**THIS NETWORK-CARRIER AGREEMENT** (“Agreement”) is entered into and effective as of \_\_\_\_\_\_\_\_\_, \_\_ 2019 (the "Effective Date"), by and between Prime Health Services, Inc. ("PHS"), a Tennessee corporation, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“CARRIER"), a \_\_\_\_\_\_\_\_\_\_\_\_ corporation (each a “Party” and collectively the “Parties”).

**Whereas** PHS has established a certified Workers’ Compensation Health Care Network in Texas (the “PHS Texas HCN”), which must operate under a written contract with an Insurance Carrier;

**Whereas** this Agreement includes the language required by Applicable Law to be in a Workers’ Compensation Health Care Network’s contract with an Insurance Carrier;

**Whereas** CARRIER is an Insurance Carrier that desires to have the PHS Texas HCN manage and arrange for Covered Persons’ access to Health Care Provider services for Compensable Injuries;

**Now, therefore**, in consideration of the mutual covenants and promises herein, the receipt and sufficiency of which are hereby acknowledged, PHS and CARRIER agree as follows:

**1.0 DEFINITIONS.** The below terms have the following meanings herein according to Applicable Law:

* 1. **“Applicable Law”** means applicable federal or state statutory and regulatory requirements, including rules governing the certification and operation of Networks, including, but not limited to: Title 5 of the Texas Labor Code, Title 28 of the Texas Administrative Code (TAC), Chapter 1305 of the Texas Insurance Code (TIC), and any other requirement of the Texas commissioner or commissioner of workers’ compensation under which PHS is certified and under which Insurance Carriers and Covered Persons will access workers’ compensation-related health care services.
	2. **“Compensable Injury”** means an injury that arises out of and in the course and scope of employment for which compensation is payable under the Texas Workers’ Compensation Act.
	3. **“Covered Person”** means any injured employee or person with Compensable Injuries seeking services under the PHS Texas HCN.
	4. **“Health Care Practitioner”** means: (i) an individual who is licensed to provide or render and provides or renders health care; or (ii) a non-licensed individual who provides or renders health care under the direction or supervision of a doctor.
	5. **“Health Care Provider”** or **“Participating Provider”** means a health care facility or Healthcare Practitioner contracted with the PHS Texas HCN to provide services for Compensable Injuries to Covered Persons under the terms of the PHS Texas HCN and Applicable Law.
	6. **“Insurance Carrier”** means one of the following: (i) an insurance company; (ii) a certified self-insurer for workers' compensation insurance; (iii) a certified self-insurance group under Chapter 407A; or (iv) a governmental entity that self-insures, either individually or collectively.
	7. **“Network” or “Workers’ Compensation Health Care Network”** means an organization that is: (i) formed as a Health Care Provider network to provide healthcare services to injured employees; (ii) certified in accordance with TIC Chapter 1305 and rules of the commissioner of insurance; and (iii) established by, or operates under contract with, an Insurance Carrier.
	8. **“Transfer of Risk”** per TIC § 1305.004(a)(26) means an Insurance Carrier's transfer of financial risk for the provision of health care services to a Network through capitation or other means.
	9. **“Treating Doctor”** means the doctor who is primarily responsible for the employee's health care for a Compensable Injury. PHS’s Treating Doctors are those Health Care Practitioners who specialize in internal medicine, general practice, family practice, and occupational medicine.

**2.0 NETWORK RESPONSIBILITIES**

* 1. **Contract Requirements.** In order to provide healthcare services to employees, PHS must operate under a written contract with an Insurance Carrier. CARRIER and PHS may negotiate the functions that PHS will provide, except that PHS’s role as the Network shall be to contract with Health Care Providers for the provision of healthcare services and to perform functions related to the operation of a quality improvement program and credentialing—in accordance with TIC Chapter 1305—and any other services or functions that CARRIER delegates, including functions delegated to a management contractor, subject to CARRIER’s oversight and monitoring of the PHS Texas HCN’s performance. Any PHS Texas HCN contract with a Health Care Provider, Insurance Carrier or other third party must comply with all applicable statutory and regulatory requirements under federal and state law.
	2. **Delegated Functions.** Any agreement by which PHS delegates any function of its Network operation to a management contractor or any third party must be in writing and must require the delegated third party or management contractor to be in compliance with and subject to all requirements of 28 TAC Chapter 10 and TIC Chapter 1305, Subchapter D. The management contractor or third party is subject to CARRIER’s and PHS’s oversight and monitoring of its performance. If the management contractor or third party fails to meet monitoring standards established to ensure that functions delegated to the management contractor or third party under the delegation contract are in full compliance with all Applicable Law, then CARRIER or PHS may cancel the delegation of any or all delegated functions. PHS and any management contractor or third party to which the PHS Texas HCN delegates a function must perform all delegated functions in full compliance with all requirements of the Workers’ Compensation Health Care Network Act, TIC Chapter 1305, the Texas Workers' Compensation Act, Labor Code Title 5 Subtitle A; and rules of the commissioner or the commissioner of workers' compensation.
	3. **Direction of Information.** PHS and any management contractor or third party to which the PHS Texas HCN delegates a function must provide all necessary information to allow CARRIER to provide the information to employers or employees as required by TIC § 1305.451 and 28 TAC § 10.60 (relating to Notice of Network Requirements; Employee Information).

2.4 **Data Reporting to CARRIER.** The PHS Texas HCN will provide CARRIER, at least monthly and in a form usable for audit purposes, the data necessary for CARRIER to comply with the reporting requirements of the Texas Department of Insurance and the Division of Workers' Compensation with respect to any services provided under this Agreement, as determined by commissioner rules. Such data provided by the PHS Texas HCN must include the following:

1. last name, first name, date of injury, date of birth, sex, address, telephone number and

 social security number of each Covered Person who is being served by the PHS Texas HCN, and the name and license number of the Covered Person's Treating Doctor;

1. initial date of healthcare services delivered by the PHS Texas HCN for each employee; and
2. any other data, as determined by the Parties, necessary to assure the proper monitoring of functions delegated to the PHS Texas HCN by CARRIER.

CARRIER, PHS, any management contractor, and any third party to which the PHS Texas HCN delegates a function must comply with the data reporting requirements of the Texas Workers' Compensation Act and rules of the commissioner or commissioner of workers' compensation.

* 1. **License Numbers.** The PHS Texas HCN will provide CARRIER and the Texas Department of Insurance with the license number of a management contractor or any delegated third party performing any function that requires a license under the Insurance Code or any other insurance law of the State of Texas, including a license as a utilization review agent under TIC Chapter 4201.
	2. **Hold Harmless; No Recourse Against Covered Persons**. PHS, a management contractor, a third party to which the PHS Texas HCN delegates a function, and PHS's Participating Providers are prohibited from billing or attempting to collect any amounts from a Covered Person for healthcare services for Compensable Injuries under any circumstances, including the insolvency of CARRIER or PHS, except as provided by TIC § 1305.451(b)(6) (relating to when an employee obtains health care from non-network providers without Network approval where CARRIER may not be liable, and the employee may be liable, for payment for that health care).
	3. **Complaints.** The PHS Texas HCN has implemented and maintains a complaint system that provides reasonable procedures to resolve oral or written complaints, including a process for notice and appeal, in accordance with the requirements of TIC § 1305.401 and 28 TAC § 10.120 (relating to Complaint System Required). The PHS Texas HCN must make complaint logs and complaint files available to CARRIER upon request to the extent permitted by law.
	4. **No Transfer of Risk.** This Agreement and any PHS Texas HCN contract with a provider, management contractor or other third party shall not be interpreted to involve a Transfer of Risk.
	5. **Managing Contractors – Third Party Vendors**. PHS requires that any third party with which it contracts, whether directly or through another third party, must permit the commissioner to examine at any time any information the commissioner believes is relevant to the third party's financial condition or the PHS Texas HCN’s ability to meet its responsibilities in connection with any function that the third party performs or has been delegated.
	6. **Credentialing.** PHS requires that Participating Providers are credentialed and subject to full re-credentialing at a minimum of every three (3) years pursuant to PHS’s Credentialing Policies, then current URAC guidelines, and guidelines of the State of Texas in 28 TAC § 10.82.
	7. **Retaliatory Action.** PHS will not engage in retaliatory action, including termination of or refusal to renew a contract because CARRIER or a provider has, on behalf of a Covered Person, reasonably filed a complaint against or appealed a decision of the PHS Texas HCN or requested reconsideration or independent review of an adverse determination.

**3.0 RESPONSIBILITIES OF CARRIER.**

3.1 **CARRIER Compliance**. CARRIER retains the ultimate responsibility for ensuring all delegated functions and all management contractor functions are performed in accordance with Applicable Law. This Agreement may not be construed to limit in any way CARRIER's responsibility, including financial responsibility, to comply with all statutory and regulatory requirements.

* 1. **Contingency Plan.** Any PHS Texas HCN contract with a Health Care Provider or third party must allow the PHS Texas HCN to effect a contingency plan in the event that CARRIER or PHS must reassume functions of the Network as contemplated under TIC § 1305.155. Exhibit A of this Agreement includes the contingency plan under which the PHS Texas HCN would, in the event of termination of an agreement or a failure to perform, reassume one or more functions of the PHS Texas HCN under the Agreement, including functions related to: (i) provider payments and employee notifications, as applicable; (ii) quality of care; (iii) utilization review; (iv) continuity of care, including a plan to identify and transition employees to new providers; and (v) collecting and reporting the data necessary to comply with reporting requirements of 28 TAC § 10.41(a)(7) as described in Section 2.4 above.

* 1. **Compensation, Billing and Claims Processing.** CARRIER acknowledges and agrees that under no circumstances will PHS be responsible for making any payments for services to any provider or Health Care Provider. Any payment made by CARRIER to a Participating Provider shall be at the contracted rate for that health care service provided through the PHS Texas HCN and as required under Labor Code 408.027 and TIC Chapter 1305. CARRIER must pay, reduce, deny, or determine to audit the Health Care Provider's claim not later than the 45th day after the date of receipt by CARRIER of the claim. CARRIER may request additional documentation necessary to clarify the Health Care Provider’s charges at any time during the 45-day period, and upon such a request, the Health Care Provider must provide the requested documentation not later than the 15th day after the date of receipt of CARRIER's request. CARRIER shall notify in writing a Health Care Provider if CARRIER contests the compensability of the injury for which the Participating Provider provides healthcare services. CARRIER may not deny payment for healthcare services provided by a Participating Provider before that notification on the grounds that the injury was not compensable.  Payment for medically necessary healthcare services provided prior to written notification of a compensability denial is not subject to denial, recoupment, or refund from a Participating Provider based on compensability.  If CARRIER successfully contests compensability, CARRIER is liable for healthcare provided before issuance of such notification (pursuant to TIC § 1305.153), up to a maximum of $7,000.
	2. **Denial of Treatment.** The PHS Texas HCN or CARRIER may not deny treatment solely on the basis that a treatment for a Compensable Injury in question is not specifically addressed by the treatment guidelines used by CARRIER or the PHS Texas HCN.
	3. **Legal Compliance.** PHS and CARRIER each represent and warrant that (i) it has obtained all regulatory approvals and licenses necessary to perform under the terms and conditions of this Agreement, and (ii) it is in compliance with all Applicable Laws, and each Party covenants to remain in compliance with such Applicable Laws during the term of this Agreement.

**4.0 TERM AND TERMINATION**

4.1 **Term**. This Agreement will commence on the Effective Date and its initial term will continue in effect until the next December 31. Thereafter, this Agreement will be automatically renewed for successive one-year terms ending on December 31st of each year.

4.2 **Termination With Cause**. Pursuant to Applicable Law, this Agreement must be terminated immediately if cause exists. The terminating Party must notify the other Party of this fact in writing via certified mail, wherein the cause of such termination must be clearly stated.

4.3 **Termination Without Cause**. Pursuant to Applicable Law, this Agreement may not be terminated without cause by either Party without giving at least 90 days’ prior written notice to the non-terminating Party.

4.4 **Procedure Upon Termination**. If this Agreement is terminated by either Party for any reason, all rights and obligations hereunder shall cease, with the exception of: (i) those provided in this Section 4; (ii) those arising out of any indemnification provision herein; and (iii) those that have accrued as a result of this Agreement and in accordance with TIC Chapter 1305. CARRIER shall remain liable for payment to Participating Providers pursuant to the terms of this Agreement, including without limitation the terms of the compensation system in effect at termination, for Compensable Injuries furnished subsequent to such termination.

1. **INDEMNIFICATION AND INSURANCE**

5.1 **Indemnification by the Parties**. Each Party shall indemnify, defend and hold harmless the other Party from and against, and in respect to, any and all second and third party liabilities, including reasonable attorneys' fees, that the other Party shall incur or suffer, which arise out of, result from or relate to any breach of any of the indemnifying Party’s representations, warranties, covenants or guarantees under this Agreement or in any schedule, certificate, attachment, or other instrument furnished or to be furnished under this Agreement except as such legal defense is required in accordance with the guidelines found in TIC Chapter 1305.

5.2 **Legal Defense**. PHS shall not be responsible for the defense of any legal action arising out of any claim for payment. CARRIER agrees to defend, indemnify, and hold harmless PHS from any such claim. PHS agrees to cooperate with CARRIER by furnishing such evidence as it has available connected to the defense of any such action. CARRIER and PHS shall notify each other promptly in writing of any changes in their respective ownership, any legal, administrative, or governmental actions initiated against them, or any other problem or occurrence which could materially affect their ability to perform the duties and obligations under this Agreement.

**6.0 CONFIDENTIAL AND PROPRIETARY INFORMATION, TRADEMARKS AND COPYRIGHTS**

6.1 **Confidential and Proprietary Information**. "Confidential and Proprietary Information" means certain non-public information disclosed in confidence by one Party to the other and includes, but is not limited to, information concerning utilization review and case management; credentialing; patient care and finances; marketing and financial information, including earnings, volume of business, pricing methods, systems, practices and strategic plans; and other commercially valuable information, including network data, mailing lists, client lists, patient lists, and programmatic information; and related documents.

A Party disclosing Confidential and Proprietary Information to the other Party shall at all times own all such information disclosed by it, and the Party to which the Confidential and Proprietary Information is disclosed will use its best efforts, consistent with the manner in which it protects its own Confidential and Proprietary Information, to preserve the confidentiality of any such information which such Party knows or reasonably should know that the other Party deems to be Confidential and Proprietary Information. Neither Party may use for its own benefit or disclose to third parties any Confidential and Proprietary Information of the other Party without the other Party's prior written consent, except as required by Applicable Law or court order. PHS’s Texas HCN data shall not be passed to another Network without PHS’s written consent.

6.2 **Trademarks**. Neither Party may use the other Party’s name, symbol, trademark or service mark in promotional materials or otherwise without the other Party’s prior written consent unless agreed to herein. Each Party grants the other Party the right to use its name, address and telephone number in connection with its obligations under this Agreement. CARRIER grants PHS the right to use its name and savings information in PHS’s newsletters and website.

6.3 **Medical Records**. The Parties shall maintain the confidentiality of medical records of Covered

Persons to the extent required by Applicable Law. Neither Party shall be in breach of this Agreement for failure to supply information from medical records which cannot be supplied due to prevailing law, or for supplying such information required to be disclosed under prevailing law. The Parties agree to comply with all Applicable Law regarding confidentiality of patient records, including federal regulations promulgated under the Health Insurance Portability and Accountability Act ("HIPAA") and HITECH, as they may be amended from time to time.

* 1. **CARRIER Records**. CARRIER shall maintain all information and records in its possession related to the participation of Covered Persons under the PHS Texas HCN workers’ compensation program, including records relating to services provided and payments to Participating Providers. PHS and its designated representatives shall have the right to inspect, review and make copies of such records upon request to facilitate medical care management, to aid in the performance of its various financial and administrative activities and to assure that Participating Providers have been paid according to the terms of this Agreement.

**7.0 GENERAL PROVISIONS**

7.1 **Governing Law**. For the purpose of governing the PHS Texas HCN, this Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas.

7.2 **Independent Contractors**. No provision of this Agreement is intended to create any relationship between PHS and CARRIER other than that of independent entities contracting with each other solely for the purposes of performing this Agreement.

7.3 **Amendments**. PHS and CARRIER must agree in writing to any amendments to this Agreement.

7.4 **Severability**. If any portion of this Agreement is, for any reason, invalid or unenforceable, such portion shall be ineffective only to the extent of any such invalidity or unenforceability, and the remaining portions shall be valid, enforceable and of full force and effect.

7.5 **Waiver**. The waiver by a Party of any breach of, or failure to insist upon strict compliance with, any provision herein, shall not be construed as a waiver of a subsequent breach of or failure of strict compliance with the same or other provision. Failure to exercise any right shall not operate as a waiver of such right. All rights and remedies provided for herein are cumulative.

**IN WITNESS WHEREOF**, the undersigned Parties have executed this Agreement as of the day and year first above written.

 **CARRIER Prime Health Services, Inc.**

 **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 331 Mallory Station Rd
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Franklin, TN 37067**

 By: By:

 Brian A. Sharp

 Title: CEO

 Date: Date:

**Exhibit A**

**Sample Contingency Plan**

In the event that the PHS Texas HCN has delegated any function to an Insurance Carrier or third party, there must be a written contingency plan to document how the Network would reassume all delegated job functions.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| WHAT | ACTION TAKEN | HOW IS ACTION TAKEN? | WHO IS RESPONSIBLE? | DUE DATE | DATE COMPLETED | Initials |
| Delegation terminates | Notification of: carrier, program directors, QI prog., TDI if applicable | By phone, email, fax, mail | VP of Network Mgmt, Dorrence Stovall | Within 2 business days |  |  |
| Notify affected parties | Notify any client affected of the name of the company that will take over the delegated function and inform all clients of new contact info.  | By phone, email, fax, mail | CEO/President, COO, VP of Network Management(will assign staff as needed) | Within 5 business days |  |  |
| Request reports / documentation | Request files returned regarding members previously dealt with under the network plus member records that will assist in re-assigning case mgmt. | By phone, email, fax | Vice President of Network Management  | Request will be made within 1 business day  |  |  |
| Assign staff to assume responsibilities | Adjust staff assignments to have an adequate number to be able to efficiently notify and inform clients. | Meet to ensure employees/clients are minimally affected by the change | President/CEO & Chief Operating Officer | Within 2 business days |  |  |
| Training of new staff | Once staff is selected, train them to notify clients and give information to clients regarding the changes being made. | Meetings, live training, step-by-step info sessions | Managers assigned to each team, including all lower level Vice Presidents | Within 3 business days |  |  |
| Follow-up reporting of assumed duties | Each manager will be assigned a team that meets each morning to go over their questions/ logs/lists until the transition is complete. | Meetings, phone, email | Each assigned manager | Each day until transition is complete |  |  |
| Decide to re-contract function | Network will re-contract immediately and permit injured employees to continue to select doctors in the manner provided by Labor Code § 408.022. | Meet with new third party after setting up meeting in initial phone call | CEO/Presidentand VP of Network Management  | Within 5 business days |  |  |
| Pre-delegation Audit | Review all records received.  | Trained staff | VPs & Managers supervise staff  | Within 5 business days |  |  |
| Delegation Agreement to new third party | Get new contract with the alternate company already determined. | Meetings, email | Legal department | Within 5 business days  |  |  |