



## Small Group EPO Plan

Oscar Insurance Company

1-855-672-2755

P.O. Box 52146 Phoenix, AZ 85072-2146

Group Agreement

# GROUP AGREEMENT

This GROUP AGREEMENT ("Agreement"), is entered into by and between Oscar Insurance Company ("Plan") and «GROUPNAME» ("Group").

## A. APPLICATION

The attached [Employer] Group Application ("[E]GA") is part of this Agreement. It is incorporated by reference as Attachment A. It serves as the signature page of this Agreement. The terms of the [E]GA (e.g., the Group's eligibility requirements) will control any conflict between the terms of that [E]GA and this Agreement.

## B. DEFINITIONS

Defined terms are capitalized in this Agreement. Those terms are defined in the Evidence of Coverage ("EOC"). The attached EOC is incorporated by reference as Attachment B of this Agreement.

## C. COVERED SERVICES

The Plan provides Coverage to [Subscribers] [Members]. The Coverage is subject to the terms and conditions of this Agreement and the EOC. The Group grants the Plan full discretionary authority to make Coverage decisions. These decisions are pursuant to this Agreement and include: (1) eligibility; (2) benefit; and/or (3) claim determinations. These decisions will be subject to the review standards applicable to ERISA plans, even if the Group is not otherwise subject to ERISA.

## D. ENROLLMENT AND TERMINATION OF COVERAGE

### 1. Enrollment

The EOC and [E]GA will determine the eligibility of [Subscribers] [and their Dependents]. [The Plan relies on the Group to provide accurate information regarding hours worked or scheduled to work exclusively for the Group.]

[If the Group offers Coverage from the Plan and other group health benefit plans for like benefits, ("Other Health Plans") to eligible [Persons] [and] [and not] [their eligible Dependents], the Group shall permit them to enroll in either plan. The Group: (1) will make equitable contributions to each plan; and (2) will not promote one plan over another. The Group will not directly or indirectly encourage, discourage or otherwise attempt to influence eligible [Persons] [or Dependents] to enroll in the Plan's Coverage based upon: (1) health status; or (2) anticipated utilization of Covered Services.]

a. The Group shall allow and eligible [Persons] can apply for Coverage for themselves [and] [and not] [their eligible Dependents] during: (1) the initial enrollment period; (2) an annual Open Enrollment Period; or (3) upon a Qualifying Event. The Parties may agree to an additional Open Enrollment Period.

b. The eligible [Persons] must complete and submit an Enrollment Form to the group administrator for transmittal to the Plan, or enroll through the Plan's secure

website. [The Group will submit Enrollment Forms to the Plan or complete electronic enrollment within [5- 60] days after: (1) receiving that form from the eligible [Persons]; or (2) the end of the Open Enrollment Period during which that eligible [Person] applied for Coverage.]

- c. When the Group provides enrollment data and that data does not match the Plan's data, the Plan's data will be used to determine the premium. The Plan will work with the Group to resolve the discrepancy. If no agreement can be reached, the Plan's records will control. Until the dispute is resolved, the Group must pay the premium indicated, based on the Plan's records.
- d. The Group's enrollment data shall not contain ineligible [Persons][and/or Dependents].

## 2. Electronic Enrollment Program

If the Group transmits data electronically (Electronically Transmitted Data, or ETD) to the Plan for enrollment or termination of Members, the Group must follow the Plan's guidelines.

### a. Plan's Duties and Responsibilities:

- (1) The Plan will work with the Group to initiate and complete acceptance of the ETD process.
- (2) The Plan will assist the Group in correcting errors, as identified through the editing process administered by the Plan. The Plan may need to contact the Group to resolve such issues.
- (3) After the initial transmission testing is successfully completed, for ongoing updates, valid ETD will be electronically uploaded into the Plan's system by the Plan within [3-7] calendar days of receipt of a valid file transmission.
- (4) Exception errors will be worked by the Plan within [7-10] calendar days of upload of file transmission.
- (5) The Plan reserves the right to terminate the ETD process with a Group when the Group's ETD does not meet a 99% validity/accuracy level, as determined by the Plan.

### b. Group's Duties and Responsibilities:

- (1) The Group will specify which persons have authority to transmit data to the Plan on behalf of the Group.
- (2) The Group must transmit data through Plan-approved medium. The parties shall agree on the medium the Group will use before the program starts.
- (3) The Group will submit its ETD data in one of the following formats:
  - a. The Plan's standard format (supplied to the Group).
  - b. Custom format, subject to prior approval by the Plan.
  - c. HIPAA 834 layout with Plan specifications
  - d. On-line transactions through the Plan's secured website.
- (4) The Group's ETD will contain the following information:
  - a. The appropriate Creditable Coverage data for each Member.
  - b. Medicare Secondary Payor enrollment information.

- c. COB data.
- (5) The Group is responsible for issuing appropriate HIPAA Pre-Existing Waiting Period notices to Members when data is transmitted electronically, other than through the Plan's secured website.
- (6) The Group is responsible for assuring all ETD are 99% accurate/valid.
- (7) The Group shall indemnify the Plan to the extent permitted by applicable law in the state of Tennessee, including the Tennessee Governmental Tort Liability Act for damages or injuries to the Plan caused by the Plan's reliance on ETD from the Group.

### **3. Electronic Enrollment Through Secured Website**

If the Group elects to submit enrollment and termination data through the Plan's secured website:

#### **a. Plan's Duties and Responsibilities**

- (1) The Plan will provide website access.
- (2) The Plan will accept data and process enrollment, status change and termination requests in accordance with the eligibility guidelines outlined in the [E]GA.

#### **b. Group's Duties and Responsibilities**

- (1) The Group will submit data only on eligible [Subscribers][and/or eligible Dependents] as outlined in the [E]GA.
- (2) Group will assure that the data submitted is accurate.
- (3) Group will assume responsibility for notifying the Plan when the group administrator or enrollment contact changes, so that the Plan can revoke that individual's website access. The Plan will revoke access within 5 business days of being notified. If the Group does not inform the Plan of any such change, the Group is responsible for any actions of a former group administrator or enrollment contact.

### **4. Notification of Termination of Coverage**

The Group will notify the Plan of the termination of a [Member's] Coverage not more than [15- 60] days after the [Member] is no longer eligible for Coverage.

## **E. [DISTRIBUTION OF MATERIALS]**

- 1. [Group shall handle and distribute enrollment materials in a timely manner and promptly provide to Plan the information necessary to administer this Agreement.] [Group's failure to provide information in a timely manner may substantially delay and/or jeopardize the enrollment of eligible Members.]
- 2. [Group shall distribute notices [to Members] that Group and/or Plan are legally required to provide (e.g., notices of a plan's preexisting condition exclusion, special enrollment rights, summary of benefits and coverage documents) in a timely manner and in accordance with all applicable laws.] [Any off-renewal changes require 60-days

advance notice to Members.][Group shall provide Plan with enough advance notice of any off-renewal changes, not to be less than [30-60] days, for Plan to meet its obligations under any applicable law and this Agreement.][Group shall indemnify Plan and hold Plan harmless from any damages, loss, action, claim or suit (including court costs and attorney's fees) arising from or related to its failure to provide such notices.]

3. [If Plan provides its enrollment and/or change forms ("Forms") and/or any summary plan descriptions, benefit summaries, summary of benefits and coverage, and/or comparison sheets ("Documents") in an electronic medium, and Group delivers Documents electronically to Members or includes Documents on the Group's internal intranet or by similar means or for similar purposes, Group agrees that:

[electronic access shall be limited to the Group's enrolling employees and covered employees and be restricted to a "read- only" or similar basis;]

[they will replace any hard-copy Forms that have been modified by Plan;]

[the hard-copy documents on file with Plan shall control in the event of any discrepancy;][and]

[the Group remains solely responsible for the content of the documents and all other legal requirements pertaining to them (e.g., distribution).]

4. [Plan shall create the Summary of Benefits and Coverage ("SBC") and provide to Group or its legal representative for Group, for distribution to Members within required timeframes.][Group shall distribute SBC to Members in manner, method and timeframes required under applicable law.][The information in the SBC and other Forms provided by Plan is based only on those services provided by Plan.][Group shall review and approve any Forms and the SBC provided by Plan prior to distribution.][Group's distribution of the Forms, SBC, or other materials indicates that Group has reviewed and approved the content of such materials.][In no circumstance will Members be charged for access to, or creation of the SBC. ][Plan shall [not] charge Group for the [printing][or][production]of the SBC.]

## F. PREMIUMS

### 1. Amount

The initial Premium Amounts payable for Coverage under this Agreement are set out in the [E]GA. To begin Coverage, the Group must pay the Total Estimated Premium Amount to the Plan. The Total Estimated Premium Amount is an estimate of that amount of money necessary to fund the required Premiums to cover the total number of Members whom the Group estimates will enroll in the Plan's Coverage. Payment of the Total Estimated Premium Amount and execution of the [E]GA is acceptance of this Agreement. The Coverage will not begin until the Plan receives the Total Estimated Premium Amount.

The Aggregate Premium is the Premium required to fund Coverage for all Members. Aggregate Premiums are shown on all Premium Statements.

The Plan may change the Premium amounts upon [30-60] days written notice to the Group at renewal if one of the following occur: (1) the Group's claim experience has materially changed; or (2) the demographics of the Members Covered by the Plan have materially changed, including their age, sex, industry, geographic area, family composition, or number of Members. The Plan may also change the Premiums upon [30-60] days written notice due to any changes having a direct and material impact upon the cost of providing Coverage to Members. This includes: fluctuations in the number of Members; changes in applicable laws or regulations including, but not limited to, an increase in the premium tax or mandated benefits applicable to such coverage. If the Group requests any changes to the Covered Services provided by the Plan, the Plan may change the Premium amounts on the effective date of any changes. In the event of termination or addition of a subsidiary, operation or class of [Subscribers] Covered by the Plan, the Plan may change the Premium amounts on the effective date of such termination or addition.

The Group may reject any revised Premium by terminating this Agreement as of the date that the revised Premiums would become effective. To do so, the Group must provide written notice of termination not less than [30-60] days prior to the date that revised Premium would first become payable pursuant to this Agreement.

## **2. Premium Statement**

The Plan will prepare and submit a [monthly] [quarterly] [semi-annually] [annually] Premium statement ("Statement") to the Group, listing: (1) Subscribers shown on its records; (2) type of Coverage selected by each Subscriber (e.g., individual, family, etc.); and (3) the Aggregate Premium payable to the Plan for providing access to benefits for all Members for the next billing period. The Plan will prepare this statement not less than [15-30] days prior to the end of each billing period this Agreement remains in effect.

The Group must pay the Aggregate Premium for anyone Covered or added during the billing period.

## **3. [Subscribers] Listed on Premium Statement and Terminations**

- a. A [Subscriber] [and his or her Covered Dependents] [Member] will not have Coverage if the [Subscriber] is not listed on the statement. Any such [Subscriber] [Member] [and his or her Covered Dependents] may still have coverage if:
  - (1) The Plan receives the Enrollment Form from the Group within [30- 60] days after [the earlier of]:
    - a. the date the Enrollment Form was executed; or
    - b. the end of the Open Enrollment Period during which the [Subscriber] [Member] is eligible to enroll in Coverageand

- a. the Group promptly submits the Enrollment Form; and
  - b. pays the applicable Premium to the Plan from the date that error occurred upon discovery of that error and a request for such payment from the Plan.
- b. The Group may terminate a [Subscriber's] [Member's] Coverage by submitting a termination request to the Plan. [It is the Group's obligation to verify that any retroactive termination requests are compliant with the Patient Protection and Affordable Care Act ("PPACA").][The Group will not request retroactive termination of a Member's Coverage for any time period during which the applicable premium was paid.]

The Plan will retroactively terminate a Member's Coverage to the extent allowed by law, if:

- (1) the Group notifies the Plan of a Member's termination from Coverage within [90-180] days after the Member's termination. The Plan will refund any remitted Premium.
- (2) the Group does not notify the Plan of a Member's termination from Coverage within [90- 180] days after the date of Member's termination. The Plan will only retroactively terminate the Member's Coverage for [90-180] days from the date of notice to the Plan. The Plan will not refund more than [3-6] months of Premium payments to the Group if it fails to notify the Plan of the termination of the Member's Coverage in a timely manner.

If after notification, the Plan fails to terminate that Member's Coverage; then, upon the Group's discovery of the Plan's failure to delete the Member, the Plan will:

- (1) terminate the Member's Coverage retroactively[.] [; and]
- (2) [credit the Group for Premiums paid during such time period when Coverage was retroactively terminated.]

#### 4. Determining Premium

On [approximately] [the] [first – thirtieth] [(1<sup>st</sup> - 30<sup>th</sup>)] [day] [of each month] [of each billing period], the [Plan] [Group] will determine the number of [Subscribers] [and/or] [Members] Covered under the Group's Coverage, and this will be the basis for the Premium [charged] [paid] by the [Plan] [Group] for the [following] [current] billing period. [The Group will submit [monthly] [quarterly] [semi-annually] [annually] a listing of [Subscribers] [Members] for the Plan to reconcile [Subscribers] [Members] covered under the Group's Coverage.] The following describes how the [Plan] [Group] will bill for adding and terminating Members:

##### a. Additions

- (1) [If a Subscriber [or Dependent] becomes Covered under the Group's Coverage after the fifteenth (15<sup>th</sup>) day of any billing period, and the Premium would be affected by this change, there will not be a partial Premium charge for that

billing period. The Group will pay Premium for that Subscriber for the first full billing period for Coverage.

- (2) If a Subscriber [or Dependent] becomes Covered on or before the fifteenth (15<sup>th</sup>) day of any billing period, and the Premium would be affected by this change, the Group will pay a full month's Premium for that billing period.]

[(1)If a Subscriber [or Dependent] becomes eligible under the Group's Coverage during the billing period, the Subscriber [or Dependent] is added on the first day of the next billing period following the date he or she becomes eligible for Coverage. Subscribers are not added during the billing period, unless they become eligible for Coverage due to a Qualifying Event.]

[(1)For certain classes of Members, as detailed in the [E]GA (or the [Employer] Group Application Change Form([E]GACF)):

- a. If a Subscriber [or Dependent] becomes Covered under the Group's Coverage after the fifteenth (15<sup>th</sup>) day of any billing period, and the Premium would be affected by this change, there will not be a partial Premium charge for that billing period. The Group will pay Premium for that Subscriber for the first full billing period for Coverage.
- b. If a Subscriber [or Dependent] becomes Covered on or before the fifteenth (15<sup>th</sup>) day of any billing period, and the Premium would be affected by this change, the Group will pay a full month's Premium for that billing period.

(2) For certain other classes of Members, as detailed in the [E]GA (or the [E]GACF):

- a. If a Subscriber [or Dependent] becomes eligible under the Group's Coverage during the billing period, the Subscriber [or Dependent] is added on the first day of the next billing period following the date he or she becomes eligible for Coverage. Subscribers are not added during the billing period, unless they become eligible for Coverage due to a Qualifying Event.]

#### **b. Subscriber Terminations**

- (1) [If a Subscriber's [or Dependent's] Coverage terminates before the fifteenth (15<sup>th</sup>) day of any billing period, and the Premium would be affected by this change, the Plan will credit the Group for the Premium for that Subscriber for that entire billing period. That credit will appear on the Group's next Premium Statement generated after the Plan processes the termination.

7

- (2) If a Subscriber's [or Dependent's] Coverage terminates on or after the fifteenth (15<sup>th</sup>) day of any billing period, and the Premium would be affected by this change, the Group will pay full Premium for that billing period.]

[(1) If a Subscriber's [or Dependent's] Coverage terminates during a billing period, and the Premium would be affected by this change, the Premium charged for that Subscriber's Coverage for the last billing period does not reduce.]

[(1) For certain classes of Members, as detailed in the [E]GA (or the [E]GACF):

- a. If a Subscriber's [or Dependent's] Coverage terminates before the fifteenth



(15<sup>th</sup>) day of any billing period, and the Premium would be affected by this change, the Plan will credit the Group for the Premium for that Subscriber for that entire billing period. That credit will appear on the Group's next Premium Statement generated after the Plan processes the termination.

- b. If a Subscriber's [or Dependent's] Coverage terminates on or after the fifteenth (15<sup>th</sup>) day of any billing period, and the Premium would be affected by this change, the Group will pay full Premium for that billing period.

(2) For certain other classes of Members, as detailed in the [E]GA (or the [E]GACF):

- a. If a Subscriber's [or Dependent's] Coverage terminates during a billing period, and the Premium would be affected by this change, the Premium charged for that Subscriber's Coverage for the last billing period does not reduce.]

### **c. Qualifying Event**

If a Member has been added or terminated as a result of a Qualifying Event, the addition or termination will be handled according to the statutory requirement for the Qualifying Event. Premiums will be determined in accordance with the provision outlined in Section E.4.a. and

E.4.b above.

## **5. Payment of Premium**

The Aggregate Premium is due in full at the Plan's office on or before the first day of each billing period.

After payment of the Total Estimated Premium Amount, subsequent payments have a grace period of [30-60] days following the Premium due date (the "Grace Period"). The Aggregate Premium may be paid to the Plan during that Grace Period without causing a lapse of the Group's Coverage. [If the Aggregate Premium is paid after the Grace Period, the Plan's acceptance or depositing of such funds shall not be construed to mean or equate to a guarantee of or acquiescence to reinstate Coverage, continue Coverage, or waive termination of Coverage by the Plan.]

[If the Group pays by check, the Group must remit the Aggregate Premium on or before the first day of each billing period.]

[If the Group pays electronically, the Group will transfer the amount specified in the statement into an account or the Plan's designated account so that such funds will be available through the ACH (Automated Clearing House) by the first day of each billing period.]

[There will be a charge for any checks for payment of premiums that are returned to the Plan for insufficient funds, closed accounts, or any other reason.]

## **6. Failure to Pay Premiums**

If the Aggregate Premium is not paid by the end of the Grace Period, the Plan, in its sole discretion, may: (1) notify the Group of such non-payment and termination date

of Coverage and terminate the Coverage back to the last Premium due date; or (2) work with the Group to arrange payment of the Aggregate Premium, for a period of up to [90-120] days. If the Group fails to pay the Premium, the Plan will be entitled to recover Plan Expenses. Plan Expenses include: (1) the total outstanding Aggregate Premium; (2) the finance charge set forth below; and [(3) a fee for any checks for payment of Premiums that are returned to Plan for insufficient funds, closed accounts, or any other reason;] and (4) any expenses reasonably incurred in recovering the amount owed to the Plan including attorney's fees.

If the Plan terminates the Coverage back to the last Premium due date, the Plan may recoup benefit payments from Providers.

The Group is still obligated to reimburse the Plan for any claims or charges which the Plan has to pay, as required by: (1) state or federal law; (2) [pharmacy benefit management agreement;] or (3) provider agreement, plus a reasonable administrative fee.

#### **7. Termination for Non-Payment of Premium**

If the payment received does not pay the Aggregate Premium, plus any other due charges in full, the Plan has the discretionary authority to terminate the Group's Coverage, or place an administrative hold on the Group. A payment of less than the full amount due will be deemed non-payment. [If the Group has access to pharmacy benefits through the Plan's pharmacy benefit manager, and its Members incur claims after the termination date of Coverage, the Group must reimburse the Plan for the cost of these services.]

#### **8. Reinstatement**

If this Agreement is terminated and the Group requests reinstatement, the Group must remit: (1) the total outstanding Aggregate Premium; (2) the applicable finance charge or fee; and (3) the Aggregate Premium for the current billing period. The Group must do so within fifteen (15) calendar days following the termination date. The Group may be reinstated by the Plan as though this Agreement had remained continuously in effect. The Plan reserves the right to decline to reinstate this Agreement, however, upon refunding the Aggregate Premium for the current billing period to the Group.

#### **9. Finance Charge**

The Plan may impose a finance charge of [one-five percent] [(1-5%)] per month. This applies to the amount of any Aggregate Premiums not remitted to the Plan on or before the first day of any billing period after the expiration of the Grace Period. This applies through the duration of this Agreement.

### **G. TERM**

The initial term of this Agreement is set forth in the [E]GA. The Agreement will automatically renew for an additional [12-24] month period unless terminated by the Group upon not less than [30-60] days advance written notice prior to the end of the Renewal Date. The Plan shall give the Group not less than [30-60] days written notice of any: (1) change in the Premium for providing Coverage to Members; (2) material changes in the Covered Services; or (3) other material changes in the provisions of this Agreement; that will become effective on a renewal date. Payment of the applicable Aggregate Premium on or after that date shall constitute acceptance of those changes by the Group, individually and on behalf of all Members.

## **H. TERMINATION OF AGREEMENT**

### **1. For Cause**

- a. If the Plan does not receive payment of any Aggregate Premium, when due, the Plan may terminate this Agreement in accordance with section D of this Agreement.
- b. Either party may terminate this Agreement, with or without prior notice, effective as of midnight prior to the date that the other party: (a) ceases doing business as a going concern; (b) makes an assignment for the benefit of creditors; (c) admits in writing that it is unable to pay debts as they come due; or (d) consents to the appointment of a trustee or receiver; or if a trustee or receiver is appointed pursuant to applicable Federal or State bankruptcy, insolvency, or similar laws.
- c. The Plan may terminate this Agreement, upon not less than [30-60] days prior written notice, if the Group fails to comply with a material Plan provision relating to the Group's contribution or group participation rules.
- d. Upon written notice, the Plan may terminate or rescind the Group's Coverage under this Agreement for fraud or misrepresentation by the Group of a material fact concerning the Group or a Member.
- e. Upon written notice, the Plan may terminate a Subscriber's [or] [Member's] Coverage under this Agreement for fraud or misrepresentation by the Group or the Member of a material fact concerning the Subscriber [or] [Member]. [Termination of a Subscriber's Coverage automatically terminates Coverage for all of his or her Dependents.]

### **2. For No Cause**

The Group may terminate this Agreement upon providing [10-31] days notice in advance of the requested termination date. The Plan, at its option may agree to allow the Group to retroactively terminate the Agreement. Should the Plan agree to a retroactive termination date, the Group is still obligated to reimburse the Plan for any claims or charges which the Plan has to pay, as required by:

(1) state or federal law; (2) [pharmacy benefit management agreement;] or (3) provider agreement, plus a reasonable

administrative fee.

10

The Plan may terminate the Agreement if it is ceasing to offer this Coverage in the market.

### **3. Because of Inability to Perform Obligations**

This Agreement may be immediately suspended or terminated by written notice to the other party if either party is unable to perform its obligations by reason of: (1) complete or partial destruction of facilities; (2) a material reduction in the number of Participating Providers; (3) lockout; (4) strike; (5) riot; (6) war; (7) act of God; or (8) by any ordinance, law, order or decree of any governmental authority. Neither party will be required to perform its duties nor be liable for any damages arising from the suspension or termination of this Agreement pursuant to this paragraph. The Plan shall refund any unearned Aggregate Premium to the Group for the period following the date of such suspension or termination of this Agreement.

The Plan, at its option may agree to allow the Group to retroactively terminate the Agreement. Should the Plan agree to a retroactive termination date, the Group is still obligated to reimburse the Plan for any claims or charges which the Plan has to pay, as required by: (1) state or federal law; (2) [pharmacy benefit management agreement;] or (3) provider agreement, plus a reasonable administrative fee.

### **4. Effect Upon Incurred Obligations**

The termination of this Agreement shall not relieve either party from any obligations incurred prior to the date of termination. The termination will not constitute an election of remedies by the terminating party. Any remedies available upon the termination of this Agreement will be cumulative.

If the Plan terminates the Coverage back to the last date through which the Group's Premium has been paid, the Plan may recoup benefit payments from Providers.

The Group is still obligated to reimburse the Plan for any claims or charges which the Plan has to pay, as required by: (1) state or federal law; (2) [pharmacy benefit management agreement;] or (3) provider agreement, plus a reasonable administrative fee.

[If the Group has access to pharmacy benefits through the Plan's pharmacy benefit manager, and its Members incur claims after the termination date of Coverage, the Group must reimburse the Plan for the cost of these services.]

### **5. Post Termination Premium Balances**

Within [30-120] days from the date the Plan is notified of the Group's Coverage termination, the Plan will conduct a final accounting. The final accounting will take into account all payments, funds transfers, etc, necessary to fulfill both parties' obligations under this Agreement.

If any outstanding payments, funds transfers, etc. due to the Plan or the Group total less than [\$25-\$100] when the Group's Coverage terminates: (1) the amount shall be forgiven; and (2) the parties agree that any financial obligation to the other party shall end.

## **6. Post Termination Reports**

Upon termination of this Agreement, the Group must pay charges for the cost of producing any report in advance of receiving the requested report. Among other things, this applies to post- termination audits, requests from replacement insurers or administrators, and requests from the Group itself.

## **I. CONTINUATION OF COVERAGE AND CONVERSION**

### **1. Continuation Coverage**

If a Member's Coverage terminates as the result of an event which permits that Member to elect to continue his or her Coverage in accordance with applicable Federal or State laws (a "Qualifying Event"), ("Continuation Coverage"), that Member will be entitled to remain Covered under this Agreement. The Member must comply with the requirements of the laws and pay the applicable Premium for the Coverage. Federal and state laws determine how long the Group is required to continue to provide Coverage to that Member. The EOC describes the terms and conditions of such Continuation Coverage in greater detail.

The Group will notify Members of their right to obtain Continuation Coverage following a Qualifying Event. The Group will collect and remit the Premium for the Coverage to the Plan. If Members do not enroll and pay the Premium for Continuation Coverage, on or before the date their Continuation Coverage would become effective, the Plan will terminate their Coverage. They may be reinstated if they subsequently enroll and pay the applicable Premiums within the enrollment period for Continuation Coverage specified by law. If the Group fails to notify a Member of his or her right to enroll for Continuation Coverage in accordance with applicable laws, the Plan will not extend the enrollment period beyond that required by law had the Group informed the Member of that right in a timely manner. The Plan may consent, in writing, to extend the enrollment period for Continuation Coverage for that Member.

### **2. [Conversion Coverage**

If Members are eligible to purchase individual conversion coverage from the Plan upon the termination of his or her Coverage under this Agreement, the Plan will offer those individuals the right to purchase the conversion coverage as outlined in the EOC.]

## **J. RELATIONSHIPS WITH OTHER PARTIES**

## 1. Between Network Providers and the Plan

The Plan may enter into agreements with health care providers, insurers, and any other individuals or entities, as it deems necessary to fulfill its obligations under this Agreement. Such parties are independent contractors. Network Providers are independent contractors who are solely responsible for any services rendered to their Member patients. The Plan makes no express or implied warranties or representations concerning the continued participation of any Network Provider. The Group acknowledges for itself and on behalf of Members that the Plan has established various arrangements to encourage Network Providers to render Covered Services in an appropriate and cost effective manner. Such arrangements include provider penalties.

## 2. Between the Group and the Plan

12

The relationship between the Plan and the Group is a contractual relationship between independent contractors. Neither party is a partner, joint venturer, agent or employee of the other when performing its obligations pursuant to this Agreement.

Nothing in this Agreement shall be construed to make the Plan a sponsor, administrator or fiduciary of the Group's [Employee] benefit plan pursuant to ERISA. The Plan is not and shall not be deemed to be a fiduciary of the Group's plan, except as necessary to exercise the discretionary authority granted to it by the Group in making authorization, eligibility and coverage determinations and construe the terms of Members' Coverage pursuant to this Agreement.

## K. [INDEMNIFICATION]

[The Plan hereby agrees to hold Group harmless against any vicarious liability actions, claims, lawsuits, settlements, judgments, and costs, including, but not limited to, attorneys' fees and court costs, arising directly from the gross negligence or wanton and reckless acts or failure to act by Plan, unless the cause of such liability was the result of the acts or failure to act of Group or resulted from direction given by Group, including, but not limited to, Group's submission of a request for a retro- termination of Coverage that does not comply with PPACA.] [The Group agrees to indemnify, defend, and hold harmless, Plan, its directors, officers, employees, and agents against any and all liability, actions, claims, lawsuits, settlements, judgments, costs, interest, penalties, expenses, and taxes, including, but not limited to, attorney's fees and court costs, resulting from or arising directly or indirectly out of, or in connection with, any actions, decisions, or failure to act by Group, including, but not limited to, any breach of this Agreement.]

[If the Group is a governmental entity, its liability is limited by the terms of and to the extent permitted by applicable law in the state of Tennessee, including the Tennessee Governmental Tort Liability Act.] [This provision shall survive the termination of this Agreement.]

## **L. [GROUP ADMINISTRATION ASSIGNMENT TO BROKER OR OTHER THIRD PARTY AND HOLD HARMLESS ARRANGEMENT**

If the Group has assigned some or all of those functions, as indicated below, to a third party and if the Group has appointed such third party to act on its behalf for those functions, the Group understands and agrees that the third party is the contractor and/or agent of the Group and not the Plan. This Group is responsible and shall hold the Plan harmless as a result of any actions resulting from such delegation and appointment. The Group affirms that it has properly executed a Business Associate Agreement (as defined in 45 CFR Part 160) with such third party.

### **1. [Third Party To Provide Enrollment Information**

If the Group has contracted with a third party to provide enrollment information to the Plan on the Group's [Members], the third party shall submit such enrollment information to the Plan in either paper or electronic form. The third party must submit the enrollment information using the Plan's approved forms or electronic guidelines. In the event the Group and the third party submit duplicate or conflicting information, the Plan will rely on the latest information provided.

If the third party submits such enrollment information to the Plan in electronic format (including but not limited to on-line enrollment via the web or other electronic media), then the Plan may provide a password for use by the third party in accessing the electronic system to provide enrollment information. If granted, this password is for the exclusive use of the third party and will expire, at the latest, when the Group's relationship with the third party expires. A separate and distinct password will be supplied to the Group. All access and activity to the electronic system will be monitored by the Plan. Such access may be limited or confined to certain information according to the agreement between the Group and the third party. The Plan reserves the right to block access to information contained in the electronic system.

The Group authorizes the Plan to accept such enrollment information. The Group shall be responsible for the validity and accuracy of the information provided to the Plan and shall indemnify and hold the Plan harmless from any and all liability, loss, damages, claims and expenses, including attorney's fees, as a result of the actions or inactions of the third party, including without limitation, any incorrect information provided.]

### **2. [Third Party To Receive Premium Statement and/or Make Premium Remittance**

If the Group has contracted with a third party to receive the Premium Statement and/or make premium remittances to the Plan, the Group understands that this does not relieve the Group from remittance of the amount due by the due date. The Group will be held responsible for the premium remittance. The Group will be responsible for any late fees or finance charges imposed for late payment. Any payment delinquency notices or coverage termination notices for non-payment of premium will

be sent to the third party for notice and delivery to Group Members.]

[The Group authorizes the Plan to send such Premium Statements to and receive and accept such premium remittances from the third party. The Group shall be responsible for the validity and accuracy of the information provided to the Plan and shall indemnify and hold the Plan harmless from any and all liability, loss, damages, claims and expenses, including attorney's fees, as a result of the actions or inactions of the third party, including without limitation, any incorrect information provided.]

[If the Group assigns other functions to the third party, this Agreement shall control the performance of those functions.]

[The Plan is not a party to the agreement between the Group and the third party. The Plan may refuse to accept information from the third party.]

[The Plan shall make reasonable accommodation to assist the Group in the administration of its assigned duties and responsibilities.]

[With regard to Electronic Protected Health Information (as defined in 45 CFR Parts 160 and 162 ("Security Standards")), the Group shall:

- (i) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic Protected Health Information that the Group creates, receives, maintains or transmits as required by the Security Standards;
- (ii) ensure that any agent, including third party or any subcontractor to whom the Group provides such information agrees to implement reasonable and appropriate safeguards to protect it;
- (iii) report to the Plan any Security Incident (as defined in the Security Standards) involving the Group's data of which the Group becomes aware within seven (7) days of the Security Incident.]

[This section will take effect on the effective date of the [Agreement] [third party arrangement] and will end on the earlier of:

The date the Group's Plan terminates.

The date the Group notifies the Plan in writing 31 days of the termination of such agreement that it has terminated the relationship with the third party.

The information provided is consistently unusable by the Plan in the administration of the Group's Plan.

The information provided is not in the format required by the Plan.

The inability of the third party to perform obligation(s) of the agreement between it and the Group.]

[Any password provided to the third party will be blocked when this arrangement terminates. Any notice required to be sent to either the Plan or the Group may be sent to the address of that party as shown in this Agreement or its attachments.]



## **M. DISPUTE RESOLUTION**

The Group may agree that any dispute related to this Agreement must be submitted to non-binding arbitration. Unless the parties otherwise agree, such arbitration shall be conducted in accordance with applicable rules of the American Arbitration Association (“AAA”) and the Tennessee Uniform Arbitration Act.

The arbitrator shall be required to issue a reasoned opinion explaining the basis of the decision and the manner of calculating any award. The arbitrator may not award punitive or exemplary damages and must base the decision on the terms of this Agreement and applicable law. Once the parties agree to accept the arbitrator’s decision, it may be entered and enforced in any state or federal court. Once it has been agreed to by the parties, that decision may only be vacated, modified or corrected for the reasons set forth in section 10 or 11 of the Tennessee Uniform Arbitration Act, if the award contains material errors of law or is arbitrary and capricious.

Upon completion of arbitration, the parties may pursue other available legal remedies.

## **N. Plan’s Right to Audit**

The Plan has the right to randomly audit for participation and eligibility requirements. This audit will take place no more than twice a year.

The Plan has the right to randomly audit if misrepresentation or fraud is suspected.

The Group shall have the right to review the Plan’s audit for participation and eligibility requirements to verify We have conducted the audit according to the Plan’s guidelines.

## **O. Group’s Right to Audit**

During the term of this Agreement, the Group may perform a simple audit of the Plan once during the calendar year while this Agreement is in force. The Group has the right to audit the Plan’s claims payment, eligibility, enrollment and termination services. Any such audit may be conducted up to two years after the affected plan year.

1. If the Group uses the services of a third party to perform all or any part of an audit, the Group and that third party must both execute the Plan’s current audit agreement.
2. The Group’s right to audit the Plan without any additional charge terminates with the termination of this Agreement.
3. [The parties agree that the Group shall not hire a third party to conduct a contingent fee audit, where the third party’s compensation is based on a percentage of errors (or savings, or “uncovered recoveries”, etc.) which may be found by the third party in its audit. Should the Group err and so contract with a third party to perform such contingent fee audit, the Plan has no obligation under

the terms of this Agreement to cooperate with said third party in the conduct of such contingent fee audit.]

The Plan shall have the right to review the Group's audit for claims payment, eligibility enrollment and termination services.

## **P. MISCELLANEOUS**

### **1. [Information Request from Plan]**

[Group shall promptly provide Plan with any and all information requested by Plan for the purposes of Plan's compliance with any state or federal law or regulation, including, but not limited to Group's Premium Contribution Rate and amount.]

[GROUP MUST IMMEDIATELY NOTIFY PLAN OF ANY AND ALL CHANGES IN GROUP'S PREMIUM CONTRIBUTION RATE AND CONFIRM THE CONTRIBUTION RATE AT RENEWAL.]

### **2. [Premium Rebates]**

[If Plan is required by law to provide a premium rebate to Group's [Subscribers] [Members] [and former Subscribers], [Plan, in its sole discretion, will choose one of the following methods of distribution, as allowed by law:]

- a. [Plan will distribute the required rebate to Group and Group will distribute the rebate to its [Subscribers] [Members] [and former Subscribers] on behalf of Plan, [as directed by Plan in such a manner as to comply with applicable laws]. [The distribution will be made on a pro-rata basis based upon each [Subscriber's] [Member's] [and former Subscriber's] contribution to the premium being rebated]. The rebate must be paid no later than August 1 of the year in which the rebate is owed. For rebates paid after August 1, Group agrees to pay interest in the amount of the current Federal Reserve Board lending rate or ten percent annually, whichever is higher, accruing from August 1 of the year in which the rebate is owed. Group will make a good faith effort to locate and deliver rebates to [Subscribers] [Members] [and] [former Subscribers] and, if despite such effort, Group cannot locate a [Subscriber] [Member] [or] [former Subscriber], then Group will comply with applicable state law regarding unclaimed funds. Group shall maintain, for a minimum of [7-10] years, accurate records verifying that such premium rebates were processed and refunded in accordance with applicable laws. Such records shall include the amount of premium rebate paid to each [Subscriber] [Member] [and former Subscriber], the amount of premium paid by each [Subscriber] [Member] [and former Subscriber], any amount of premium rebate retained by Group, and the amount of any unclaimed rebate and how it was distributed. Group shall make such records available to Plan immediately upon request. Group shall make appropriate notification to appropriate federal and state agencies and each payment will be accompanied by the appropriate federal or state documentation, e.g. Form 1099; [or,]
- b. [Group will provide Plan with any information that is necessary for Plan to pay the rebates to [Subscribers] [Members] [and former Subscribers] in accordance with

applicable law, including, but not limited to information relating to premium contribution amounts and contact information. If Group fails to provide Plan with premium contribution information that is necessary to calculate a rebate to [Subscribers] [Members] [and former Subscribers] on a pro rata basis based on the percentage of premium paid, Plan will distribute 100% of the rebate for Group's coverage to [Subscribers] [Members] [and former Subscribers], without regard to the pro-rata share of the premium contribution made by Group and Group waives any claim it has to a share of the rebate.]]

[To the extent applicable, if Group is a non-ERISA and a non-governmental benefit plan, Group shall distribute the employee contribution portion of any MLR rebate to employees in a method consistent with applicable laws and Federal regulations or guidance. If Group decides to use or distribute the rebate in a different manner than the one agreed to above, Group shall notify Plan of such decision, in writing, and any MLR rebate due Group will be paid directly to Subscribers instead, as required by PPACA and other applicable laws.]

### **3. Entire Agreement**

This Agreement, including the [E]GA, the EOC, any Riders, and any Amendments, Attachments or Exhibits, constitute the entire agreement between the parties. It supersedes all prior oral or written understanding or agreements between the parties.

### **4. Effective Date of This Agreement**

This Agreement will be effective as of the date indicated after the Plan accepts the [E]GA and accepts the Total Estimated Premium Amount. The Group's execution of the [E]GA and payment of the Total Estimated Premium Amount will be its acceptance of this Agreement. Upon execution by the Plan, the [E]GA will be the signature page of this Agreement.

### **5. Renewals**

The parties may agree to extend the term of this Agreement. The Group will indicate its acceptance of any change in terms of the Agreement by the payment of the next due Aggregate Premium.

### **6. Amendments**

This Agreement may be amended, in writing, by an authorized representative of both parties. The Plan may also amend the Agreement, upon notice to the Group, as necessary to comply with: (1) applicable laws; (2) regulations; or (3) lawful orders of governmental agencies. Only an officer of the Plan has the authority to: (1) modify this Agreement; (2) waive any of its provisions; or (3) extend the time for taking any action required by this Agreement.

**7. Claim Adjudication**

The Plan adjudicates claims in accordance with its internal administrative guidelines. Any rebates or refunds on Member's Covered Services are credited against the Group's experience for rating purposes.

**8. Clerical Errors**

Clerical errors will not change the rights or obligations of either party under this Agreement. They also will not grant additional benefits to Members. The parties shall cooperate, in good faith, to promptly correct such errors.

**9. Waiver**

The terms or conditions of this Agreement may only be waived by express written consent of the party from whom such a waiver is requested. Any waiver of a breach of any provision shall not constitute a waiver of any subsequent breach of the same or any other provision of this Agreement.

**10. Assignability**

No rights or duties under this Agreement are assignable by the Group to any other party unless the Plan consents to such assignment in writing.

**11. Notices**

Any notice required or permitted under this Agreement shall be in writing. Such notice will be deemed to have been given on the date when delivered to the other party's most recent address: (1) in person; or (2) by certified or overnight mail, return receipt requested. Notice from the Plan to the Group will be deemed to be notice to all Members.

**12. Third Parties**

This Agreement will not confer any rights or obligations on third parties except as specifically provided herein.

**13. Construction**

This Agreement will be construed without regard to the party that drafted it. Any ambiguity will not be interpreted against either party but will, instead, be resolved in accordance with other applicable rules concerning the interpretation of contracts.

**14. Governing Law and Severability**

This Agreement is executed and is to be performed in accordance with applicable federal and Tennessee laws. If any provision of this Agreement is deemed to be invalid or illegal by a court or regulatory agency having jurisdiction over such matters, the surviving provisions of this Agreement shall remain in effect unless the severance of that provision shall deprive a party of the material benefits of this Agreement.

#### **15. Legal Action**

No action at law or in equity shall be brought to recover on this Agreement until 60 days after written proof of loss has been furnished as required by this Agreement. No such action shall be brought beyond 3 years after the time written proof of loss is required to be furnished.

#### **16. Confidentiality**

The parties acknowledge that this Agreement and information provided to the other party that is identified as confidential information, including, but not limited to, reimbursement information, group membership lists, marketing information and information obtained from and/or about the Plan ("Confidential Information"); shall be treated as confidential, proprietary or trade secret information. A party may release Confidential Information to providers or its affiliates, or their respective directors, partners, officers, employees, advisors and other representatives ("Representatives") who: have a need to know such Confidential Information, for purposes of their participation in or oversight of matters within the scope of this Agreement; and are under a duty or obligation of confidentiality at least as restrictive as those set forth in this Agreement. Each party shall advise its Representatives of their obligation to maintain the confidentiality of such information. Each party is responsible if its Representative breaches this Section. Neither party shall otherwise release nor disclose such Confidential Information to third parties without the other party's prior written consent, except as required by law. This paragraph shall survive the termination of this Agreement.

Notwithstanding anything herein to the contrary, the following shall not constitute Confidential Information for the purposes of this Agreement: (a) Confidential Information that is or becomes generally available to the public other than as a result of a disclosure by a party or its Representatives;

(b) Confidential Information that was available to the parties on a non- confidential basis prior to its disclosure by a party or its Representatives; or (c) Confidential Information that becomes available to the parties on a non- confidential basis from a third party, provided that third party is not known to be subject to any prohibition against transmitting that information.

#### **17. [Creditable Coverage Statements]**

[Group will provide Creditable Coverage statements to formerly covered Members. In doing so, Group hereby affirms that it follows the requirements set out in federal

and state law. Group agrees to indemnify and hold the Plan harmless for any penalty and/or damages assessed against the Plan for Group's failure to follow federal and state requirements. The Plan may audit the Group's process at any time.]

[The Plan will provide Creditable Coverage statements to formerly covered Members.]

-

**18. Other Acceptable Forms of this Document and its Attachments.**

The following shall have the same legal effect as an original: facsimile copy, imaged copy, scanned copy, and/or an electronic version, including a digital or electronic signature.