide any personal or other services under the Contract by the New Entity and,

(2) an organizational chart clearly describing the organizational structure of the New Entity, parent company, subsidiary, division or other unit of the entity or parent company with which it has merged or by which it, or the Contract, has been acquired; and

iii. such additional evidence of financial solvency, adequate capitalization and information regarding corporate organizational and personnel assigned to the Contract as the State determines is necessary to evaluate the status of the proposed

or consummated merger, acquisition or sale.

- c. The original Contractor shall immediately notify the State in writing in the event of a change in its legal name and/or Federal Employer Identification Number (FEIN). The Contractor shall comply with State requests for copies of any documents that have been filed with state corporate records officials or other officials in the state of its incorporation that verify the name change and a narrative description of the reasons for the name change. If a New Entity has succeeded to the interest of the original Contractor, it shall immediately provide the State written notification of its Federal Employer Identification Number (FEIN), its complete corporate name, State of incorporation, and other documentation required to effectuate the transfer.
- d. Notwithstanding any other provisions of this Contract to the contrary, the State may immediately terminate this Contract in whole or in stages in the event that it determines that the New Entity
 - i. has been debarred from State or Federal contracting in the past five years; or
 - ii. has had a contract terminated for cause by the State of Tennessee within the past five years.

The Contractor shall be entitled to compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor or New Entity for compensation for any service which has not been rendered. Upon such termination, the Contractor or New Entity shall have no right to any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- e. The New Entity shall provide to the State within ten (10) business days of the State's request, a notarized statement signed by an individual authorized to bind the New Entity certifying that all liabilities and obligations incurred by the former Contractor are assumed by the New Entity.
 - f. If the New Entity owes money to the State of Tennessee, it acknowledges that Tenn. Code Ann. § 9-4-604 requires repayment of these funds and will enter into a legally binding agreement for repayment.
 - g. The Contractor shall not be required to disclose to the State any material nonpublic information until such information becomes public unless the information is expressly required under this Section.
- A.17. Ownership of Materials. All records, reports, documents, or other material related to this Contract and/or obtained or prepared by the Contractor in connection with the performance of the services hereunder shall become the property of the State, and shall, upon request, be transmitted by the Contractor to the State, at the Contractor's expense, at termination or expiration of this Contract or at such earlier time as the State may request. Without limiting the foregoing, the Contractor retains all of its rights in its intellectual property (including methodologies, ideas, know-how, techniques, models, tools, skills, knowledge and experience and any graphic representations of any of these) used by it generally or provided generally to clients or possessed by it prior to, or developed or acquired by it, during the performance of the services hereunder for the State.
- A.18. Transition of Services Upon Termination. Upon the natural expiration of this Contract or in the event of its termination for any reason, the Contractor shall transfer, at the State's request and in accordance with the State's instructions, all records pertaining to the State's insurance program to whomever the State may designate in writing to the Contractor. The Contractor agrees to cooperate with the State, and any subsequent contractor selected by the State to perform the services hereunder, in the transition and conversion of such services. To ensure continuous operation of the State's insurance program and upon thirty (30) calendar days' notice, this information shall be provided to the State or its designated agent at least forty-five (45) calendar

days prior to the termination or expiration 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 or expiration date of this Contract. It shall be the responsibility of the Contractor to continue to service claims until they are closed as well as provide loss runs for up to five (5) years on policies placed by the Contractor before the termination or expiration of the Contract.

- A.19. Applicable Gifts and Solicitations Policy. The Contractor shall not offer to give, or give, any gift to any employee of the State or to any member of a Board, Commission or Committee administratively attached to the State that would violate the State's Gifts and Solicitations Policy, included as Contract Attachment 2 to this Contract.
- A.20. Non-Solicitation. During the term of this Contract and for a period of twelve (12) months after the date that the Contractor last provides services to the State under this Contract, neither Party shall knowingly and directly solicit for employment or as an independent contractor any person employed by the other, if such person was directly involved in the performance of this Contract, without the express consent of the other Party. This provision shall not apply to any individual whose employment has been terminated for a period of three (3) months or longer before any such solicitation occurs or to any offers of employment initiated by either Party prior to the execution of this Contract.
- A.21. Client Conferences. The Contractor shall invite relevant State employees selected by the State to participate in client conferences hosted by or on behalf of the Contractor and all other similar educational activities provided by the Contractor and normally offered to the Contractor's clients based on geographic location (collectively, "Client Conferences"). Any invitations to State employees to participate in Client Conferences shall be considered part of the services rendered by the Contractor under this Contract, and any costs normally paid or reimbursed by the Contractor, such as registration fees, materials, lodging, conference meals and refreshments, related to such Client Conferences shall be deemed part of this Contract. The State does not consider the opportunities available to relevant State employees pursuant to this provision to be gifts pursuant to the State's Gifts and Solicitations Policy, which is described in Section A. 19 above.
- A.22. 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.23. 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 March 10, 2021 (“Effective Date”) and extend for a period of sixty (60) 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.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed one thousand dollars and no cents (\$1,000.00) (“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. Subject to Section C.3.c. below, the Contractor shall be compensated based upon the following payment methodology:

| SERVICE DESCRIPTION | Amount (per compensable increment) | | | | |
|---|---------------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|
| | March 10, 2021 — March 9, 2022 | March 10, 2022 — March 9, 2023 | March 10, 2023 — March 9, 2024 | March 10, 2024 — March 9, 2025 | March 10, 2025 — March 9, 2026 |
| Professional Risk Management Consulting Services as detailed in Section A.11. | \$1.00 per hour | \$1.00 per hour | \$1.00 per hour | \$1.00 per hour | \$1.00 per hour |

| | | | | | |
|--|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| <p>All other services set forth in this Contract, <u>excluding</u> (1) insurance placements for the state of Tennessee's real property and business personal property, all-risk property insurance and flood and earthquake, (2) any new insurance or bond placements that is not listed in Section A.2(i) – (viii) and (3) predictive modeling and support services for the state of Tennessee's property program as described in Sections A.9 and A.10.</p> | <p>\$100.00 per year</p> | <p>\$100.00 per year</p> | <p>\$100.00 per year</p> | <p>\$100.00 per year</p> | <p>\$100.00 per year</p> |
| <p>Compensation for (1) insurance placements for the state of Tennessee's real property and business personal property, all-risk property insurance and flood and earthquake, (2) any new insurance or bond placements that is not listed in Section A.2(i) – (viii) and (3) predictive modeling and support services for the state of Tennessee's property program as described in Sections A.9 and A.10 shall be commissioned-based as provided in Section C.3.c below .</p> | | | | | |

- c. The Contractor shall not receive fees or other compensation directly from the State or any other Tennessee state governmental entity or agency with respect to (1) insurance placements for the state of Tennessee's real property and business personal property, including all-risk property insurance and flood and earthquake, (2) any new insurance or bond placements that is not listed in Section A.2(i) – (viii), and (3) predictive modeling and support services for the state of Tennessee's property program as described in Sections A.9 and A.10. Compensation to the Contractor for such services shall come from commissions or other types of payments, including prospective or potential payments, from insurance carries as a result of property insurance placed on behalf of the State.

Specifically, payment to the Contractor shall be made via the insurance premium. The insurance company providing the coverage charges a premium for that coverage. A percentage commission (based on prevailing market rates) of the premium charged shall be paid to the Contractor by the insurance company. The State shall compensate the Contractor for the full amount of the insurance premium for each such policy, as verified by appropriate documentation from the insurance company, including the insurance policy and endorsements. The Contractor shall make payment to the insurance company, net of its commission.

The Contractor agrees that for the Contract Term, the commissions received by the Contractor on behalf of the State shall be equal to or lower than any commissions received by the Contractor from other customers for like services.

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:

Rodney Escobar, Director
Division of Claims and Risk Management
15th Floor, Andrew Jackson State Office Building
502 Deaderick Street
Nashville, Tennessee 37243 – 0202
rodney.escobar@tn.gov

a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):

- (1) Invoice number (assigned by the Contractor);
- (2) Invoice date;
- (3) Contract number (assigned by the State);
- (4) Customer account name: Tennessee Treasury Department, Division of Claims and Risk Management;
- (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
- (6) Contractor name;
- (7) Contractor Tennessee Edison registration ID number;
- (8) Contractor contact for invoice questions (name, phone, or email);
- (9) Contractor remittance address;
- (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
- (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
- (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
- (13) Amount due for each compensable unit of good or service; and
- (14) Total amount due for the invoice period.

b. Contractor's invoices shall:

- (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
- (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
- (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
- (4) Include shipping or delivery charges only as authorized in this Contract.

c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.

C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, 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 invoiced.

- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice 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.8. 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.9. 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.

D. MANDATORY TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the 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:

Rodney Escobar, Director
Division of Claims and Risk Management
15th Floor, Andrew Jackson State Office Building
502 Deaderick Street
Nashville, Tennessee 37243 – 0202
rodney.escobar@tn.gov
Telephone # (615) 741-2734
FAX# (615) 532-4979

The Contractor:

Branden Miller, Area Executive Vice President
Arthur J. Gallagher Risk Management Services, Inc.
8 Cadillac Drive, Suite 200
Brentwood, Tennessee 37027
branden_miller@aig.com

Telephone # (615) 279-7228
FAX # (615) 263-5930

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 a Party ("Breaching Party") fails to properly perform its obligations under this Contract, or if a Party materially violates any terms of this Contract ("Breach Condition"), the Party ("Non-breaching Party") may provide written notice to the Breaching Party specifying the Breach Condition. If within thirty (30) days of notice, the Breaching Party has not cured the Breach Condition, the Non-breaching Party may terminate the Contract. In the event the Non-breaching Party is the State, the State may withhold payments in excess of compensation for completed services or provided goods. The Breaching Party shall not be relieved of liability to the Non-breaching Party for damages sustained by virtue of any breach of this Contract, and the Non-breaching Party 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 Contract Attachment 3, 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 the negligent acts, omissions, or willful misconduct 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.
- 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 Contract Attachments 1 - 3;
 - 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; and
 - f. the Contractor's response seeking this Contract.
- 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. The Commercial General Liability coverage and Automobile Liability coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to include 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 except Professional/Error and Omissions Liability must contain an endorsement, blanket endorsement or policy wording 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 advise the State and allow the State to view 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., 3rd 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 shall endeavor to provide it again on the date of renewal or replacement of coverage, but no later than seven (7) business days after the 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 Contractor shall permit the State to review 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 and employer liability insurance in the amounts required by appropriate state statutes.

- 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. Automobile Liability Insurance

- 1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).
- 2) The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars (\$1,000,000) per occurrence or combined single limit.

d. Professional Liability Insurance

- i. 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:
 - 1. The retroactive date must be shown, and must be on or before the earlier of the Effective Date of the Contract or the beginning of Contract work or provision of goods and services;
 - 2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) full years from the date of the final Contract payment; and
 - 3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date on or prior to the Contract Effective Date, the Contractor must purchase "extended reporting" or "tail coverage" for a minimum of five (5) full years from the date of the final Contract payment.
- ii. Any professional liability insurance policy shall have a limit not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the aggregate; and

e. Technology Professional Liability (Errors & Omissions)/Cyber Liability Insurance

- 1) The Contractor shall maintain technology professional liability (errors & omissions)/cyber liability insurance appropriate to the Contractor's profession in an amount not less than two million dollars (\$2,000,000) per occurrence or claim and two million dollars (\$2,000,000) annual aggregate, covering all acts, claims, errors, omissions, negligence, infringement of intellectual property (including copyright, patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, information theft, damage to destruction of or alteration of electronic information, breach of privacy perils, wrongful disclosure and release of private information, collection, or other negligence in the handling of confidential information, and including coverage for related regulatory fines, defenses, and penalties.
- 2) Such coverage shall include data breach response expenses, in an amount not less than ten million dollars (\$10,000,000), including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public

relations and crisis management firm fees, credit file or identity monitoring or remediation services and expenses in the performance of services for the State or on behalf of the State hereunder.

f. Crime Insurance

- 1) The Contractor shall maintain crime insurance, which shall be written on a "loss sustained form" or "loss discovered form" providing coverage for third party fidelity, including cyber theft and extortion. The policy must not contain a condition requiring an arrest or conviction.
- 2) Any crime insurance policy shall have a limit not less than one million dollars (\$1,000,000) per claim and one million dollars (\$1,000,000) in the aggregate. Any crime insurance policy shall contain a Social Engineering Fraud Endorsement with a limit of not less than two hundred and fifty thousand dollars (\$250,000). This insurance may be written on a claims-made basis, but in the event that coverage is cancelled or non-renewed, the Contractor shall purchase an extended reporting or "tail coverage" of at least two (2) years after the Term.

D.33. Major Procurement Contract Sales and Use Tax. Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Contractor and the Contractor's subcontractors shall remit sales and use taxes on the sales of goods or services that are made by the Contractor or the Contractor's subcontractors and that are subject to tax.

D.34. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal 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 that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law. Subject to the State's approval, the Contractor may disclose Confidential Information in furtherance of services rendered by the Contractor to the State hereunder, which may include the release to insurers and other financial institutions of Confidential Information relevant to the underwriting and/or evaluation of the State's risks and the processing of its claims; provided that the recipients of such Confidential Information have previously been made aware of the terms of this Section and have agreed to keep such information confidential under terms substantially the same as those in this Contract.

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.

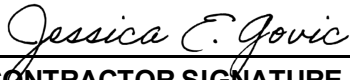
E.2. Work Papers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis work papers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.

E.3. 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 # 30901-47220 (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>.

IN WITNESS WHEREOF,

ARTHUR J. GALLAGHER RISK MANAGEMENT SERVICES, INC.:

| | |
|---|-------------|
|  | 02/24/2012 |
| CONTRACTOR SIGNATURE | DATE |
| Jessica E. Govic, Area President | |
| PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above) | |

DEPARTMENT OF TREASURY:

| | |
|---|---------------|
| | March 2, 2021 |
| DAVID H. LILLARD, JR., STATE TREASURER | DATE |

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF TREASURY
AND
CORVEL ENTERPRISE COMP, INC.**

This Contract, by and between State of Tennessee, Department of Treasury ("State") and CorVel Enterprise Comp, Inc. ("Contractor"), is for the provision of state-wide workers' compensation pharmacy benefit management services, workers' compensation third party administrative services, managed disability provider network, bill repricing, and utilization review and/or managed care services for the State, 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 a for-profit corporation.
Contractor Place of Incorporation or Organization: State of Delaware
Contractor Edison Registration ID # 177618

WITNESSETH:

WHEREAS, the State is responsible for administering the Workers' Compensation Program made available to employees of the state of Tennessee; and

WHEREAS, the mission of the State in this area is to provide prompt and high quality medical and pharmaceutical services to injured state of Tennessee employees in a cost effective manner, to ensuring that the maximum allowable fees for health care services and pharmaceuticals are not exceeded, and to enhancing the quality and efficiency of medical and pharmaceutical care that any such injured or ill employee may receive; and

WHEREAS, to accomplish the above, the State issued a request for proposal ("RFP") for the provision of state-wide workers' compensation pharmacy benefits management services, physician peer review services, telehealth services, workers' compensation third party administrative services, managed disability provider network, bill repricing, and utilization review and/or managed care services through which injured state of Tennessee workers will receive needed medical care and pharmaceuticals, and the Contractor was the successful proposer to perform said services.

NOW, THEREFORE, in consideration of the premises and the mutual promises contained herein, the Parties have agreed and do hereby enter into this Contract according to the provisions set out herein:

DEFINITIONS:

"Act" means Tennessee's Workers' Compensation Act, codified in Tenn. Code Ann. § 50-6-101 *et seq.*, as amended.

"AWP" means average wholesale price.

"Business Day" means 7:30 a.m. CS(D)T until 6:00 p.m. CS(D)T each day, except Saturdays, Sundays and legal holidays on which State offices are closed.

"Compounding" means the preparation, mixing, assembling, packaging or labeling of a drug or device.

"Dispense" or "Dispensed" means preparing, packaging, compounding or labeling for delivery and actual delivery of a prescription drug, nonprescription drug or device in the course of professional practice to a patient or the patient's agent by or pursuant to the lawful order of a prescriber.

"Employee" means any person defined as a state of Tennessee employee pursuant to Tenn. Code Ann. § 8-42-101 who is eligible for workers' compensation coverage pursuant to Tenn. Code Ann. § 9-8-307.

"Health Facility" means an institution legally operating as a hospital which is primarily engaged in providing, for compensation from its patients, inpatient medical and surgical facilities for diagnosis and treatment of injury or illness and is operated under the medical supervision of a staff of physicians and continuously provides nursing services by registered nurses for twenty-four (24) hours of every day.

"Maximum Allowable Rates" means the maximum fees a Provider may receive for dispensing healthcare services, supplies or pharmaceuticals to Employees for work related injuries, as determined by the lesser of the following: (i) the State Mandated Rates, or (ii) the Negotiated Rates.

"Negotiated Rates" means the rates the Contractor negotiated with a Provider pursuant to Section A.3.d.(1), Section A.3.i, Section A.4.d(1) or Section A.4.j below, as applicable, that are lower than the State Mandated Rates.

"Network" means the Providers contracted by the Contractor to participate in the managed disability provider network or workers' compensation pharmacy network established and maintained on behalf of the State pursuant to this Contract.

"Pharmacy" or "Pharmacies" means a location licensed by a state where drugs are Compounded or Dispensed under the supervision of a Pharmacist, and where prescription orders are received or processed.

"Pharmacist" means an individual health care provider licensed by a state to practice the profession of pharmacy.

"Primary Care Physician" means a duly licensed physician who engages in the practice of occupational medicine, emergency medicine, internal medicine, or family/general medicine. "Primary Care Physician" also means a duly licensed Walk-in Clinic that provides care and treatment of injured employees.

"Primary Care Provider" means a Primary Care Physician or a Health Facility.

"Provider" means a facility or practitioner who, for a fee, dispenses healthcare services or supplies to the public. "Provider" also means a Pharmacy.

"Repricing" means the process used to calculate the difference between the Providers' billed charges and the Maximum Allowable Rates.

"State Mandated Rates" means the fees calculated according to Tenn. Code Ann. § 50-6-204 and the Medical Fee Schedule Rules promulgated by the Tennessee Department of Labor and Workforce Development in Chapters 0800-02-17, 0800-02-18 and 0800-02-19 of the *Official Compilation of the Rules and Regulations of the State of Tennessee*, as may be amended.

"Walk-in Clinic" means a free-standing or hospital based facility, with limited hours, professionally staffed and equipped to provide emergency or non-emergency medical care.

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.

A.2. Workers' Compensation Third Party Administrative Services.

- a. In General. The Contractor's responsibilities under this Contract with respect to workers' compensation third party administrative services include, but are not limited to, workers' compensation claims investigation and determination of compensability, ongoing claims management, payment of medical and indemnity benefits, subrogation recoveries, reserving, facilitation of early return to work and modified duty, attendance at benefit review conferences

and alternative dispute resolution proceedings across the state of Tennessee, and data capturing and reporting. The Contractor shall perform such responsibilities in accordance with this Contract.

b. Claims Administration.

(1) Determination of Claims. The Contractor shall review all workers' compensation claims assigned to the Contractor by the State during the term of this Contract and process each such claim in accordance with Tenn. Code Ann. §§ 9-8-307, 9-8-402 and Title 50, Chapter 6, and as provided in the Contractor's Proposal, and the Claims Handling Requirements described in Section A.2.b(3) below.

(2) Claim Adjudication Decisions.

(A) The Contractor is authorized to make decisions regarding workers' compensation cases in accordance with Tennessee law, except that the following claims adjudication decisions shall require prior approval of the State:

- (i) denials of the compensability of an accident/injury;
- (ii) approvals to use rehabilitative services;
- (iii) approvals of death claims;
- (iv) approvals of heart attack/hypertension claims;
- (v) discontinuance of overpayment collection efforts;
- (vi) discontinuance of subrogation collection efforts;
- (vii) initiations of surveillance/investigation services;
- (viii) approvals or denials of National Guard claims; and
- (ix) prior to entering into settlement discussions with a claimant/counsel, the Contractor shall obtain the State's approval of the settlement conditions to be proposed.

Notwithstanding the above, the State may authorize the Contractor to approve certain classes of claims falling within sub-items (i) through (ix) above without the necessity of obtaining the prior approval of the State. Any such authorization will be in writing and set forth the classes of claims involved. It is understood and agreed that any decision made by the Contractor regarding a workers' compensation case is subject to review and modification by the State.

(B) If the Contractor recommends denial of a claim, the Contractor shall notify the State and inform the State of the reasons therefore. The State shall have final authority to determine whether a claim should be denied. If the State approves the denial recommendation, the Contractor shall notify the claimant by letter. The letter shall be substantially in the same form as the sample letter which shall be jointly developed by the State and the Contractor. If the Contractor approves the claim, the Contractor shall notify the claimant by letter. The letter shall be substantially in the same form as the sample letter which shall be jointly developed by the State and the Contractor. The Contractor shall also send a copy of the denial or approval letter, whichever is applicable, to the representative of the specific agency or department where the claimant was working at the time of the alleged injury. Any approval letter shall further be sent to the State's group insurance division. The Contractor shall thereafter, without further authorization, process and pay all approved claims for workers' compensation benefits and all appropriate medical and pharmacy bills related to such workers' compensation injury as provided in Sections A.2.e and A.5 of this Contract.

(C) The files of claims closed by the Contractor shall be archived by the Contractor in an industry standard electronic manner, format and frequency as shall be mutually agreed to by the Parties. The integrity of each file shall be maintained during archiving and shall include all documents, papers, letters, and other material made or received by the Contractor in connection with the particular claim. All file documents, papers, letters and other material shall be archived in the order of their occurrence, with the most recent material appearing first. Prior to archiving, the Contractor shall ensure that the claim number assigned to the file is marked at the top of each page.

- (D) The Contractor assumes entire responsibility for any loss occasioned by reason of misplaced, lost, damaged, destroyed or stolen files while such files are in the possession or custody of the Contractor, or while such files are in the possession of any carrier en route from the Contractor to the State.
- (3) Claim Handling Requirements. The Contractor shall develop, in consultation with the State, Claim Handling Requirements for workers' compensation claims assigned by the State to the Contractor. At a minimum, such Requirements shall include the Claim Handling Requirements set forth in Contract Attachment 1. Once developed, the Requirements shall be subject to revision and modification by the Parties provided that no such revisions or modifications shall be inconsistent with this Contract. The Contractor shall not unreasonably withhold its consent to any such revisions or modifications proposed by the State.
- (4) Telephonic 24/7 Nurse Triage and Electronic Claims Intake Services. The Contractor shall provide 24/7 Nurse Triage and electronic claims intake services, which allow the filing of workers' compensation claims over the telephone and electronically. The Contractor shall make such services available twenty-four (24) hours a day, seven (7) days a week. The Contractor shall provide notification of each such telephonic 24/7 Nurse Triage services and electronic filing to the injured Employee's agency contact within two (2) Business Days of filing. The Nurse Triage Services shall be performed in accordance with pages 73 – 82 of the Contractor's Proposal and as may be modified or supplemented in the Claim Handling Requirements.
- (5) Communications Between Contractor and State.
- (A) Meetings. The Contractor shall meet with the State in Nashville, Tennessee on a monthly basis to discuss such issues as strategies on open claims, reserve changes, upcoming hearings, general claims administration and other issues as determined by the State. Claim adjudication decisions subject to State approval shall also be discussed at these meetings. If a claim decision requiring State approval should not be delayed until the next monthly meeting, the Contractor shall notify the State.
- (B) Reports.
- (i) Daily. On a daily basis, the Contractor shall provide a detailed listing of the payment activity, including check serial numbers and ACH payment identifiers, payee names, payment amounts and associated claim numbers, and balancing to the required funding amount for that day.
- (ii) Weekly. On a weekly basis, the Contractor shall provide an aging report for all claims pending a decision on compensability and a report for new claims that require chiropractic treatment option.
- (iii) Monthly. The Contractor shall further provide to the State monthly reports containing the following information: (i) loss run information summarizing the number of claims opened, closed and pending; (ii) the amounts paid and reserved; (iii) loss analysis by agency showing number of claims, amount paid, amount incurred, body part, type of injury, location and etc.; (iv) check reconciliation reports that provide detail (check number, issue date, payee name, claim number, check amount, paid or cancel date) of all checks issued, paid or cancelled during the month, and a detailed listing of outstanding checks at each month-end; (v) payment activity report by department/division code and location; (vi) temporary total disability report by department/division code transmitted by secure e-mail to each state agency contact; (vii) payment report by type of payment (medical, permanent disability, temporary disability and death); (viii) caseload count by adjuster; and (ix) subrogation recoveries and refunds. The monthly report shall be due on the last Business Day of the month and shall cover the information described in this subparagraph as of the previous month end.

- (iv) Quarterly. On a quarterly basis, the Contractor shall provide the State with a listing of all reserve changes over \$25,000, a loss analysis showing claims by body part, type of injury, location of injury and etc., and a listing of the average accident reporting time (i.e., from the date of injury to the date reported to the employer to the date of filing a claim). The listings and analysis shall cover the information described in this subparagraph occurring since the previous quarter.
 - (v) Miscellaneous. Upon the State's request, the Contractor shall further provide written status reports to the State for all claims. The reports shall include the name and job title of the claimant, claimant's last four digits of his/her social security number, date of injury, claims examiner, claim number, client location, date claim reported, next diary review date, description of accident, nature of injury and medical summary, adjuster's most recent status report, supervisor's most recent comments, indemnity and medical reserves, subrogation, litigation and such additional information as shall be mutually agreed to by the Parties.
- c. Subrogation and Surveillance. The Contractor shall identify claims wherein subrogation opportunities may arise requiring follow-up by the Contractor and shall assist the State in obtaining subrogation. In the event the Contractor determines that investigative techniques, including, but not limited to, surveillance, medical record canvassing, social media checks and activity checks (collectively, "Investigative Techniques") may be useful with respect to any claim, the Contractor shall notify the State of such claims and recommend the applicable Investigative Techniques. Upon the State's approval, the Contractor shall initiate the applicable Investigative Techniques on the identified claims as provided in the Claims Handling Requirements, which may be modified or supplemented from time to time.
- d. Return to Work, Rehabilitation and Transitional Employment.
 - (1) Return to Work and Rehabilitation in General. The Contractor shall monitor the treatment programs recommended for Employees by physicians, specialists and other health care providers by reviewing all reports prepared by them and maintaining such contact with these providers as may be appropriate in the judgment of the Contractor. As the State directs, the Contractor shall assist in interpreting medical reports to consider the circumstances under which an ill or injured Employee could return to work in the shortest period of time and shall assist the State, at the State's request, in arranging for rehabilitation or retraining of Employees in appropriate cases.
 - (2) Return to Work Program. The Contractor acknowledges the State has implemented a workers' compensation return to work program for all state of Tennessee departments and agencies as summarized in the Claims Handling Requirements that are attached hereto as Contract Attachment 1. Under the return to work program, the employing department attempts to identify areas within the Employee's existing department where the Employee can return to work with accommodation. The Contractor will be required to work with state of Tennessee agency staff in an attempt to promote this return to work effort, and to assure that the information and documentation necessary to assist all parties in returning Employees to work as quickly as possible is shared. The Contractor shall maintain ongoing communication with the agency staff so that they are aware of the timeline and likelihood of return to work either with or without restrictions. The Contractor shall keep the applicable human resource representative up-to-date monthly on cases where the Employee has not been separated from agency employment and the Contractor must aggressively work to return an Employee to work as quickly as possible.
 - (3) Transitional Employment Program. The Contractor acknowledges the State has implemented a transitional employment statewide program as described in the Claims Handling Requirements, which are attached hereto as Contract Attachment 1. The program includes the identification and development of positions sometimes involving temporary assignments into which Employees will be placed for limited periods of time. These transitional assignments are intended to be temporary and under normal circumstances, the duration for

the entire transitional employment process has not been determined; however, under no circumstances shall the duration period of transitional employment adversely interact with the Americans with Disabilities Act Amendments Act (ADAAA). The Contractor agrees to assist and support the State in further enhancement and development of transitional employment efforts and work with the physicians to return Employees to work at the earliest opportunity. As a part of the initial claims handling process, the Contractor shall assist state of Tennessee agencies as requested in the creation of transitional employment and the development of physical job requirements that will be forwarded to the health care provider for medical return to work approval.

(4) Return to Work Coordinator. At the State's request, the Contractor shall provide a member of its staff as a full-time Return to Work Coordinator dedicated to the State's account only. The Return to Work Coordinator shall perform work plans mutually agreed upon by the Contractor and the State. The Return to Work Coordinator's responsibilities shall include, but shall not be limited to, the following:

- (A) Serving as the main point of contact regarding the Return to Work Program;
- (B) Developing relationships with representatives of agencies identified by the State;
- (C) Working with agencies identified by the State to monitor periods of light duty job duties;
- (D) Assisting the State in tracking Return to Work data via the Contractor's established Return to Work reporting capabilities; and
- (E) Notifying the State when an agency does not return an injured worker to work.

e. Process Workers' Compensation Medical and Pharmaceutical Bills. Upon approval of a workers' compensation claim as provided above and after the reviews are performed as provided in this Section A.2.e below, the Contractor shall process for payment all medical and pharmaceutical bills related to the workers' compensation injury submitted by or on behalf of the authorized physicians, hospitals, pharmacists and pharmacies as provided below:

- (1) The Contractor shall review all medical and pharmaceutical bills to ensure that each bill is reasonable, necessary, related to the treatment of the approved injury, and meets the requirements of Tenn. Code Ann., Title 50, Chapter 6 (Tennessee Workers' Compensation Act).
- (2) The Contractor shall then reprice all medical and pharmaceutical bills as provided in this Section A.3 and in Section A.4 below to ensure that each bill does not exceed the Maximum Allowable Rates, as defined in the "Definitions" above.
- (3) The State maintains the right to audit individual claims and the claim payment procedures of the Contractor at any time, with reasonable notification to the Contractor.

f. Reserving. The Contractor shall establish reserves on open claims in accordance with approved insurance standards, or as otherwise agreed to by the Parties. Unless authorized by the State in writing, the Contractor shall not charge against experience those claim payments not authorized under the workers' compensation plan of the State of Tennessee if such payments were the result of error, negligence, reckless or willful acts or omissions by the Contractor, its officers, agents, or employees. At the State's request, the Contractor shall furnish the reserve information to the State's Risk Management Actuarial Vendor to enable the Vendor to determine the funding required for the State's Risk Management Fund.

g. Consulting Services. At the State's direction, the Contractor shall provide information to State employees and to State departments and agencies regarding the benefits available under the State's workers' compensation program and to counsel any such department or agency regarding policies and procedures to meet the needs of the State. Further, the Contractor shall consult with the State, at the State's request, on the establishment and coordination of necessary procedures and practices to meet any applicable laws or regulations. The Contractor shall also participate in the orientation of the State's personnel who are directly or indirectly involved in the processing of workers' compensation claims.

- h. Attendance at Benefit Review Conferences or Alternative Dispute Resolution Proceedings. Unless otherwise directed by the State, the Contractor shall physically attend and participate in benefit review conferences and alternative dispute resolution proceedings held pursuant to the Act relative to workers' compensation claims assigned to the Contractor by the State during the term of this Contract. Should the State direct that the Contractor's physical presence at any such conference or proceeding is unnecessary, the Contractor shall, at the State's request, participate by telephone or other State approved electronic means, provided the Contractor is given at least two (2) Business Days' advance notice of the conference or proceeding.

A.3. Workers' Compensation Provider Network, Bill Repricing and Utilization Review/Managed Care Services.

- a. In General. The Contractor agrees to establish and manage a workers' compensation managed disability preferred provider network for the benefit of the State. Such Network must exhibit a management philosophy and incorporate concrete steps to secure Providers who will return injured Employees to work, and exhibit a Provider contract philosophy of credentialing Providers who specialize in the treatment of occupational injuries and who are philosophically bound to return to work programs. The Network must be composed primarily with Providers who specialize in the treatment of injured workers. The Contractor further agrees to ensure Provider compliance with the Maximum Allowable Rates (as defined in the "Definitions" above) by repricing all billings submitted by Providers for dispensing healthcare services or supplies (including pharmaceuticals) to Employees for work related injuries. The Contractor also agrees to provide utilization management and managed care services on behalf of the State for accidents and injuries covered under the State's workers' compensation program. The services shall be provided in accordance with Section A.3.k below.
- b. Provider Evaluation and Credentialing.
 - (1) Hospitals and Alternate Site Health Care Providers. The Contractor shall identify desirable hospitals and alternate site health care Providers for inclusion in the Network. Once various Providers are identified, the Contractor shall evaluate whether or not contracting will proceed in accordance with Section A.3.d(1) hereof. The evaluation shall be applied to, but shall not be limited to, acute care general hospitals, subacute hospitals, rehabilitation hospitals, physical therapists, pharmacies, ambulatory surgery centers, durable medical equipment providers, and home health care providers. The Contractor shall reevaluate hospitals and alternate site health care Providers included in the Network every three (3) years to ensure that such Providers continue to meet the minimum standards for participation by health delivery organizations.
 - (2) Physicians. The Contractor shall identify, evaluate and credential physicians for participation in the Network. The Contractor shall reevaluate physicians included in the Network every three (3) years.
- c. Provider Network Standards. In accordance with Rule 0800-02-01-.06 of the *Official Compilation of the Rules and Regulations of the State of Tennessee*, the Contractor shall provide an Employee with a choice of three (3) Providers within the Employee's community. For purposes of that requirement, the term "community" means fifty (50) miles from the Employee's residence or place of employment. To meet this requirement, the Contractor shall use its best efforts to select and contract with at least three (3) Primary Care Physicians and a Health Facility located within at least fifty (50) miles of each Employee's residence. The Contractor shall also use its best efforts to select and contract with at least three (3) orthopedic and neurosurgery specialists located within sixty (60) miles of each Employee's residence. The Contractor shall have an accessibility analysis performed on an annual basis by a qualified third party for the purpose of establishing whether the above standards are being met and provide the results of the analysis to the State. Notwithstanding the numerical standards set forth above (e.g., three (3) Primary Care Physicians and a Health Facility), the Contractor shall use its best efforts to secure, for each county in Tennessee, sufficient Network participation by hospitals, physicians, ambulatory surgical facilities, and other health care providers to ensure an adequate distribution of, and reasonable access to, participating Providers from a geographic and service standpoint. The Contractor and the State

shall reevaluate for each county in Tennessee the ratios of health care providers to Employees on an on-going basis and the Contractor shall add health care providers as needed.

d. Network Organization and Administration.

- (1) Contracts. The Contractor intends to execute a contract with each hospital, alternate site health care provider, and physician that sets forth the specific conditions and obligations required for the Provider's participation in the Network, including the rates the Provider may charge for dispensing healthcare services or supplies (including pharmaceuticals) to Employees for work-related injuries. Said rates shall not exceed the State Mandated Rates as defined in the "Definitions" above. The Contractor shall use its best efforts to negotiate rates with Providers that are less than the State Mandated Rates. The Contractor shall permit the State to review such Provider contracts as the State may request.
- (2) Insurance. The Contractor further agrees to require all Providers in the Network to maintain adequate malpractice and professional liability insurance in amounts that are not less than the amounts described on page 69 of the Contractor's Proposal.

e. Quality Management.

- (1) Policies and Standards of Quality Care. The Contractor agrees to maintain written policies concerning quality of care provided by hospitals and physicians in the Network, which are subject to the State's approval. The Contractor shall provide a copy of such policies to the State upon the State's request. At the State's request, the Contractor further agrees to establish and maintain a formal Quality Assurance Committee to establish standards for and monitor quality of care provided by the Network.
 - (2) Provider Performance Evaluation and Education. In cooperation with the State, the Contractor shall maintain a Quality Assurance program with all of its Providers, and monitor, report and evaluate on at least a semi-annual basis Network Provider performance based on measures of utilization, treatment outcome, patient access to care, and patient Provider satisfaction with Network performance. The Contractor shall prepare and present to the State on a semi-annual basis a report outlining the Contractor's patient satisfaction surveys. Clinical protocols shall be developed by the Contractor, which are specifically designed for the types of work found among state of Tennessee Employees. The State shall, in cooperation with the Contractor, establish the Network's protocols and procedures, and return to work expectations and protocols. The Contractor shall thereafter train and educate Network Providers regarding the Network's protocols and procedures, return to work expectations and protocols, and auditing and repricing of medical claims. Such training and education of a respective Provider shall commence within thirty (30) calendar days after the Provider is included in the Network.
- f. Consulting Services. The State shall disseminate to Employees and to state of Tennessee departments and agencies information regarding the Network. The Contractor shall participate in the orientation of the state of Tennessee's personnel, who are directly or indirectly involved in the processing of workers' compensation claims, concerning the Network. The Contractor shall also consult with the State, at the State's request, on the establishment and coordination of necessary procedures and practices to meet any applicable laws or regulations regarding workers' compensation.
- g. Toll-Free Telephone Number. The Contractor shall maintain a toll-free telephone number to respond to inquiries concerning the Providers participating in the Network. The toll-free telephone number shall be available on the commencement date of this Contract as defined in Section B of this Contract. The Contractor agrees to answer and respond to such calls each Business Day.
- h. Contractual Pricing Arrangement with Network Providers. Once the Maximum Allowable Rates are established as provided in Section A.3.d(1) above, the Contractor agrees to ensure Provider compliance with such Rates by repricing all billings submitted to the Contractor by the Network for

services rendered to Employees. The Contractor agrees to allow the State or the State's authorized representative to perform medical bill repricing audits on at least a semi-annual basis.

- i. Out-of-Network Negotiations. The Contractor agrees that should the State be responsible for the payment of bills associated with an Employee's treatment from a Provider that does not participate in the Network, the Contractor shall, upon receipt of the Provider's bill, reprice the bill to the State Mandated Rates. The Contractor may then attempt to negotiate a discounted billed charge that is less than the State Mandated Rates.
- j. Reports. The Contractor shall furnish to the State the following reports:
 - (1) Repricing Performance Reports. The Contractor shall provide to the State a report on a quarterly basis that measures the time of bill receipt to the time that the repriced bill is paid to the respective Provider. For each bill repriced, the Contractor shall maintain, and provide to the State upon the State's request, daily facility UB-04 repricing sheets and physician HFCA-1500 repricing sheets.
 - (2) Statement of Account. The Contractor shall provide the State with monthly detailed bill by bill reports of savings and shall provide the State an opportunity to review and audit the bills for accuracy. Such reports shall provide a brief description of the State's account as well as a detailed description of each repriced bill, which shall include the following data elements: whether the Provider is a Network or out-of-Network Provider, claim number, patient name, social security number, service dates (from and to), place of service, type of service, procedure coding method, procedure code, process date, Provider name, Provider ID, total billed charge, State Mandated Rate, Negotiated Rate (if any), repriced bill, and the savings generated beyond the State Mandated Rate (if any). The Contractor shall include such other data elements in the report that the State deems necessary to monitor compliance with the State Mandated Rates, and the savings generated beyond the State Mandated Rates.
 - (3) Provider Contracting Status Reports. On a quarterly basis, the Contractor shall provide the State with detailed reports describing the status of Providers requested by the State to be included in the Network.
 - (4) Addition and Deletion Reports. The Contractor shall provide monthly detailed reports to the State that contain information concerning the location, type, and other information regarding newly paneled Providers, and information concerning the departure of Providers from the Network. For purposes of the delete report, such information shall include, but shall not be limited to, the effective departure date of any Provider from the Network.
- k. Utilization Review/Managed Care Services.
 - (1) Services and Procedures. The Contractor shall perform the following utilization management and managed care services on behalf of the State for all cases referred to the Contractor hereunder. Said services shall be performed in accordance with pages 100 – 117 of the Contractor's Proposal, and the Claims Handling Requirements described in Section A.2.b(3) above:
 - (A) Managed Care Action Plan for Employee Treatment;
 - (B) Utilization Review;
 - (C) Clinical Case Review;
 - (D) Home Health Review;
 - (E) Durable Medical Equipment Review;
 - (F) Medical Transportation Review;

- (G) Preadmission Certification/Continued Stay Review;
- (H) Ambulatory Care Review (i.e., physical therapy, chiropractic or otherwise)/Continued Treatment Review;
- (I) Outpatient Procedure Review for Surgeries, including, but not limited to, low back disorders and carpal tunnel syndrome;
- (J) High Tech Diagnostic Procedure Review;
- (K) Prospective and Retrospective Review (for in patient/outpatient stays);
- (L) Physician Review*/Peer Review/Relatedness Review;
- (M) All Bill Review, including Hospital Bill Review/Audit;
- (N) Discharge Planning;
- (O) Telephonic Case Management;
- (P) Case Management Task Assignment;
- (Q) Large Case Management (On-site);
- (R) Independent Medical Examination Review;
- (S) Functional Capacity Evaluation Review; and
- (T) Fraud Investigations.

(2) Utilization Review/Managed Care Reports. The Contractor shall provide to the State quarterly activity and quarterly financial reports to enable the State to monitor the effectiveness of the utilization management and managed care services provided hereunder. Said reports shall describe the effectiveness of the utilization management services in managing utilization (inpatient and outpatient) and the financial impact of the case management/rehabilitation services.

(3) Quality Assurance. The Contractor shall use a Quality Assurance Program to ensure: (i) consistency and timeliness of reviews; (ii) appropriateness of review decisions; (iii) accuracy of clinical information solicited through telephonic review; (iv) appropriateness and consistency of nurse reviewer and physician advisor documentation; and (v) process(es) for the continuous quality improvement in the UM process.

I. Communications with State. At the State's request, the Contractor shall meet with the State on at least a quarterly basis in Nashville, Tennessee to discuss the status of managed disability provider network activities, and of utilization review/managed care activities.

A.4. Workers' Compensation Pharmacy Benefit Management Program/Telehealth Services.

a. In General. The Contractor agrees to establish and manage a workers' compensation pharmacy provider network for the benefit of the State that will provide economical services to Employees. The Contractor further agrees to ensure Provider compliance with the Maximum Allowable Rates (as defined in the "Definitions" above) by repricing all pharmacy billings submitted by Providers for the treatment of Employee work related injuries. The Contractor also agrees to provide cost containment and other utilization review services on behalf of the State for accidents and injuries covered under the State's workers' compensation program.

b. Provider Evaluation and Credentialing. The Contractor shall identify and evaluate desirable Providers for inclusion in the Network as described in the Contractor's Proposal to the RFP. Once

various Providers are identified, the Contractor shall utilize the Provider criteria outlined in the Contractor's Proposal to the RFP, or such other comparable criteria, to evaluate whether or not contracting will proceed in accordance hereunder.

- c. Provider Network Standards. For each Employee residing in an urban area, the Contractor shall use its best efforts to select and contract with at least three (3) retail pharmacies located within at least five (5) miles of the Employee's residence. For each Employee residing in a suburban area, the Contractor shall use its best efforts to select and contract with at least three (3) retail pharmacies located within ten (10) miles of the Employee's residence. For each Employee residing in a rural area, the Contractor shall use its best efforts to select and contract with at least three (3) retail pharmacies located within at least fifteen (15) miles of the Employee's residence. Notwithstanding the numerical standards set forth above, the Contractor shall use its best efforts to secure, for each county in Tennessee, sufficient Network participation by retail pharmacies to ensure an adequate distribution of, and reasonable access to, participating Providers from a geographic and service standpoint. The Contractor and the State shall reevaluate for each county in Tennessee the ratios of retail pharmacies participating in the Network to Employees on an on-going basis and the Contractor shall add such pharmacies as needed.
- d. Network Organization and Administration.
 - (1) Contracts. The Contractor intends to execute a contract with each Provider that sets forth the specific conditions and obligations required for the Provider's participation in the Network, including the rates the Provider may charge for dispensing pharmaceuticals or devices to Employees for work-related injuries. The rates shall not exceed the State Mandated Rates as defined in the "Definitions" above. The Contractor shall use its best efforts to negotiate rates with Providers that are less than the State Mandated Rates. The Contractor shall permit the State to review such Provider contracts as the State may request.
 - (2) Insurance. The Contractor further agrees to require all Providers in the Network to maintain professional liability insurance in amounts that are not less than the amounts described on page 69 of the Contractor's Proposal.
- e. Pharmacy Benefit Management Program. The Contractor agrees the pharmacy benefit management program provided to the State hereunder for both new and existing claims shall include the use and distribution of temporary and /or "first fill" cards, and the use and distribution of permanent cards. The program shall prevent the use of a card by another, unauthorized person and provide for reimbursement if an Employee pays for a prescription out-of-pocket instead of by using the pharmacy card. The program shall also include a mail order program, a "first fill" policy and a generic substitution policy. All of the forgoing shall be provided and otherwise operate in accordance with the Contractor's Proposal to the RFP. The Contractor further agrees that if a workers' compensation claim is denied as not being compensable that (i) the Contractor will guarantee payment of any first fill prescriptions relative to the claim, (ii) that the State shall not be liable for the payment of the first fill pharmacy bills, and (iii) that the Contractor shall not seek reimbursement of the bills from either the pharmacy or the employee.
- f. Formulary (or Preferred Drug List). The Parties agree that the formulary listed and otherwise described in the Contractor's Proposal to the RFP shall be used for the pharmacy benefit management program hereunder unless otherwise agreed to in writing by the Parties. For any specific claim, the formulary shall be applied and addressed in the manner described in the Contractor's Proposal to the RFP. For prescriptions outside the formulary, the Contractor shall address such prescriptions in the manner provided the Contractor's Proposal to the RFP. All prescriptions for opioids that exceed the quantity limit allowed under applicable state and federal laws and regulations shall undergo a physician review prior to being dispensed.
- g. Cost Containment Services. As part of the pharmacy benefit management program hereunder, the Contractor shall perform on behalf of the State the following cost containment and other features described in the Contractor's Proposal to the RFP. Said services shall be performed in accordance with the Contractor's Proposal.

- (1) Retrospective utilization reviews;
- (2) Early detection and prevention of fraud and abuse, including monitoring of narcotics usage;
- (3) Prescribing and over-utilization patterns;
- (4) Identification of duplicate prescriptions;
- (5) Management of multiple medications and multiple providers for an Employee;
- (6) Treatment/diagnosis appropriateness, including drug interaction analysis;
- (7) Confirmation that the prescription was written by a licensed medical provider;
- (8) Use of generic substitutions, including encouraging the use of generic substitutions;
- (9) Tracking leakage of pharmacy billings to paper billings; and
- (10) Managing, both prospectively and retrospectively, repackaging by physicians

h. Education and Consulting Services. The Contractor shall assist the State in introducing and educating Employees about the pharmacy benefit management program, including, but not limited to, the following features:

- (1) Issuance of temporary or “first fill” drug program cards;
- (2) Issuance of permanent drug program cards;
- (3) Cardless system, if available;
- (4) Mail order program;
- (5) “First Fill” policy; and
- (6) Generic drug substitution policy

The Contractor shall also participate in the orientation of the State's personnel who are directly or indirectly involved in the processing of workers' compensation claims concerning the pharmacy benefit management program. The Contractor shall also consult with the State, at the State's request, on the establishment and coordination of necessary procedures and practices to meet any applicable laws or regulations regarding workers' compensation pharmacy benefits.

i. Contractual Pricing Arrangement with Network Providers. Once the Maximum Allowable Rates for pharmaceuticals are established as provided in Section A.4.d above, the Contractor agrees to ensure Network Provider compliance with such Rates by repricing all billings submitted to the Contractor by or on behalf of a Network Provider for pharmaceuticals dispensed to Employees. The Contractor agrees to allow the State or the State's authorized representative to perform pharmacy bill repricing audits on at least a semi-annual basis. The Contractor further acknowledges that the State requires its TPA to retain a copy of every paid bill and corresponding explanation of review (EOR).

j. Out-of-Network Negotiations. The Contractor agrees that should the State be responsible for the payment of bills associated with an Employee's pharmaceuticals from a Provider that does not participate in the Network, the Contractor shall, upon receipt of the Provider's bill, reprice the bill to the State Mandated Rates. The Contractor may then attempt to negotiate a discounted billed charge that is less than the State Mandated Rates.

k. Reports. The Contractor shall furnish to the State or its designee the following reports at such frequency and in such manner as described in the Contractor's Proposal to the RFP:

- (1) Utilization and cost savings, including savings for state mandated fee schedule, by generic and brand name;
- (2) Formulary compliance;
- (3) Percentage of generic substitutions;
- (4) Network penetration, including percentage of in-network first fills and in-network second fills;
- (5) Top 100 prescribed medications, by dollar and by number;
- (6) Overuse and overprescribing “redflags”; and
- (7) Rejection analysis reports.

The Contractor shall further provide to the State such other standard or ad-hoc reports as may be described in the Contractor's Proposal to the RFP. The provision of any such other standard

reports shall be submitted at such frequency and in such manner as described in the Contractor's Proposal to the RFP.

A.5. Claims Payment and Reconciliation Process.

- a. For payment of all approved claims for workers' compensation and all appropriate medical and pharmaceutical bills, the Contractor shall issue payments in the form of checks and/or Automated Clearing House (ACH) electronic funds transfer (or such other electronic funds transfer method as mutually agreed to by the Parties) against the Contractor's own bank account. The Contractor shall maintain security and quality controls over the design, printing and mailing of checks, as well as any fraud prevention feature of check stock.
- b. The State shall fund the Contractor for the total issue amount of the payments, net of cancellations, voids or other payment credit adjustments, daily or at the time of each issuance of checks or ACH, provided the Contractor's payment process includes timely delivery of checks and settlement of ACH transactions. The State shall fund the Contractor as provided under this Section A.5 upon receipt of an ACH debit from the Contractor to a designated State bank account. The Contractor acknowledges and agrees that since the State intends to fund payments at the time of issuance, the State shall not maintain a separate bank account or an escrow account with the Contractor or to otherwise pre-fund an account.
- c. The Contractor further acknowledges the State will monitor and age the outstanding check balance and the Contractor agrees, upon request of the State, to conduct a review and/or cancel-reissue of stale dated outstanding items. Pursuant to Section A.2.b(5)(B)(i), the Contractor shall provide to the State, on a daily basis, a detailed listing of the payment activity, including check serial numbers and ACH payment identifiers, payee names, payment amounts and associated claim numbers, and balancing to the required funding amount for that day. The listing shall enable the State to reconcile the payment detail to the required funding amount, while providing related payment information needed to record the necessary accounting entries by expense classifications. The Contractor shall further provide to the State the monthly check reconciliation reports described in Section A.2.b(5)(B)(iii) hereof.
- d. The Contractor shall issue all related Internal Revenue Service (IRS) Form 1099 reports, submit required 1099 information directly to the IRS and maintain responsibility in matters relating to such information provided to payees and to the IRS, including the payment of any penalties or fees related to the 1099 reporting.
- e. Overpayments resulting from the negligent, reckless, or willful acts or omissions of the Contractor, its officers, agents or employees shall be the responsibility of the Contractor, regardless of whether or not such overpayments can be recovered by the Contractor. The Contractor shall repay the State the amount of any such overpayment within thirty (30) calendar days of discovery of the overpayment. Overpayments due to Provider fraud or fraud of any other type, other than fraud by employees or agents of the Contractor, will not be considered overpayments for purposes of this Section. The Contractor agrees to assist in identifying fraud and make reasonable efforts, in consultation with the State, to recover overpayments due to fraud. The State will not hold the Contractor responsible for overpayments caused by the State's errors or errors caused by any other agency or department of the state of Tennessee; however, the Contractor shall assist the State in recovery of such overpayments. The requirement that the Contractor assist the State in identifying or recovering overpayments as provided in this Section does not require the Contractor to become a party to any legal proceeding as a result thereof.
- f. Pursuant to Chapter 0800-02-26 the *Official Compilation of the Rules and Regulations of the State of Tennessee*, the Contractor shall act as the State's agent under this Contract with respect to electronic billing, processing, and payment of medical services and products provided to an injured Employee and data reporting subject to Tenn. Code Ann. § 50-6-202. The Contractor's clearinghouse shall receive bills from Providers in electronic form, verify the data integrity of the information on the bills, and route the bills directly to Contractor's bill review system for completion of the Contractor's bill review service. The Contractor shall transmit Explanation of Benefit information to providers in the ANSI 835 format. The Contractor shall send 835 data to

health care providers via the Contractor's clearinghouse upon the Contractor's completion and approval of all Explanation of Reviews via the Contractor's bill review service in compliance with applicable Tennessee state laws and regulations.

- A.6. Pharmacy Physician Peer Review. On a monthly basis, the Contractor shall perform the services described on pages 117 – 130 of the Contractor's Proposal to identify those State employees for which a clinical review of medical and prescription records shall be performed based on the criteria contained in pages 117 – 130 of the Contractor's Proposal. The Contractor shall supply this monthly report to the State, and the State shall coordinate with the Contractor to select employee candidates or adjust the report as appropriate. At the request of the State, the Contractor shall provide the State with periodic reports, which include but are not limited to: the number of State employee medical and prescription records reviewed; the number of State employees who have had their medical or prescription regimens adjusted including the date of the adjustment; and whether the adjustment has resulted in a change in their Workers' Compensation pharmacy spend or utilization.
- A.7. Pharmacy Telephonic Case Management (TCM). At the request of the State, the Contractor shall have one of its licensed nurses perform a post-review follow-up to ensure that any agreed changes to the State employee's treatment or medical therapy have been completed.
- A.8. Cognitive Behavioral Therapy (CBT). The Contractor shall have the availability to utilize Cognitive Behavioral Therapy specialists if the physician recommends that service to assist the injured worker. The Contractor shall reprice any bill received from a Cognitive Behavioral Therapy specialist to the State Mandated Rates and shall use its best efforts to negotiate rates with those specialists that are less than the State Mandated Rates.
- A.9. Telehealth. The Contractor shall provide a Telehealth Program, which shall include, but shall not be limited to, telehealth providers, patient interface capabilities, telehealth services and follow-up services. The services shall be provided in the manner described in pages 73 – 82 of the Contractor's Proposal.
- A.10. Cooperation in Litigation. The Contractor shall fully cooperate with the State of Tennessee in any hearing or trial involving a workers' compensation claim. Such cooperation shall include assisting the State, if requested, in preparing the defense of litigated cases, negotiating settlements, pursuing subrogation or contribution actions and the presentation at trial of factual information concerning the activities of particular individuals or any other information possessed by the Contractor that may be useful in the enforcement of the Tennessee Workers' Compensation Act or resolution of any related dispute.
- A.11. CMS/MSA Compliance. The Contractor shall provide Medicare Secondary Payer Reporting and manage liens and set asides for state of Tennessee workers' compensation claims, when applicable, to ensure the State will be in compliance with the mandatory claim reporting reports of Section 111 of the Medicare, Medicaid, and the S.M.A.R.T. Act. These services shall include a Medicare-eligibility query function, data collection and screening, automated claim file submissions, medical bill review, receiving estimated and final Medicare settlement interest and processes for handling acknowledgment and rejection notices by the Centers for Medicare and Medicaid Services ("CMS"). The Contractor shall conduct CMS/MSA training for State employees to help explain the workers' compensation requirements that are in effect.
- A.12. Telephone, Post Office Box, and Offices and Personnel.
- a. General Toll-Free Telephone Number. The Contractor, at its own expense, shall maintain a toll-free telephone number to respond to inquiries from claimants and providers concerning the status of claims, medical bills, and panels of physicians. Upon proper identification, the Contractor shall, to the extent possible, answer inquiries over the telephone.
- b. Telephone System. In addition to the above toll-free telephone number, the Contractor shall maintain a system that will cause all phone calls made to the Contractor relating to the services hereunder to go directly to the Contractor's claims management division through a dedicated toll-free phone. All such telephone calls shall be answered by a Contractor claims technician rather

than a receptionist. The claims technicians must be able to answer most routine questions and provide information needed for patient referrals. Should the technician not be able to address the needs of the caller or if the caller is inquiring about a particular claim, the caller shall be referred immediately by the technician to the adjuster assigned by the Contractor to handle the claim. Should the adjuster be unavailable, the caller shall be given a choice of either a voice mail system or going back to a claims technician to address the needs of the caller. The direct toll-free number shall be answered by at least four (4) Contractor claims technicians. Should all these lines be in use, calls shall then be answered by an automated system that will ask the callers to hold for the next available technician. The Contractor shall, to the maximum extent possible, return all phone calls by the next Business Day.

- c. Post Office Box. The Contractor shall maintain a unique post office box number for the purpose of receiving claims, medical and pharmacy bills and other correspondence in relation to this Contract.
- d. Offices and Personnel. The Contractor shall maintain at least one (1) claims management office in Tennessee. All claims adjusters assigned by the Contractor to this Contract shall maintain office hours from 7:00 a.m. CS(D)T until 5:00 p.m. CS(D)T of each day except Saturdays, Sundays and legal holidays on which State offices are closed. Notwithstanding the number of offices maintained by the Contractor in Tennessee, the Contractor shall travel to any place deemed necessary by the Contractor to perform the services outlined in this Contract. The Contractor shall devote, dedicate and maintain the level of staffing and sufficient personnel to enable the Contractor to fulfill its responsibilities under this Contract. Notwithstanding the foregoing, the Contractor shall not exceed the following maximum adjuster caseloads without the State's prior approval: 170 medical only, 175 complex medical and 125 indemnity. The Contractor agrees that no supervisor responsible for adjusters shall have an open inventory of claims.

The Contractor shall provide the State a list of staff dedicated to this Contract at least quarterly and shall notify the State immediately of any staff changes with respect to the Contractor's services provided under this Contract. The State shall approve any replacement or additional permanent staff, and the Contractor agrees to hire these approved staff members within sixty (60) days of receiving approval from the State.

In the event the services required under the Contract exceed the capacity of the dedicated staff, the Contractor shall immediately notify the State of this condition, and the Contractor may temporarily utilize trained adjusters or other staff employed by the Contractor to perform the services required under this Contract. In the event the State reasonably determines that additional staff is required for the Contractor to perform the services under this Contract, the State may direct the Contractor to add one or more members to its permanent staff dedicated to this Contract.

- A. 13. Assignment of Key Personnel. The Contractor agrees to assign the individuals named on page 57 of the Contractor's Proposal as the key staff members to perform the services under this Contract. Except upon the State's prior written consent, the Contractor shall not remove or temporarily reassign any of the named individuals until such time as the Contractor has completed the services under this Contract. Should the State consent to such removal or reassignment, the State reserves the right to approve the candidates proposed by the Contractor as a replacement.

Notwithstanding the foregoing, the Contractor shall have the right to remove or reassign such personnel upon notice to the State if such removal or reassignment is required due to promotion, termination of employment, extended illness, or death. In such event, the State reserves the right to approve the candidates proposed by the Contractor as a replacement.

- A. 14. Claims Management System.

- a. Access to System. At no additional cost to the State, the Contractor shall provide the State on-line web-based computer access to a user friendly claims management system (the "System"), which shall be hosted and provisioned by or on behalf of the Contractor. The System shall

provide the claims management and risk management data and reports needed for effective claims management.

The System must eliminate the process of the Contractor using its own employees to draft and submit ad hoc reports whenever data is requested by the State. The System must also support a robust imaging platform for all claim-related documents and a primarily paperless workflow among internal and external customers in a secured fashion. The Contractor must aggressively work to identify and convert wherever possible paper processes to an electronic workflow. This must extend to software that supports electronic signature and other electronic efficiencies.

Access to the System shall include access to all claims information, including the Contractor's adjusters' file notes, to assist designated employees with managing the workers' compensation program within their own departments/facilities. This shall include the ability for such employees to easily, efficiently, and effectively draft and submit reports to determine incident only, medical only, indemnification claims, temporary total disability, permanent partial disability, reserves, causations of the injuries, and trends analyzes within each Tennessee state department/agency.

Access to the System shall be through a secure website supplied to the State by the Contractor and shall be accessible by the designated users twenty-four (24) hours a day, three hundred sixty-five (365) days a year, except for reasonable maintenance, updates or enhancements. Up to five hundred (500) users will be approved to access to the System. Concurrent use by multiple users must be supported. The network shall include any necessary connection or equipment for host directed print from the System to the State. Further, the System shall provide real time information to all State of Tennessee human resource personnel regarding their respective employees' workers' compensation claims and return to work restrictions/status. This access of real time information must be unlimited and provide on-line reporting for State of Tennessee agencies. The Contractor shall, at its own expense, maintain and keep the private network or its Internet connection in good working order and condition so that it will perform its functions properly. Any private network connection shall be furnished to the State at 92 Weakley Lane, Smyrna, Tennessee 37167 ("the Facility Location"). If redundant private network connections are provided, the alternate connection shall be furnished at 901 Fifth Avenue North, Nashville, Tennessee 37247 ("OIR Data Center").

- b. Grant of License. The Contractor agrees the State shall have a nontransferable and nonexclusive right, revocable in accordance with the terms herein, to use the System solely in connection with the internal operation of the State's business. The State acknowledges that the license to use the System granted herein transfers no title or right to the System other than the right to use the System for particular transactions or particular advisory or management situations occurring in the normal conduct of the State's business. The Contractor warrants it has complete ownership of the System except for portions of such System licensed from and copyrighted by other software suppliers, and that it has full rights to grant to the State the uses of and the privileges to the System granted herein. Based on the Contractor's warranty, the State acknowledges title to the System shall remain in the Contractor.
- c. Maintenance, Training and Support Services.
 - (1) Maintenance. The Contractor shall provide the following maintenance services to the State:
 - (A) Incorporate any improvements, enhancements and new releases of the Website developed by the Contractor that are generally made available to other licensees of the Website along with explanatory reference documentation. Documentation of the existing Website shall be changed as the Contractor deems necessary for purposes of removing errors, providing consistency of interpretation and/or documenting improvements. All such improvements, enhancements and new releases shall be considered part of the Website;
 - (B) Provide to the State updates to any portions of the Website released at no cost to the Contractor to other software suppliers. Such updates shall be tested by the Contractor prior to furnishing the same to the State;

- (C) Provide access to the Contractor's online support documentation; and
 - (D) Diagnose, verify and corrected errors, malfunctions and defects in the Contractor's Website.
- (2) Training. The Contractor shall, at the State's facilities and during regular State business hours, conduct a one (1) day training class annually for State of Tennessee user and operations staff. The class shall consist of a lecture and hands-on training in the use and operation of the System functions and their related documentation. The Contractor shall further establish an on-going capability for training new users by providing to the State an electronic copy of the System's User Guide suitable for reproduction, or online access to the User Guide for authorized users. The Contractor shall provide the State with periodic status updates relative to the access, use and functionality of the Website, and to address any of the State's questions and needs. The length, content and frequency of the meetings shall be mutually agreed upon by the Contractor and the State.
- (3) Support. The Contractor shall provide the State with off-site support services through a help desk support line, which shall be available to the State each business day from 8:00AM central time to 4:30PM central time to provide consultation, support, advice, guidance and assistance relative to System access, use and functionality.

d. Security and Data Retention.

- (1) The Contractor shall provide security functions within its application. The Contractor shall provide reasonable risk control procedures as well as appropriate physical, technical and administrative safeguards to protect the integrity, confidentiality and availability of the information that will be uploaded onto the System's website.

The Contractor warrants to the State that it is familiar with the requirements of the State of Tennessee Enterprise Information Security Policies, and has measures in place that ensure that all data records are transported, stored and accessed in a secure manner, including encryption of any sensitive information. All data is property of the State of Tennessee. The system or contractor must meet or exceed the State's information security requirements for access control, authentication, storage, data destruction, system maintenance and patching and must be compliant with best practices for secure application development as defined in ISO/IEC 27000 series. The State of Tennessee Information Security policy can be found at the following link: <http://www.tn.gov/finance/oir/security/secpolicy.html>. The Contractor warrants that it will cooperate with the State in the course of performance of the Contract so that both parties will be in compliance with State Enterprise Information Security Policies requirements, that may be amended from time to time, and any other state and federal computer security regulations including cooperation and coordination with State computer security officials and other compliance officers required by its regulations.

- (2) The Contractor shall provide for the physical and electronic security of all information that is uploaded onto the System's website, including data encryption in transport and at rest, such that the information is maintained and secured, ensuring its safety from loss; theft; copying; destruction; modification; unauthorized access, use or disclosure during utilization, transmission and storage.
- (3) The Contractor shall protect against anticipated threats or hazards to the security or integrity of the information uploaded to System's website that could result in inconvenience or harm to the State or the Employees.
- (4) The Contractor shall allow State security staff to add, update, and terminate users, grant privileges, and report on activity.
- (5) The Contractor shall allow State audit staff to monitor activity and create reports.

- (6) The Contractor shall host a secure website for use by the Contractor, the Contractor's applicable subcontractors and the State. The website's landing page shall clearly indicate that the application accessed through the website is intended to be used by the State of Tennessee and shall display logos, titles, text and banners regarding unauthorized use.
- e. Information Security Management Process and Program: Back-Up Procedures and Disaster Recovery Plan: Business Continuity Management Process and Program: and Conversion Project Management Plan. The Contractor shall provide the following services at no additional cost to the State:
- (1) Information Security Management Process and Program. The Contractor shall maintain an Information Security Management Process and Program in accordance with Section E.4 of this Contract and in accordance with pages 82 – 93 of the Contractor's Proposal.
 - (2) Back-Up Procedures and Disaster Recovery Plan. The Contractor shall maintain contingency plans for systems back-up in the event of disaster or malfunction. Such plans shall be as described in pages 82 – 93 of the Contractor's Proposal and comply with Section E.4 of this Contract. At a minimum, this shall be accomplished by the Contractor backing-up all claims data nightly and maintaining at least two (2) back-up cycles off-site in a commercial business storage facility. The Contractor shall provide notification of an incident to both the Director of the Division of Claims and Risk Management and to the State's Information Systems Operations Group within two (2) hours after the beginning of operation of the Contractor's Emergency Operations Command Post.
 - (3) Business Continuity Management Process and Program. The Contractor shall maintain a Business Continuity Management Process and Program that complies with Section E.4 of this Contract and as described in 82 – 93 of the Contractor's Proposal.
 - (4) Conversion Project Management Plan. The Contractor shall transition takeover claims, conduct System training, develop and implement a System conversion plan, and perform post-implementation review services in accordance with pages 132 – 133 of the Contractor's Proposal. At the request of either party, the Contractor and the State shall meet to discuss the status of such services, and to resolve any issues in consummating the services. Any such meeting shall take place at a time mutually agreed to by the Parties, and shall be held at the State's facilities in Nashville, Tennessee, or, with the State's approval, via telephone conference. The Party requesting the meeting shall set the meeting agenda, and prepare a brief report summarizing the issues raised at the meeting and the decisions made in addressing those issues.
- f. Interface with State's Payroll and Leave System. The Contractor shall, at its own expense, establish and maintain an HR Feed interface with the State's payroll and leave system for the purposes of reporting temporary disability payments and generating automated wage statements from the State's payroll system.
- g. Interface with the Origami System. The Contractor shall establish and maintain, at its own expense, an electronic interface with the Origami System to download on a daily basis all claims data, transactions and notes from the Contractor's Risk Management Information System to Origami. The State will pay Origami for the interface, but the Contractor shall reimburse the State within sixty (60) calendar days of the State's payment to Origami.
- A. 15. Statement on Standards for Attestation Engagements. On at least an annual basis, the Contractor shall have a Statement on Standards for Attestation Engagement No. 16 (SSAE16 or SOC1 and/or the SSAE16 SOC2), Type II independent service auditor's report prepared for its service organization, and provide copies of each such report to the State during the term of this Contract. The audit must detail that the Contractor's processes, procedures and controls pertaining to the management of the State's workers' compensation claims, the management of the State's money and the management of the State's data have been formally evaluated and tested.

- A.16. Client Conferences. On an annual basis, the Contractor shall invite two (2) relevant State employees selected by the State to participate in client conferences hosted by or on behalf of the Contractor and all other similar educational activities provided by the Contractor and normally offered to the Contractor's clients based on geographic location (collectively, "Client Conferences").

Any invitations to State employees to participate in Client Conferences shall be considered part of the services rendered by the Contractor under this Contract, and all costs, including round-trip airfare, registration fees, materials, lodging, meals and refreshments related to the Client Conferences shall be deemed a part of this Contract.

If the costs borne by the Contractor under this Section A.16 are initially borne by the State, the Contractor shall reimburse the State for such costs. The State does not consider the opportunities available to relevant State employees pursuant to this provision to be gifts pursuant to the Tennessee Department of Treasury Gifts and Solicitations Policy.

- A.17. Subcontractor Fee Disclosure. At the State's request, the Contractor shall disclose to the State the fees, if any, which are billed to the State by the Contractor for services performed by subcontractors in fulfilling the Contractor's obligations under this Contract.
- A.18. Record Retention/Data Ownership. The Contractor shall maintain all pertinent records for seven (7) years from the date of activity. All such data is the property of the State and shall be provided to the State by the Contractor upon request in a reasonable format specified by the State.
- A.19. Timetable for Transitioning of Services. The Contractor agrees that all services hereunder shall be transitioned to the Contractor within the timetable provided in the pages 132 – 133 of the Contractor's Proposal to the RFP unless otherwise agreed to in writing by the Parties.
- A.20. Transition of Subsequent Claims Upon Contract Termination. Upon expiration of this Contract or in the event of its termination for any reason, the Contractor shall provide a copy of the workers' compensation claims history, utilization review/managed care data and other pertinent workers' compensation 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 reasonably compatible with the data processing system maintained by the State. Additionally, the Contractor shall provide all information necessary to properly interpret the data supplied. To insure continuous operation of the workers' compensation program and upon thirty (30) calendar days' notice, this information shall be provided to the State or its designated agent at least forty-five (45) calendar days prior to the termination or expiration 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 or expiration date of this Contract. It shall be the responsibility of the Contractor to process all medical and pharmacy bills delivered to it before the termination or expiration of this Contract, and to complete all utilization management and case management services assigned to the Contractor before the termination or expiration of this Contract. Medical and pharmaceutical bills delivered after the termination or expiration of this Contract shall be forwarded to the State or its designated agent.
- A.21. Review Process Audit. At the State's direction, the Contractor shall provide to independent auditors selected by the State access to the Contractor's facilities, including nurse reviewer workstations, during regular business hours for the purpose of on-site review at dates and times as mutually agreed. The Contractor shall further provide to such auditors case specific documentation requested by the auditors.
- A.22. 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.23. 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 for the period beginning on July 1, 2019 (“Effective Date”) and ending on June 30, 2024 (“Term”). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed eighteen million three hundred seventy thousand eight hundred eighty six dollars (\$18,370,886) (“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.
 - d. The Contractor’s compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
 - e. The Contractor shall be compensated based upon the following payment methodology:

| SERVICE DESCRIPTION | Amount (per compensable increment) | | | | |
|---------------------|---|---------------------------------|---------------------------------|---------------------------------|---------------------------------|
| | NON-PHARMACY AND NON-TELEHEALTH SERVICES | | | | |
| | July 1, 2019 — June 30, 2020 | July 1, 2020 — June 30, 2021 | July 1, 2021 — June 30, 2022 | July 1, 2022 — June 30, 2023 | July 1, 2023 — June 30, 2024 |

| | | | | | |
|---|--------------------------------------|---|-------------------------------------|------------------------------|------------------------------|
| For all non-pharmacy and non-telehealth services in Section A for the Assumption of Take-Over Claims Note: "Take-Over Claim" means a claim already received by the State prior to the commencement date of the Contract, but which is still open. Compensation for the assumption of Take-Over Claims will be for the first year of the Contract only. Note: Invoices for this annual fee shall be submitted on a monthly basis and in arrears, beginning August 1, 2019. | \$0.00 | N/A | N/A | N/A | N/A |
| For all other non-pharmacy and non-telehealth services set forth in Section A Note: Invoices for this annual fee shall be submitted on a monthly basis and in arrears, beginning on August 1, 2019. | \$3,250,000 | \$3,315,000 | \$3,381,300 | \$3,448,926 | \$3,500,600 |
| Annual Claim Variance Adjustment (as defined and described in this Section C.3.c. below) | N/A | \$15,000 | Same as second year of the contract | | |
| SERVICE DESCRIPTION | | Amount (per compensable increment) | | | |
| PHARMACY AND TELEHEALTH SERVICES | | | | | |
| | July 1, 2019 — June 30, 2020 | July 1, 2020 — June 30, 2021 | July 1, 2021 — June 30, 2022 | July 1, 2022 — June 30, 2023 | July 1, 2023 — June 30, 2024 |
| Brand Name (retail) NOTE: The cost will be paid as part of the claim file and not invoiced to the State pursuant to Section C.5. below | AWP minus 14% plus \$2.50 (fill fee) | Same as first year of the contract | | | |
| Generic (retail) NOTE: The cost will be paid as part of the claim file and not invoiced to the State pursuant to Section C.5. below | AWP minus 48% plus \$2.50 (fill fee) | Same as first year of the contract | | | |

| | | |
|--|--|------------------------------------|
| Brand Name (mail order or 90 day retail pharmaceutical prescription) <u>NOTE: The cost will be paid as part of the claim file and not invoiced to the State pursuant to Section C.5. below</u> | AWP minus 16% plus \$1.50 (fill fee) | Same as first year of the contract |
| Generic (mail order or 90 day retail pharmaceutical prescription) <u>NOTE: The cost will be paid as part of the claim file and not invoiced to the State pursuant to Section C.5. below</u> | AWP minus 50% plus \$1.50 (fill fee) | Same as first year of the contract |
| Pharmacy Physician Peer Review Services | \$1,000 (per review) | Same as first year of the contract |
| Pharmacy Telephonic Case Management <u>NOTE: The cost will be paid as part of the claim file and not invoiced to the State pursuant to Section C.5. below</u> | \$500 (per review) | Same as first year of the contract |
| Telehealth Rates (Includes any and all services offered via telehealth platform) <u>NOTE: The cost will be paid as part of the claim file and not invoiced to the State pursuant to Section C.5. below</u> | State Mandated Rates for Telehealth minus 5% | Same as first year of the contract |

- f. In the event of a claim frequency variance in excess of + or - 5% in the total number of received claims (not including Report Only (RO) claims), using the Date Administrator Notified field in the Contractor's claims management system, the flat fee associated with the subsequent service year shall be adjusted. This adjustment will be capped at a 10% variance from the original estimated claim count below. If the claim count variance is less than or equal to 5% there shall be no adjustment of the annual fee. This additional annual flat fee or credit shall apply to each 1% variance of claim count between 5% and 10%. This variance may result in an additional fee to the Contractor or a credit to the State. This claim count evaluation shall take place on June 30, 2020 for the July 1, 2020 – June 30, 2021 contract period, and on each June 30 thereafter through June 30, 2023 for the July 1, 2023 – June 30, 2024 contract period.

Total Original Estimated Claim Count: 2,718 (Medical Only – 1,933 and Indemnity Only - 785)

- g. The Contractor shall be entitled to incentive payments if the Contractor exceeds the performance levels set forth in Contract Attachment 2. The incentive payments are forth in Contract Attachment 2 and are intended to encourage and reward superior service and

performance by the Contractor. The performance incentive plan shall be used for evaluating annually the workers' compensation program services provided by the Contractor hereunder and will be effective for all indemnity claims reported to the Contractor during the period of July 1, 2019 through June 30, 2024.

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:

Accounts Payable Section
Division of Administrative Services
Tennessee Treasury Department
14th Floor, Andrew Jackson State Office Building
502 Deaderick Street
Nashville, Tennessee 37243

- c. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):
- (15) Invoice number (assigned by the Contractor);
 - (16) Invoice date;
 - (17) Contract number (assigned by the State);
 - (18) Customer account name: Tennessee Treasury Department, Division of Claims and Risk Management;
 - (19) Customer account number (assigned by the Contractor to the above-referenced Customer);
 - (20) Contractor name;
 - (21) Contractor Tennessee Edison registration ID number;
 - (22) Contractor contact for invoice questions (name, phone, or email);
 - (23) Contractor remittance address;
 - (24) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
 - (25) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
 - (26) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
 - (27) Amount due for each compensable unit of good or service; and
 - (28) Total amount due for the invoice period.
- d. Contractor's invoices shall:
- (5) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
 - (6) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
 - (7) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
 - (8) Include shipping or delivery charges only as authorized in this Contract.
- c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.

- C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, 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 invoiced.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice 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.8. 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.9. 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.

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:

Rodney Escobar, Director
Division of Claims Administration and Risk Management
15th Floor, Andrew Jackson State Office Building
502 Deaderick Street
Nashville, Tennessee 37243 – 0202
rodney.escobar@tn.gov
Telephone # (615) 741-2734
FAX # (615) 532-4979

The Contractor:

Shellie Evans, Account Manager
CorVel Enterprise Comp, Inc.
6550 Carothers Parkway, Suite 200
Franklin, Tennessee 37067
Shellie_Evans@corvel.com
Telephone # (615) 786-1343
FAX # (866) 230-9798

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. The State's exercise of a valid Renewal Option or Term Extension does not constitute an amendment so long as there are no other changes to the Contract's terms and conditions.
- 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 in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately 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 Condition 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 Contract Attachment 3, 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.
- 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 the negligent acts, omissions, or willful misconduct 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.
- 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 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 applicable state and federal laws and regulations in the 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:
- g. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
 - h. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes Contract Attachments 1 - 3;
 - i. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - j. the State solicitation, as may be amended, requesting responses in competition for this Contract;
 - k. any technical specifications provided to proposers during the procurement process to award this Contract; and
 - l. the Contractor's response seeking this Contract.
- 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 General Liability and Automobile Liability coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to include 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 or policy wording 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 included 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., 3rd 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 ten (10) business 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.

d. 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.

e. 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.

f. Automobile Liability Insurance

- 3) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).
- 4) The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars (\$1,000,000) per occurrence or combined single limit.

g. Professional Liability/Errors & Omissions (including Technology E&O and Cyber Liability) Insurance

- 1) The Contractor shall maintain professional liability (errors & omissions) and cyber liability insurance appropriate to the Contractor's profession in an amount not less than ten million dollars (\$10,000,000) per occurrence or claim and ten million dollars (\$10,000,000) annual aggregate, covering all acts, claims, errors, omissions, negligence, infringement of intellectual property (including copyright, patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, information theft, damage to destruction of or alteration of electronic information, breach of privacy perils, wrongful disclosure and release of private information, collection, or other negligence in the handling of confidential information, and including coverage for related regulatory fines, defenses, and penalties.
- 2) Such coverage shall include data breach response expenses, in an amount not less than five million dollars (\$5,000,000) and payable whether incurred by the State or Contractor, including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services and expenses in the performance of services for the State or on behalf of the State hereunder.

D.33. Major Procurement Contract Sales and Use Tax. Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Contractor and the Contractor's subcontractors shall remit sales and use taxes on the sales of goods or services that are made by the Contractor or the Contractor's subcontractors and that are subject to tax.

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. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal 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 that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal 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.3. Intellectual Property Indemnity. 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 or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.

- E.4. 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 and the Contractor's processing environment containing Confidential State Data shall either (1) be in accordance with at least one of the following security standards: (i) International Standards Organization ("ISO") 27001; (ii) Federal Risk and Authorization Management Program ("FedRAMP"); or (2) 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") Type II audit. The State shall approve the SOC audit control objectives. The Contractor shall provide proof of current ISO certification or FedRAMP authorization for the Contractor and Subcontractor(s), or provide the State with the Contractor's and Subcontractor's annual SOC Type II audit report within 30 days from when the CPA firm provides the audit report to the Contractor or Subcontractor. 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 or Subcontractor.

If the scope of the most recent SOC audit report does not include all of the current State fiscal year, upon request from the State, the Contractor must provide to the State a letter from the Contractor or Subcontractor stating whether the Contractor or Subcontractor made any material changes to their control environment since the

prior audit and, if so, whether the changes, in the opinion of the Contractor or Subcontractor, would negatively affect the auditor's opinion in the most recent audit report.

The Contractor shall meet requirements of current version of Minimum Acceptable Risk Standards for Exchanges ("MARS-E") controls.

No additional funding shall be allocated for these certifications, authorizations, or audits as these are included in the Maximum Liability of this Contract.

- (4) 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.
- (5) 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
- (6) Upon termination of this Contract 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.

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. The Contractor will maintain and cause its subcontractors to maintain a complete audit trail of all transactions and activities in connection with this Contract. The 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) "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: 4 hours.
- 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: 24 hours.

(2) The Contractor and its subcontractor(s), as applicable, 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 Recover Test that its Disaster Recovery Capabilities meet the RPO and RTO requirements.

- 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 30901-41919 (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. 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 except that the Contractor may retain an electronic copy in accordance with its records retention policy.

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.7. Applicable Gifts and Solicitations Policy. The Contractor shall not offer to give, or give, any gift to any employee of the State or to any member of a Board, Commission or Committee administratively attached to the State that would violate the State's Gifts and Solicitations Policy, included as Contract Attachment 4 to this Contract.

IN WITNESS WHEREOF,

CORVEL ENTERPRISE COMP, INC.

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF TREASURY:

DAVID H. LILLARD, JR., STATE TREASURER

DATE

CONTRACT ATTACHMENT 1

CLAIMS HANDLING REQUIREMENTS

PROGRAM CONTACTS

| | |
|--|--|
| State of Tennessee | State of Tennessee |
| Rodney Escobar Director of Risk Management 502 Deaderick St. 15 th Floor, Andrew Jackson Bldg. Nashville, TN 37243-0243 P: 615-741-9957 E: Rodney_escobar@tn.gov | Jamie Fohl Manager 4 502 Deaderick St. 15 th Floor, Andrew Jackson Bldg. Nashville, TN 37243-0243 P: 615-741-9972 E: Jamie.fohl@tn.gov |
| State of Tennessee | State of Tennessee |
| Monica Fuqua Claims Manager 2 502 Deaderick St. 15 th Floor, Andrew Jackson Bldg. Nashville, TN 37243-0243 P: 615-741-9959 E: monica.fuqua@tn.gov | Cynthia Sparks - *Primary Contact Senior Claims Examiner 502 Deaderick St. 15 th Floor, Andrew Jackson Bldg. Nashville, TN 37243-0243 P: 615-741-9970 E: cynthia.sparks@tn.gov |
| State of Tennessee | State of Tennessee |
| Letrese Lacy Administrative Assistant 502 Deaderick St. 15 th Floor, Andrew Jackson Bldg. Nashville, TN 37243-0243 P: 615-741-9973 E: letrese.lacy@tn.gov | David Bauer Assistant Director, Information Systems 502 Deaderick St. 15 th Floor, Andrew Jackson Bldg. Nashville, TN 37243-0243 P: 615-532-0892 E: david.bauer@tn.gov |

DEPARTMENT CONTACTS FOR THE STATE OF TENNESSEE

*If an adjuster is informed that a specific contact is no longer available, the adjuster will notify Cynthia Sparks and Account Manager of the change to help keep the list up to date for the State and TPA.

CLIENT INFORMATION

Government Profile taken from www.tn.gov.

The State of Tennessee joined the union in 1796 and was the 16th state. It is the 17th largest State in the United States with a population of 6.3 million. The state capital is in Nashville. The State Government of Tennessee currently employs approximately 77,000 people (this does not include part time employees).

The following information was taken from www.treasury.tn.gov/wc.

The Division of Claims and Risk Management administers the workers' compensation program for state employees only. The Division of Claims Administration contracts with a third party administrator for the processing of state employees' workers' compensation claims with a managed care organization for provider network and managed care services, and with a pharmacy benefits manager for a pharmacy network and processing of pharmacy bills. The Division's staff monitors the work done by these companies and acts as a liaison between state employees, the third party administrator and medical providers.

PROGRAM INFORMATION

SERVICE PERIOD

Original Effective Date: September 1, 2014
Current Service Period: September 1, 2014 – June 30, 2019

LOCATION LEVELS:

- State Government
- Board of Regents
- Austin Peay State University
- East Tennessee State University
- Middle Tennessee State University
- Tennessee Tech University
- Tennessee State University
- University of Memphis
- University of Tennessee

REPORTING CLAIMS

The phone number to telephonically report claims is: **1-866-245-8588**

To report a claim via fax, the number is: **1-866-777-1668**

SPECIAL INSTRUCTIONS

STATE OF TN DIVISION OF CLAIMS AND RISK MANAGEMENT OVERSIGHT

- The Division of Claims and Risk Management will act in an oversight capacity for all claims services.
- The Division of Claims and Risk Management and all State Agencies must have on-line computer capacity to review claims daily. Documentation on all files must be complete to allow the The Division of Claims and Risk Management full knowledge of the claim without the benefit of the hard copy file.
- There will be documentation on all medical only claims to include a minimum description of the accident and injury, why it is compensable, and if a network facility was used
- The TPA will be required to obtain prior approval from the Division of Claims and Risk Management for the following claims adjudication decisions:
 - Denials of the compensability of an accident/injury;
 - Approvals to use rehabilitative services;
 - Approvals or denials of death claims;
 - Approvals or denials of heart attack/hypertension claims;
 - Discontinuance of overpayment collection efforts;
 - Discontinuance of subrogation collection efforts;
 - Initiations of surveillance/investigation services;
 - Approvals or denials of National Guard claims; and
 - Prior to entering into settlement discussions with a claimant/counsel, the TPA will obtain the State's approval of the settlement conditions to be proposed.

Notwithstanding the above, the State may authorize the TPA to approve certain classes of claims without the necessity of obtaining the prior approval of the State. Any such authorization will be in writing and set forth the classes of claims involved.

All denials shall have the adjuster provide justification for the denial based upon factual evidence that allows a reasonable person to believe that the reported personal injury did not meet the definition of Tenn. Code Ann. § 50-6-102(12). The adjuster shall include a summary of the investigation and the basis for recommending the denial. A formal denial to the injured employee will not be sent without the express approval of the State. The same procedure is followed whenever vendor recommends that a claim outcome should or should not be appealed.

WRITTEN NOTICES

The adjuster will:

- Send written notice to the claimant on **every claim (LT, MO, and WC EXP) when approved or denied.**

- Send a copy of **every compensability approval notice** (via e-mail) to the following contacts from the State's group insurance division:
 - Melissa Horsley melissa.horsley@tn.gov
 - Connie Guthrie connie.guthrie@tn.gov
 - Steven Porter steven.porter@tn.gov
- Send a copy of the notice of **every compensability approval and denial** (via e-mail) to employee's designated HR contact(s).
- Send a notice of **termination of temporary total disability benefits** to the employee (via letter) and the employee's designated HR contact(s) (via e-mail) whenever benefits are terminated.
 - The notice should explain the reason why indemnity benefits are stopping.

NATIONAL GUARD CLAIMS

Special procedures as established by the State of TN will be followed on all National Guard claims. The adjuster will discuss the handling of these claims with Monica Fuqua at the State.

FILE MANAGEMENT & DOCUMENTATION

FILE RECEIPT AND ASSIGNMENT

Claim files shall exist in electronic format and be documented accurately with all relevant information associated with the particular claim. Sections shall be established in the electronic claim file to adequately distinguish between required documentation, Commission filings and communications, medical information, payments, litigation information, etc.

Information shall be placed in the claim file within one Business Day of receipt in the office as measured by the date stamp. Adequate and accurate documentation is required so as to support any decisions that are being made relative to the claim. Documentation shall be imaged and maintained in the claim computer system. The adjuster shall pay no bills until they have been reviewed with supporting documentation, evaluated and determined to be causally related to the injury.

CLAIM SUPERVISOR FILE RECEIPT AND ASSIGNMENT RESPONSIBILITIES

- The claim unit supervisor will review all loss notices on the day received. Medical only claims should receive the same initial review as lost time claims. Specific written instructions will be given to the assigned adjuster regarding:
 - Additional information required for compensability determination
 - Medical reports/input from medical resources
 - Possible "red flags" (e.g., un-witnessed accidents, late reporting, etc.)
 - Subrogation/other offset potential
 - Jurisdictional issues
 - Other specific claim management issues
- Claims will be provided to the appropriate adjuster within one work day of receipt.
- Supervisory review of the file for quality assurance will be documented within 30 days.

FILE REVIEW AND INITIAL CONTACT

Claim files shall be reviewed by a supervisor and assigned the day received. At a minimum within **5 calendar days** from receiving the claim in the office there shall be case documentation requirements including, but not limited to, a compensability assessment, action plan, reserve analysis, medical and bill utilization review if applicable, return to work or transitional employment potential, employer information, treating provider information, and any other documentation that will assist in providing a clear and accurate picture of the true claim status.

- Claim information will be reviewed by the adjuster on the day received with any outstanding data highlighted.
- Initial contact (employer, claimant/attorney, physician, and witnesses if applicable) will be made on the assignment date as well (within 24 business hours of the claim's receipt).
 - Thorough description of accident, extent of injury, and any investigation findings.
 - Attitude of employee regarding accident, employer, knowledge of workers' compensation process.
 - Attitude of employer regarding employee, work history, other pertinent information.
 - If appropriate, verify that a physician from the PPO network was used. If not, redirect treatment.
 - Availability of modified duty/job description, etc.
- If no employee contact within 2 Business Days, the adjuster will reach out to the HR Contact(s) at the involved location to request assistance in reaching the employee.
- Within 3 days send contact letter to injured employee acknowledging receipt of the claim and providing the employee with the claim file number, the adjuster's name and contact information.
- Adjuster shall call daily for 7 work days until first point of contact is made with injured employee and HR personnel. After 7 days, notification shall be made with written correspondence via certified mail with a minimum of 3 additional follow up calls to injured employee up to 14 days. All attempts of notification shall be documented.

SPECIAL ATTENTION WILL BE GIVEN TO THE FOLLOWING "RED FLAGS":

- Back injury (strain/sprain) - neck, thoracic or lumbar
- Reference made to need for surgical intervention by treatment provider
- Cumulative trauma/repetitive motion disorders (e.g., tendonitis, carpal tunnel syndrome)
- Chiropractic treatment
- Work-related exposure illnesses (exposure to inhalants, etc.)
- Physical therapy treatment exceeding 30 days
- Stress/psychiatric - primary or "related"
- Complicating medical conditions (e.g. history of hypertension, obesity, heart disease, etc.)
- Nonspecific diagnosis or prognosis (e.g. "Will be unable to return to work for an undetermined length of time.")
- Subjective complaints without objective findings
- Use of multiple medications, particularly addictive drugs
- Serious fractures - major members; multiple fractures; fractures at joint sites; fractured skulls, hands or feet

MEDICAL REVIEW IS ALSO REQUIRED IN THE FOLLOWING CIRCUMSTANCES:

- If a modified duty position is available that appears to be consistent with the employee's disability but the treating provider determines "totally disabled"
- Any other cases with extenuating circumstances (e.g., layoff or facility shutdown, probation, un-witnessed/questionable accident, etc.)
- Any catastrophic injury/illness

RECORDED STATEMENTS

Recorded statements will be taken on a **case by case basis, unless otherwise instructed by State of Tennessee**. When taken, the recorded statements should also be obtained from supervisors/managers and any relevant witnesses when necessary.

CLAIM CLASSIFICATION

WC EXPOSURE (WCEXP)

3 point contact

- All Exposure claims (needle sticks, blood borne pathogen claims, bodily fluids, etc.) must be coded as WCEXP.

INDEMNITY (IND)

3 point contact

Assignment to an indemnity adjuster should be made at the time of file set-up if any of the following apply:

- All claims with client questions on the validity of the reported injury
- In-Patient Hospitalization
- Repetitive motion claims (cumulative trauma) such as Carpal Tunnel Syndrome, DeQuervein's Syndrome, Tendonitis, Epicondylitis
- Questionable compensability or causal relationship
- Attorney involvement or pending litigation
- Cases involving third party liability
- Paid Medical is greater than \$5,000 or open for more than 120 days
- Assault/battery claims
- Claims involving death
- Stress/Psychiatric Claims
- Surgical intervention suggested by provider.

*** Before Issuing an Indemnity payment, the adjuster must check with the HR contact at the agency of employment to confirm if the injured employee will be utilizing their sick time or assault pay. Injured employees should not be receiving 2 types of pay for lost time.**

*** The adjuster will send a notice of termination of temporary total disability benefits to the HR Contact at the agency of employment whenever benefits are terminated. This will be done via e-mail.**

MEDICAL ONLY (MO)

3 point contact

Assignment to a medical only adjuster should be made at the time of file set-up for any other claim involving minor medical treatment that is not expected to surpass \$5,000.

SUBCLASS CODING

- There are two subclass codes that must be utilized for the State of TN:
 - **Future Medical (FTMED):** this subclass code must be utilized for any long term future medical claim.
 - **Heart & Lung (HTLNG):** This subclass refers to all heart, lung, and hypertension injuries. These should be classified as indemnity, and the subclass code should be designated as HTLNG.

COMPENSABILITY

The claims adjuster will conduct a thorough investigation of the facts of the claim – including any necessary statements, on-site investigations, or other fact finding methods of substantiating compensability issues, including pursuit of personnel records, prior medical records, ISO, police reports, and court reports. These investigative steps will be documented in claim notes.

- Within 10 days, the claims adjuster will complete full investigation, obtain initial medical report(s), determine compensability (officially accept or deny the claim), evaluate the adequacy of initial reserves, and evaluate the file to assure that all appropriate documentation has been entered.
- Within 14 days, the adjuster will approve payment for accepted claims
- In complex claim investigations where a decision just cannot be made by the 10th day, the State can actually allow up to 90 days for a decision to be made. In these special circumstances, the adjuster will discuss with Cynthia Sparks.

APPROVALS

Before accepting any of the following types of claims, the adjuster will first obtain approval from Cynthia Sparks with the State of TN:

- Death claims;
- Heart attack/hypertension claims (HHL Claims);
- National Guard claims

APPROVAL NOTICES

- Send a notice of compensability approval **to the claimant** on every approved claim (**LT, MO and WCEXP**).
- Send a copy of every compensability approval notice (via e-mail) **to the following contacts from the State's group insurance division:**
 - Melissa Horsley melissa.horsley@tn.gov
 - Connie Guthrie connie.guthrie@tn.gov
 - Steven Porter steven.porter@tn.gov

- Send a copy of every compensability approval notice **to the employee's designated HR contact(s) via e-mail.**

DENIALS

Claims adjuster **will be required to obtain prior approval** from Cynthia Sparks at the State for the following claims adjudication decisions:

- Denials of the compensability of an accident/injury;
- Denials of death claims;
- Denials of heart attack/hypertension claims;
- Denials of National Guard claims

Notwithstanding the above, the State may authorize the TPA to approve certain classes of claims without the necessity of obtaining the prior approval of the State. Any such authorization will be in writing and set forth the classes of claims involved.

All denials shall have the adjuster provide justification for the denial based upon factual evidence that allows a reasonable person to believe that the reported personal injury did not meet the definition of Tenn. Code Ann. § 50-6-102(12). The adjuster shall include a summary of the investigation and the basis for recommending the denial. A formal denial to the injured employee will not be sent without the express approval of the State. The same procedure is followed whenever claims adjuster recommends that a claim outcome should or should not be appealed.

Denial recommendations will be e-mailed to Cynthia Sparks at Cynthia.Sparks@tn.gov

DENIAL NOTICES

- Send a notice of denial **to the claimant** on every denied claim (**LT, MO and WCEXP**).
- **The employee's designated HR contact** will need to be notified of the denials.
- **Cynthia Sparks** will need to be notified of the denials.

SURVEILLANCE

Outside investigation including surveillance, social media activity checks, medical record canvassing, SIU or other investigative activity **must be approved in advance by Cynthia Sparks from the State of TN.** Surveillance must be assigned **within 48 hours** of approval from the State.

ISO CLAIM SEARCH

All indemnity claims and all medical only claims will be reported to ISO and open indemnity claims will be re-indexed every 6 months. Evidence of indexing & re-indexing is to be noted in claim notes. Claim indexing fee will **NOT** be charged to the claim file as an allocated expense.

ONGOING CLAIMS MANAGEMENT

SUPERVISORS

- Supervisors will review indemnity claims initially within 30 days of assignment. Subsequent diaries will be set based on complexity/severity of the claim and claims examiner experience. Subsequent diaries will vary between 60-90 days depending on the above. Medical only claims will be reviewed every 60 days.
- Supervisor will provide specific written instructions to the adjuster. Review will include:
 - Appropriateness of reserves
 - "Red flags"
 - Employee complaints or concerns that alert the adjuster to reasonably believe that litigation is possible.
 - Quality of medical documentation - history and physical, proposed treatment plan, anticipated result
 - Status of subrogation/offsets investigation
 - Any provider issues that include but not limited to scheduling delays, employee failing to attend schedule appointment, provider no longer in PPO network, provider not being in PPO network, delays with diagnostic testing, or any issue that will prolong the employee treatment and/or delay to return to work with or without medical restrictions.
 - Adjuster's plan of action to reach case closure
 - Need for rehabilitation/IME/disability management/investigation

ADJUSTERS

- A plan of action for bringing claims to closure shall be documented every 30 days.
- The action plan and claim notes will show:
 - Ongoing contact with claimant, employer, physician, attorney
 - Any medical input provided
 - Confirmation of use of PPO network provider
 - Referral(s) to appropriate utilization review and medical case management, with appropriate progress updates
 - Follow up with rehabilitation/IME/disability management regarding any of their activities and their plan for future action
 - Follow up with employer/physician regarding return to work and modified duty availability
 - Plan of action for claim resolution
 - Termination of any benefits
 - Whether claimant is represented by legal counsel.
 - Reason for denial of claim
- The claim adjuster will follow up on outstanding medical documentation. No bill will be paid unless the corresponding medical report has been received and reviewed, confirming the medical necessity of the treatment. Medical reports should be expected within 2 weeks of the treatment or at least by the time the claim is received. Reports from IMEs should be expected within 1 week. The adjuster will diary scheduled appointments and follow up after the specified day to see if the claimant kept the appointment and to advise the provider that bills will not be paid until medical information is received. If the claimant misses an appointment, he/she will be called to determine why the appointment was not kept.
- Medical reports should indicate, at a minimum, objective findings, progress and treatment plan with anticipated result.

RETURN TO WORK (RTW)

Effective 7/1/2016 the State of Tennessee implemented a Return to Work Incentive as follows:

The employer has 14 Business Days, from the date the Authorized Treating Physician (ATP) releases the injured employee to perform work in any capacity, to return the injured employee to a transitional duty assignment or full duty status. If the employer is able to return the employee within the 14 Business Days to one of these roles, the Treasury Department will pay 100% of the Temporary Total Disability (TTD) Benefits due to the injured employee during this period. If the employer is unable and/or decides not to accommodate the injured employee's transitional duty restrictions, the Treasury Department will continue to administer benefits according to workers compensation law, however, after the seventh (7) day of lost time, the employer will be charged 50% of the TTD benefits owed. This charge to the employer will continue until the employer determines that an accommodation can be made allowing return to work; the employee has been released to full duty; the ATP rescinds the transitional duty restrictions; or, the employee reached Maximum Medical Improvement (MMI).

| Time Frame for Days to RTW | Incentive and Assessment Payments |
|---|--|
| Injured Employee Returns within 14 days | Treasury Department pays 100% of all TTD's |
| Injured Employee Returns after 14 days | Treasury Department pays 100% of the first 7 days of TTD's |
| | Employer pays 50% of TTD's starting from day 8 of lost time, and will continue to pay TTD's until injured employee returns to work, has been released to full duty, the ATP rescinds the transitional duty, or the employee reaches MMI. |

For any current injured employee(s) who are on Temporary Total Disability (Lost Time Pay) on July 1, 2016, and the Authorized Treating Physician previously had released the employee with restrictions but your agency elected not to bring employee back, you will need to contact your claims adjuster to get a new Authorized Treating Physician appointment scheduled to revisit the medical restrictions.

If the Authorized Treating Physician still states that the injured employee can come back to work with restrictions, (in order to avoid the penalty), the agency will have to return the employee back to work within 14 Business Days of the doctor appointment.

When an employee is released to modified duty with restrictions, please contact the designated HR contact(s) responsible for the injured employee's location to discuss possible modified duty jobs. If RTW cannot be accommodated by a location or facility, the claims examiner will contact the Return to Work Coordinator and inform them that the employer cannot accommodate said restrictions. Once RTW Coordinator receives this information from the claims specialist, they will then reach out to Jamie Fohl advising that the location or facility cannot accommodate. At that point, Jamie will reach out to the employer and advise them of the penalty rule in which they must accommodate or risk paying 50% of the injured employees TTD benefits.

The adjuster and case manager (if applicable) will utilize ODG or MDG for disability duration and incorporate the information into their RTW goals and expectations. The adjuster will aspire to get the injured employee back to work prior to the end of the expected disability duration suggested by ODG or MDG.

If an employee is off work for 90 days and a nurse is not on the file, or a nurse was once on the file and is no longer on the file, you must assign/reassign a nurse to the file with the intent to get the employee back to work as soon as possible.

RTW SCREEN DOCUMENTATION

For all claims, claims adjuster must fully document all work restrictions in the claim profile until the employee is released to return to work full duty. The restrictions should be updated after each doctors appointment.

SALARY CONTINUATION

Sick and Annual Pay: State employees can elect to utilize their sick and annual pay instead of WC indemnity benefits while they are out of work due to a work related injury. **Assault Pay** is available to employees within the State (See the TCA 8-50-11 Assault Pay document on the

In Line of Duty Pay: State Troopers are eligible for In Line of Duty Pay. An employee can be reimbursed for leave used from the date of accident until the date the claim is approved, if the employee was not receiving TTD. Please discuss these details with Kimberly Collie in HR when a State Trooper claim is reported. Kimberly can be reached at 615-251-1565 or kimberly.collie@tn.gov.

Before issuing any indemnity payments, the adjuster will confirm with the appropriate HR contacts the injured employee's first day **WITHOUT** pay. WC indemnity benefits should not be paid as long as the employee is receiving any form of salary continuation.

DEATH CASES

Death cases shall include contacting the spouse to determine marital status. Also, the adjuster shall determine dependent status up to their 18th birthday or determine if the dependent is enrolled in a recognized educational learning institution with a maximum age of 22, or in cases when the dependent may receive the entire award of death benefits if they are physically or mentally incapacitated regardless of age.

CLAIM FINANCIALS

RESERVES

Reserves will reflect the ultimate probable outcome based upon known medical information at the time the claim is received. Indemnity, medical, and expense should be included in the reserve calculation. Initial reserves should be set within 5 days after receiving first notice of the claim. However, a more accurate reserve reflecting information obtained during investigation shall be posted within 30 days from first notice of the claim. This reserve will reflect the most likely outcome based on the treatment

plan, disability guidelines, probability of impairment, and expenses associated with investigation, litigation, and any other costs associated with properly bringing the claim to resolution. Any subsequent reserve change shall be documented.

- Reserves will be reviewed every 30 days unless a longer term diary is approved.
- For claims older than 2 years, reserve reviews occur every 180 days.
- For Settled Indemnity and PTD files, reserves reviewed every 180 days.
- Reserves for permanency and death cases are reviewed annually.
- **ODG or MDG will be utilized for every indemnity reserve and the appropriate disability guidelines will be factored into the reserving methodology.**
- The reserve worksheet will be utilized in establishing reserves for all indemnity claims.
- Every reserve change by the adjuster shall be documented with an explanation and purpose for the change, which shall include documented calculations by the adjuster.
- Reserves will be recalculated within 5 Business Days following receipt of new information or attainment of MMI. When MMI is reached, the adjuster will factor in settlement potential and value, likelihood for continued care, rate of continued care (if applicable), and medical inflation.
- If a file is being handled by the AGO, the adjuster's reserving accuracy is highly dependent upon consistent updates and communication from the AGO as settlement negotiations develop and new exposures are added to the claim.

RESERVE AUTHORIZATION

Reserve changes that are greater than \$25,000 must be approved by Cynthia Sparks from the State of Tennessee. Any reserve changes that are greater than \$50,000 must be approved by Monica Fuqua from the State of Tennessee. Any reserve changes that are greater than \$100,000 must be approved by Rodney Escobar. Approval requests should be sent to Cynthia, Monica, and Rodney regardless of increase via e-mail with a detailed analysis and breakdown of the reserves. The completed reserve worksheet should be attached to the e-mail. ODG/MDG disability timelines will be factored into the adjuster's reserve analysis. The approval will be documented in the claim file.

SETTLEMENTS

Prior to entering into settlement discussions with a claimant/counsel, the TPA will obtain the State's approval of the settlement conditions to be proposed. Pre-Settlement discussions with Cynthia Sparks is required on all claims. The claim file must clearly document the settlement evaluation. Email the settlement recommendation request template with pertinent file activity and medical reports to cynthia.sparks@tn.gov and copy Letrese Lacy Letrese.Lacy@tn.gov for review at least 14 days prior to beginning settlement discussions.

The adjuster can negotiate and settle a claim without TDOL Mediation or litigation thru TN Claims Commission. The settlement recommendations are sent to Cynthia Sparks and copy Letrese Lacy along with a copy of the following pieces of information: First Report of Injury, wage statement, and medical records indicating MMI/PPI, if applicable.

For all forms of settlement, once settlement is agreed upon and reached, the adjuster will submit a Settlement Worksheet along with all supporting documentation to Cynthia Sparks and copy Letrese Lacy. The Treasury Department will then draw up the order to be signed by all parties. Once the order is signed by all parties it will be returned back to the claims adjuster for distribution of settlement funds.

Settlement payments are due 48 hours after the approval order is issued by the TN Claims Commission.

Please contact Cynthia Sparks with any questions about the process.

LITIGATION MANAGEMENT & DOCUMENTATION

SPECIAL HANDLING FOR THE STATE OF TENNESSEE

All legal matters are to go through the Attorney General's Office. On claims with a date of injury after 7/1/05, employees must request a Mediation before filing with the Tennessee Claims Commission. If a claim is denied, the adjuster must send a letter notifying the claimant of the reasons for the denial and of the claimant's right to request a Mediation within 90 days from the date of the denial notice. State employees do not file claims in the court system.

Third-Party Administrator will retain a copy of all files which have been transferred to the Attorney General's Office for litigation. The original file is sent to the AGO, with a file summary prepared by the claims examiner. Written notice of the appeal is also prepared for the Tennessee Claims Commission.

LEGAL REPRESENTATION OF THE STATE

All legal matters are to go through the Attorney General's Office (AGO) who will control the legal representation.

If an appeal or complaint is filed, Cynthia Sparks will receive a copy and will instruct the claims adjuster if it should be sent to the AGO.

When a file is being referred to the AGO, the adjuster MUST complete the "AGO Checklist" and send to the AGO.

- . The checklist will accompany a copy of the claim file (file notes, documents, med records, etc.).
 - Please send the information to the AGO. **It will need to be sent via secure file transfer software, proofpoint.**
- The adjuster must also send the TN Claims Commission a notification letter informing them that the AGO will receive the file. In this notification letter, the claim #, and claimant name should be included. The First Report of Injury Form should accompany that notification and nothing else. This can be done via e-mail to the following individuals:
 - Paula Merrifield: paula.merrifield@tn.gov

The AGO cannot subpoena medical records if they are not handling the case. If medical records cannot be obtained due to lack of subpoena power and compensability decision cannot be made without those records, the adjuster will deny the claim. As always, if a case needs to be denied, please seek prior approval from Cynthia Sparks.

LEGAL COMMUNICATION

Upon notice of litigation, the adjuster will immediately notify Cynthia Sparks and copy Letrese Lacy at the State of Tennessee. The adjuster and claims supervisor (if needed) will manage the file up to the Mediation. If there is an impasse at the Mediation and the plaintiff attorney appeals, then the adjuster

will work with Cynthia Sparks to refer the file to the State Attorney General's Office. The Attorney General's Office **must be involved in all** legal communication from that point forward.

MEDIATIONS AND BENEFIT REVIEW CONFERENCES

TN DOL will notify claims adjuster of pending Mediation requests, TPA will keep a calendar of such requests and work with TN DOL to establish best possible dates for scheduling mediations. Allowing for multiple mediations to occur within TN DOL offices on the same day.

Mediations involving temp benefits, medical treatment, etc. may be handled via telephone conference unless otherwise instructed by the State or TDOL. Mediations that involve more complex issues, such as complex permanency disputes, or when specifically requested to appear by the State, will be attended in person by a claims adjuster representative. If mediation efforts during this process do not result in resolution of claim issues, the TN DOL will issue a summary of disputed issues. The plaintiff attorney has 90 days to file an appeal to the TN Claims Commission. Once that appeal is received, the file will be referred to the Attorney General's Office who will then manage the litigation portion of the file from that point forward.

All claims appealed to the TN Claims Commission cannot not be remanded back to the TN DOL for further mediation. If during the Claims Commission adjudication process further mediation is necessary, the parties will agree to the use of an outside mediator.

Litigation Flag

When and only when a file is transferred to the Attorney General's Office (AGO), the adjuster will mark the claim as "Litigated" in claim profile. This is important for the State as it helps them track the number of files being handled by the AGO. No Litigation flag will be triggered until the file is actually transferred to the AGO.

Fraud Handling Procedures

If TPA receives a report of alleged fraud, the adjuster will forward that information to the Division of Claims and Risk Management. If warranted and with authority from The Division of Claims and Risk Management, claims adjuster will initiate a fraud investigation and report the findings to The Division of Claims and Risk Management. If fraud is confirmed, the Division of Claims and Risk Management will inform the Comptroller's office. The Division of Claims and Risk Management will communicate with the specific departments/agencies and at that point the department/agency will decide if they should prosecute.

If the Comptroller is made aware of a fraud allegation, they will forward that info to the Division of Claims and Risk Management who will then communicate with claims adjuster and initiate a fraud investigation. At this point, the above explained process will take place.

RECOVERIES / SUBROGATION

Subrogation potential must be addressed within activity notes. Approval must be obtained from Cynthia Sparks at the State of TN prior to discontinuing subrogation collection efforts.

When negotiating a lien, please discuss with Cynthia Sparks and CC Letrese Lacy.

If the Subrogation Claims Specialist cannot get a response from the third party or they are not willing to reimburse, the AGO can get involved for cases with a payout over \$5,000.

If information is needed for subrogation (accident reports, insurance info, etc.), please request from claimant, claimant attorney, and/or any of the following entities:

- **Department of Safety** can help get police reports for MVAs that a State Trooper works.
- **Local Law Enforcement** can get you the police reports for MVAs they worked.
- **Motor Pool (MVM)** can help with police reports if the MVA involves a State employee in a State vehicle. MVM can be reached at 800-447-2277.

If there are questions as to whether or not subrogation can be pursued, the claims examiner will send an e-mail to Cynthia Sparks with details requesting direction. If subrogation activity stalls and the third party is unresponsive, claims adjuster will discuss with Cynthia Sparks to possibly initiate involvement from the AGO's office.

DEPT. OF CHILDREN'S SERVICES (DCS) SUBROGATION SPECIFICS

- Subrogation can be pursued on MVA claims involving DCS employees
- Subrogation can be pursued on home visits involving DCS employees when the foster parent is contracted thru Omni Home and/or Youth Villages
- Subrogation cannot be pursued in situations in which the DCS employee is injured while making a home visit to a recipient of DCS services. DCS has a privacy statute that does not allow them to give that information out (even to another state agency). Even if they could give the information, the recipient most likely does not have insurance or the means to repay the amount spent on the injury.
- Subrogation cannot be pursued in situations in which the DCS employee is injured on the premises of a DCS foster parent. Per Tenn. Code Ann. § 8-42-101 foster parents are considered state employees. We do not subrogate against a state employee.

In the future, if there are any questions as to whether or not subrogation is an option, the claims examiner should send Cynthia Sparks an email with the injured worker's name, date of injury, name of the homeowner and address where the accident occurred. Cynthia will check with DCS Legal to see if subrogation can be pursued.

FILE AUDITS

The Division of Claims and Risk Management will have a third party vendor conduct on-site case file audits at least every six (6) months at the TPA's office. The third party vendor will issue a report of the audit findings to the State and the TPA. The TPA will review and respond in writing to each finding.

CLAIM REVIEWS & STEWARDSHIPS

CLAIM REVIEW FREQUENCY

TPA will meet with the State on a monthly basis to discuss claims management issues either in person or on teleconferencing when approved by the State.

CLAIM REVIEW INSTRUCTIONS

All Claim Reviews must be coordinated through the Account Manager.

STEWARDSHIPS

Annual stewardship reports shall summarize TPA's operational and financial performance in regards to the State's workers' compensation overall program. This includes areas of program management, procedural compliance, financial stewardship, and customer service.

BILL REVIEW

ADJUSTER RESPONSIBILITIES

- Bills are reviewed by the appropriate adjuster to determine relatedness to the claim. That determination must be based on relevant medical records.
- If applicable, adjuster will return the bill with a request for medical records
- Upon return of a re-priced bill, the TPA adjuster will promptly process payment.

OUT OF STATE INJURED EMPLOYEES

- If an out of state employee is treating with an out of state doctor, we should attempt to have MD agree to the TN Fee Schedule. If the MD will not agree to TN Fee Schedule, then the State will allow us to pay Usual and Customary fees.

MEDICAL MANAGEMENT

ADVOCACY 24/7

The 24/7 nurses will take calls for all employees from the State of Tennessee. 24/7 will utilize the panel of physicians for treatment referrals. 24/7 nurses will utilize national protocols to determine whether the injured worker would benefit from going to a walk-in clinic vs. Telehealth.

CASE TRIAGE

For losses complex in nature or with ongoing lost time, triage will be performed within 8 business hours of notice

- Triage nurse will utilize the State of Tennessee case management referral criteria
- Triage nurse will make three point contacts.
- Triage nurse will make 2 attempts to contact injured employee. If contact is not made, the adjuster will be notified.
- Triage nurse will make 1 attempt to contact treating provider to secure updated medical and will fax treating provider letter if unable to secure information telephonically
- Special attention will be given to the following "red flags":
 - Back injury (strain/sprain) - neck, thoracic or lumbar
 - Reference made to need for surgical intervention by treatment provider

- Cumulative trauma/repetitive motion disorders (e.g., tendonitis, carpal tunnel syndrome)
- Chiropractic treatment
- Work-related exposure illnesses (exposure to inhalants, etc.)
- Physical therapy treatment exceeding 30 days
- Stress/psychiatric - primary or "related"
- Complicating medical conditions (e.g. history of hypertension, obesity, heart disease, etc.)
- Nonspecific diagnosis or prognosis (e.g. "Will be unable to return to work for an undetermined length of time.")
- Subjective complaints without objective findings
- Use of multiple medications, particularly addictive drugs
- Serious fractures- major members; multiple fractures; fractures at joint sites; fractured skulls, hands or feet
- If a modified duty position is available that appears to be consistent with the employee's disability but the treating provider determines "totally disabled"
- Any other cases with extenuating circumstances (e.g., layoff or facility shutdown, probation, un-witnessed/questionable accident, etc.)
- Any catastrophic injury/illness
- Employee hire date within 90 days of accident
- Employee has history of prior workers' compensation injuries
- Employee has known performance issues at work
- Employee works at a location undergoing reductions in workforce and/or undergoing a closing.
- Review TCM / FCM Referral Criteria to determine any proposed TCM / FCM referral.
- Triage nurse note template will be utilized to report outcome of contacts, recommendations for TCM or FCM, and approval/denial of TCM/FCM request in the Claim System.
- Triage file will be closed upon completion of contacts or approval/denial of TCM/FCM request.

CASE MANAGEMENT

Claims adjusters will notify Return to Work Coordinator anytime an employer does not accommodate an injured workers' restrictions. The Return to Work Coordinator will then address the file and need for case management.

GOALS

- Facilitate prompt, appropriate medical treatment
- Promote early return to work
- Positively impact PPO penetration
- Advocate appropriate medical care for State of Tennessee injured workers
- Identify and positively impact medical treatment over-utilization

TELEPHONIC CASE MANAGEMENT

- TCM activities will show evidence of aggressive return to work.

- Utilization Review Referrals must be referred via claims system request for service form to assure appropriate file routing
- The TCM supervisor will review all open cases every 60 days & document: review/rationale for further TCM involvement; future course of action; expected outcome & any barriers to outcome
- TCM will provide a copy of the pre-injury job description if available to physician
- TCM will provide a copy of the modified duty positions if available to physician.
- The initial evaluation is submitted within 7 Business Days from referral
- Progress Reports are to be submitted after each exam.
- Closure Report to be completed within 1 Business Day of file closure
- When closing the referral, any impact to the claim in the form of savings must be documented with both value and rationale.

AUTOMATIC TELEPHONIC CASE MANAGEMENT TRIGGERS

Immediate Full TCM referrals upon Notice of Injury or Condition are as follows:

- Catastrophic injuries/illness.
- Head injuries including closed head injuries.
- Second and/or Third degree burn over 25% or more of the body.
- Major Amputations.
- Crush Injuries.
- Cervical, thoracic, lumbar, disc disorders when surgery is required.
- Injuries expected to exceed 7 days lost time, except in cases when the adjuster believes the employee will return within 14 days.
- Fractures/Dislocation which involve a major joint area.

Full TCM referrals within two weeks of Notice of Injury or Condition are as follows:

- Multiple diagnosis/Multiple treating physicians.
- Anticipated or actual inpatient hospitalization or surgery.
- Delayed recovery without objective findings.
- Lack of progress/lack of treatment plan by physician.
- Presence of co-morbidities such as diabetes, heart disease, depression, pulmonary conditions.
- Psychiatric/Mental injuries unresolved by EAP visits.
- Diagnosis of RSD or Fibromyalgia.
- Anticipated lost time in excess of 2 weeks with no RTW estimate.
- Prior injury history to same body part or prior PPD settlement.
- Evidence of drug or alcohol abuse, either prior to injury or as a result of injury.
- Non/poor compliance with treatment.

TCM Task Assignment Triggers:

- Clarification of treatment plan with provider when lack of information or response proves difficult.

- Pursuit of final determination to include MMI/PPI/RTW when no response from provider after 14 days. If the adjuster does not receive final determination within 30 days the supervisor shall investigate the issue and notify the State of the situation.
- Coordinate restricted duty return to work, when available with employer.
- Facilitate completion of Independent Medical Review or Second Opinion Evaluations.
- Complete file review with case management recommendations for proceedings with medical care and/or other services.

FIELD CASE MANAGEMENT

- Progress Reports are to be submitted after each exam.
- Closure Report to be completed within 1 Business Day of file closure
- When closing the referral, any impact to the claim in the form of savings must be documented with both value and rationale.

AUTOMATIC ONSITE FIELD CASE MANAGEMENT TRIGGERS

Onsite Field Case Management (FCM) Triggers:

- Complex cases involving multiple providers and/or uncooperative claimants where face to face relationships/communication would facilitate resolution and one time tasks assignments cannot resolve.
- Cases where communication barrier exist and all other options have been unsuccessful such as non-English speaking, hearing impaired, speech impaired, and visually impaired.

Onsite Case Management Task Assignment Triggers:

- Onsite inpatient hospital chart review and or visit with family in catastrophic injuries/illness.
- Onsite case conference attendance when inpatient rehabilitation utilized.
- Expedite discharge planning to an appropriate level of care when telephonic contact is unsuccessful.
- Clarification of information when claimant and provider response differs.
- Clarification of treatment plan when lack of information or provider response to telephonic and/or written requests.
- Home assessment when home modifications are recommended.
- Consult with provider regarding job description and any accommodations available with employer.
- Facilitate file resolution.

Discharge Planning Case Management Triggers:

- Any medical/surgical/rehabilitative inpatient hospitalization that are projected to need any one of the following:
 - Durable Medical Equipment
 - Prolonged Pharmaceutical Therapy
 - Home Infusion Therapy
 - Physical, Occupational, Speech Therapies
 - Home Health Care

- Prolonged Medical/Surgical Supplies
- Referral recommended at the time of precertification/continued stay review to assure prompt initiation of discharge planning at the time of admission.

UTILIZATION REVIEW

In-patient hospitalizations should be pre-certified. If a nurse case manager is involved, and the procedure is outpatient in nature, pre-cert is not necessary. That is, unless the nurse case manager has concerns over some portion of the request. If no nurse case manager is involved, it is up to the adjuster to determine if something in the request warrants pre-cert involvement. UR should not exceed ODG Guidelines.

DIRECTED CARE NETWORKS

The following services are to be coordinated through Ancillary Services Network

- Transportation & Translation
- Durable Medical Equipment
- Physical Therapy
- Functional Capacity Evaluations
- Independent Medical Exams
- Peer Review / Medical Record Review

PHARMACY MANAGEMENT

Pharmacy program is to be utilized for all claims

NOTE: For N drugs that need reviewed by the claims examiner, the Pharmacy Department will send that request to the UR team to have the review of a single medication done.

- First Fill Program Applies Yes No
- Mail Order to be used for supplies over 90 days Yes No
- Standard Formulary applies Yes No

Surgery Authorization Protocol

Since surgery requires a pre-certification, an adjuster can initiate this protocol as soon as they are notified of the pending surgery.

When the adjuster is notified of a pending surgery, they can email the pharmacy department with the following information:

- date of surgery
 - details of the surgery
 - who the surgeon/prescriber is
 - medications that will be needed if known
-the more details the better.

Pharmacy support team will set the authorizations for a period of time that will allow the patient to receive medications without prior authorization for the medications listed on the attached spreadsheet.

MEDICARE SET ASIDES, LIFE CARE PLANS

All MSAs must be approved by the State prior to referral. Please e-mail Cynthia Sparks a brief summary of the claim and recommendations on why a MSA should be considered.

- All MSA's are to be coordinated through TPA's national MSA hub.
- MSA referrals are to be submitted via claims system & all applicable records forwarded as requested
- Conditional Payment letters shall be reviewed and submitted to TPA's Medicare Department to be evaluated for appeal or processing. Claims adjuster will submit notice of Conditional Payment letters to Cynthia Sparks as well.

SECTION 111 REPORTING

All Section 111 reporting for the State of Tennessee will be completed under the assigned RRE # 19823.

STATE OF TENNESSEE JOB DESCRIPTIONS

If a job description is needed, please access the State of Tennessee database via the link below. If a job description is not listed in the below database or an available job description is not sufficient, please contact the associated HR department to determine if another one is available.

[State of Tennessee Job Descriptions](#)

Performance Incentives

Contract Attachment 2

Goal: To provide excellent customer services and an excellent treatment experience for injured employees.

Criteria: Customer satisfaction rating from completed telemedicine visits.

Compliance: Average score greater than 4.5 stars out of 5 stars.

As measured by: Customer survey completed after each telemedicine visit by the injured employee.

Reporting Tool: Survey Results report from Telemedicine team compiled at the end of each contract year.

Incentive: 4.5+ to 4.75 stars= \$10,000

4.75+ stars= \$20,000

Goal: to assure accurate reserving of claims and reduce reserve variance.

Criteria: Measure total incurred on claims reported during defined period compared to reserve variance on same set of claims one year later.

Compliance: less than 20% variance in total incurred

As measured by: Loss run report for claims officially reported to the Contractor between 7/1 – 6/30 of a given year, which will be valued as of 6/30 and compared to loss run of same period one year later.

Reporting Tool: Loss runs

Incentive: Less than 20% variance = \$10,000

Less than 15% = \$20,000

Goal: To provide prompt and respectful communication with employees and respond timely to all inquiries.

Criteria: Three point contact is made or attempted and documented for all claims within 1 business day.

Compliance: 90%

As measured by: Date the claim is assigned to adjuster to date 3 point contact is documented. Must document attempted or successful 3 point contact to be compliant. No partial credit given for less than 3 point contact.

Reporting tool: Activity report from Analytics

Incentive: 90% to 95% = \$15,000

95%+ = \$25,000

Goal: To comply and report compliance, well within state law requiring timely compensability decisions.

Criteria: Decision to accept, deny, partially deny or delay must be clearly documented by the 10th calendar day from date Contractor is notified.

Compliance: 90%

As measured by: Date claim received by Contractor to the date documented in the claim file regarding status of compensability.

Reporting tool: Compensability Report from Analytics

Incentive: \$20,000

Goal: To provide timely and accurate payments to medical providers.

Criteria: Medical bills are processed timely.

Compliance: Medical bills are processed an average of 8 business days or less.

As measured by: Date medical bills received by Contractor and date sent to adjuster for approval.

Reporting tool: Contractor bill review turnaround time report

Incentive: \$10,000

Goal: Reduce medical cost associated with claim through medical bill review process and proactive medical management.*

Criteria: Evaluate the medical bill review savings from prior vendor and compare to Contractor results.

Compliance: For every percentage point above 64%, Contractor earns \$2,500 up to a max of \$20,000

As measured by: Medical bill review savings divided by billed charges, excludes duplicate bills.

Reporting tool: Bill review savings report

Incentive: \$20,000

* To be re-evaluated if any fee schedule or provider reimbursement legislation enacted.

Goal: To focus on closing claims when appropriate and settle claims quickly when possible.

Criteria: Measure claims reported by claims closed.

Compliance: 98% or better closure ratios.*

As measured by: The claims reported during the contract year plus re-opened claims divided by the number of claims closed in a fiscal year. Does not include Report Only claims (ROs).

Reporting tool: Claim detail report in Contractor's software claims system.

Incentive: 98%-102% = \$10,000
102%+ = \$15,000

* If the State ever reaches a point where claim settlements are limited or prohibited, which would impact closure ratios, Contractor will not be penalized.

Goal: Reduce indemnity costs by aggressive claims handling and return to work prior to the statutory waiting period and facilitation/coordination of early return to work with the medical provider and employer.

Criteria: Evaluate and compare LT to MO ratio from the prior contractor for the previous year (7/1/18 – 6/30/19). The ratio from the previous year for that contractor was 32% Indemnity. The 32% will be used as the baseline for measurement each year.

Compliance: For every percentage point below 32%, the Contractor will be paid \$5,000, capped at \$20,000.

As measured by: Dividing the number of indemnity claims by the total number of claims (excluding any Report Only claims) during most recent contract year.

Reporting tool: Claim detail report from Contractor's software claims system.

Incentive: \$20,000

TREASURY DEPARTMENT GIFTS AND SOLICITATION POLICY

No employee or any member of a Board, Commission or Committee administratively attached to the Department shall solicit, accept or agree to accept, directly or indirectly, on behalf themselves or their immediate family, any gift in violation of state law including, but not limited to, any gratuity, service, favor, entertainment, lodging, transportation, loan, loan guarantee rebate, money, any promise, obligation or contract for future awards or compensation or any other thing of monetary value, from any **individual or entity** that:

- Has, or is seeking to obtain, contractual or other business or financial relations with the Treasury Department or the Tennessee Consolidated Retirement System;
- Conducts operations or activities that are regulated by the Treasury Department;
- May bid on future procurement from the Department or a Board, Commission, or Committee administratively attached to the Department based on the employee's reasonable belief that the person or entity intends to submit a bid; or
- Has an interest that may be substantially affected by the performance or nonperformance of the employee's official duties.

Generally, gifts from a lobbyist or an employer of a lobbyist are prohibited; however, the following are exceptions to the general gift prohibition:

- A gift given for nonbusiness purpose and motivated by a close personal friendship and not by the position of the employee, and specifically authorized and defined by the Ethics Commission;
- Informational materials in the form of books, articles, periodicals, other written materials, audiotapes, videotapes, or other forms of communication;
- Sample merchandise, promotional items, and appreciation tokens if they are routinely given to customers, suppliers or potential customers or suppliers in the ordinary course of business;
- Unsolicited tokens or awards of appreciation, honorary degrees, or bona fide awards in recognition of public service in the form of a plaque, trophy, desk item, wall memento, and similar items, provided that any such item shall not be in a form which can readily be converted to cash;
- Benefits resulting from business, employment, or other outside activities of the employee or the employee's immediate family, if such benefits are customarily provided to others in similar circumstances and are not enhanced due to the status of the employee;
- Opportunities and benefits made available to all members of an appropriate class of the general public, including but not limited to, discounts afforded to the general public or prizes and awards given out in public contests;
- Expenses of out-of-state travel, if such expenses are paid for or reimbursed by a governmental entity or an established and recognized organization of elected or appointed state government officials;
- Food, refreshments, amenities, goody bags, entertainment, or beverages provided as part of a meal, reception or similar event including tradeshow and professional meetings; and
- Food, refreshments, meals, foodstuffs, entertainment, beverages that are provided in connection with the following: an event where the employee is a speaker or part of a panel discussion at a scheduled meeting of an established or recognized membership organization which regularly meets at in-state events in which invitations are extended to legislative or executive branch employees. The value of the items shall not exceed fifty dollars (\$50.00) per person, per day.*

* The amount may be increased to reflect the percentage of change in the average consumer price index. The Ethics Commission publishes the increased amount on its website.

For other gifts offered which are not included in the exceptions above, the employee must obtain the written approval of the Assistant Treasurer for Legal, Compliance, and Audit.

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

| | |
|--------------------------------------|--|
| SUBJECT CONTRACT NUMBER: | |
| CONTRACTOR LEGAL ENTITY NAME: | Arthur J. Gallagher Risk Management Services, Inc. |
| EDISON VENDOR IDENTIFICATION NUMBER: | 20097 |

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.

Jessica E. Govic

CONTRACTOR SIGNATURE

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.

Jessica E. Govic, Area President

PRINTED NAME AND TITLE OF SIGNATORY

02/24/2021

DATE OF ATTESTATION