

AGREEMENT TO PROVIDE ADMINISTRATIVE SERVICES FOR THE EARLY RETIREE REINSURANCE PROGRAM

1. Purpose

This agreement (the “**Agreement**”) is made as of June 1, 2010 (the “**Effective Date**”) by and between _____ (“**Sponsor**”) and Comprehensive Care Services, Inc., (d/b/a “BlueLink TPA”), a third party administrator employed by Sponsor to provide services for Sponsor’s health plan, for the purpose of delineating the terms and conditions under which BlueLink TPA will provide services related to Sponsor’s participation in the early retiree reinsurance program (the “**Program**”) administered by the Department of Health and Human Services.

2. Definitions

A. The terms “Certified,” “Claim,” “Employment-Based Plan,” and “Health Benefits” shall have the same meanings as in 45 C.F.R. § 149.2.

B. The term “Chronic and High-Cost Condition” means any condition for which \$15,000 or more in Health Benefits claims are likely to be incurred during a plan year by one Employment-Based Plan participant.

C. The term “HHS” means the United States Department of Health and Human Services, and references to HHS include the Secretary of HHS or the Secretary’s designee.

D. The term “HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as amended.

E. The term “Program” means the Early Retiree Reinsurance Program established in Section 1102 of the Patient Protection and Affordable Care Act and implementing HHS interim final rule at 45 C.F.R. Part 149.

F. The term “Program-Eligible Individual” means an individual who is age 55 or older, enrolled for Health Benefits in a Certified Employment-Based Plan, not eligible for coverage under Medicare (Title XVIII of the Social Security Act), and not an active employee of Sponsor, as well as such individual’s enrolled spouse, surviving spouse, and dependents (if applicable).

G. The term “Program Requirements” means the requirements of 45 C.F.R. Part 149, and any administrative guidance there issued.

H. The term “Negotiated Price Concession” means any direct or indirect remuneration (including discounts, direct or indirect subsidies, charge backs or rebates, cash discounts, free goods contingent on a purchase agreement, up-front payments, coupons, goods in kind, free or reduced-price services, grants, or other price concessions or similar benefits), received by the Sponsor or BlueLink TPA, that would serve to decrease the costs incurred under the Employment-Based Plan.

3. Term and termination

A. Term. The term of this Agreement will commence on the Effective Date and will continue until federal funding from the Program is exhausted or the Agreement is terminated. The Agreement will be renewed automatically for successive one (1) year terms.

B. Termination of Agreement. The Agreement may be terminated under any of the following circumstances:

1. Termination with notice. Either party may terminate this Agreement in its entirety at any time upon 60 days' prior written notice to the other party.

2. Termination for material breach. In the event that either party fails to cure a material breach of this Agreement within 60 days of receipt of written notice to cure from the other (which notice will state the material breach with specificity and attach any then-available documentation of the material breach), the non-defaulting party may terminate this Agreement upon 30 days' prior written notice. If the breach is cured within such 60-day period, or if the breach is one that cannot reasonably be corrected within 60 days, and the non-defaulting party determines that the defaulting party is making substantial and diligent progress toward correction during such 60-day period, this Agreement will remain in full force and effect.

3. Termination based on failure to reach agreement following regulatory change. Either party may terminate this Agreement effective 60 days after either party provides written notice that it is unable to agree on any amendment required under Section 11(C).

4. Termination based on termination of the third party administration agreement between the parties. This Agreement will terminate concurrent with termination of the third party administration agreement between the parties.

C. Transition requirements. If this Agreement is terminated by BlueLink TPA under Section 3(B)(1), by either party under Section 3(B)(3) or concurrent with termination of the third party administration agreement between the parties, then the parties agree to take the following specific actions to minimize disruption:

1. Transition plan. The parties will develop and implement a detailed plan for transitioning the services, and both parties will cooperate fully to arrange for the transfer of services to Sponsor's designee.

2. Transition period. BlueLink TPA will continue to provide services in accordance with this Agreement for a reasonable transition period. Unless the parties mutually agree otherwise, the transition period will not exceed 180 days from the date of notice of termination. Except as otherwise provided in this Agreement, the terms and conditions of this Agreement will apply during the transition period.

3. Prompt payment. The parties will take reasonable steps to ensure that any payments due under this Agreement will be made promptly following termination of this Agreement, including without limitation any amounts due to BlueLink TPA for services performed during the Transition Period which will be paid at the rates set forth in Appendix A.

Termination of this Agreement will not terminate the rights or liabilities of either party arising out of the period prior to the effective date of the termination.

4. Scope of services

A. Program application.

1. Responsibility for preparing and submitting Program application. Sponsor will be responsible for preparing and submitting the Program application. BlueLink TPA agrees to provide to Sponsor any data in its possession that Sponsor requires in order to complete its application. BlueLink TPA and Sponsor will work cooperatively to provide the data needed to complete Sponsor's Program application on a timely basis.

2. Projection of claims.

(a) Responsibility for preparing projection. Sponsor shall be responsible for preparing and submitting to HHS the projection of amounts to be received by Sponsor under the Program for the first two plan year cycles, as described in 45 C.F.R. § 149.40. BlueLink TPA will assist Sponsor upon request within 14 days of inquiry.

(b) Data for projection. BlueLink TPA shall provide, to the best of its ability, any data in its possession associated with services provided pursuant to the third party agreement between the parties that Sponsor requests for the projection.

3. Fraud, waste, and abuse policies. BlueLink TPA has implemented policies and procedures to detect and reduce fraud, waste, and abuse in connection with the Employment-Based Plan, in accordance with 45 C.F.R. § 149.40. BlueLink TPA shall provide a summary of such policies and procedures to Sponsor. Sponsor agrees to hold the information in confidence, in accordance with Section 4(A)(8).

4. Programs that generate savings for Chronic and High-Cost Conditions. BlueLink TPA shall provide Sponsor with a summary explanation describing the procedures or programs it has in place that have generated or have the potential to generate cost savings with respect to Employment-Based Plan participants with Chronic and High-Cost Conditions. Sponsor agrees to hold the information in confidence, in accordance with Section 4(A)(8).

5. Confidentiality requirements. Sponsor agrees that any documents, materials, or other information provided to Sponsor by BlueLink TPA pursuant to Sections 4.A.3 or 4.A.4 of this Agreement, relating to BlueLink TPA's fraud, waste and abuse policies, programs that generate savings for Chronic and High-Cost Conditions, or both (collectively, the "Confidential Information"), are the sole property of BlueLink TPA and are private and confidential in nature. Sponsor further agrees that BlueLink TPA would suffer competitive or other harm in the event the Confidential Information, or any portion thereof, was disclosed. Sponsor further agrees that it will hold the Confidential Information in the strictest confidence and will not use or disclose it, or any part thereof, unless: (a) the use or disclosure is necessary for Sponsor to comply with the Program Requirements; (b) the disclosure is made with the prior written consent of BlueLink TPA; (c) the disclosure is requested by and made to a local, state, or federal law enforcement official, provided Sponsor gives BlueLink TPA written notice at least

30 days before making such disclosure; (d) the disclosure is made in response to a lawful subpoena or other compulsory process, provided that prior to making the disclosure, Sponsor promptly gives notice thereof to BlueLink TPA and furnishes BlueLink TPA with a copy of the subpoena or other process so as to afford BlueLink TPA a reasonable opportunity to seek a protective order; or (e) the Confidential Information to be disclosed is already in the public domain through no act or failure on the part of Sponsor.

In the event this Agreement is terminated, Sponsor agrees that it will continue to treat the Confidential Information as private and confidential, will return all such Confidential Information to BlueLink TPA, and will not use or disclose such Confidential Information, or any part thereof, except as permitted in this Section. Sponsor agrees that BlueLink TPA shall, in addition to any other available legal relief, be entitled to an injunction by any competent court to enjoin and restrain the unauthorized use or disclosure of the Confidential Information, or any part thereof.

B. Claims submission.

1. Responsibility for compiling and submitting data. BlueLink TPA shall compile and submit Claims data to Sponsor in accordance with the frequency allowed in the Program Requirements, and in no event more frequent than permitted by HHS and in no event more frequent than monthly. At least 15 days in advance of the date that BlueLink TPA will submit the Claims data to Sponsor, Sponsor shall provide to BlueLink TPA:

(a) Sponsor's current list of Program-Eligible Individuals or, at the election of BlueLink TPA, another suitable method of identifying such Program-Eligible Individuals;

(b) If Sponsor elects for BlueLink TPA to include in a Claims submission to Sponsor any cost-sharing amounts paid by Program-Eligible Individuals for Health Benefits under the Employment-Based Plan, Sponsor shall provide actual payment receipts indicating that such cost-sharing amounts have been paid by the Program-Eligible Individual. In the absence of such receipts, BlueLink TPA shall not include in a Claims submission amounts paid by Program-Eligible Individuals; that is, any cost-sharing amounts paid by a Program-Eligible Individual will not be taken into account for purposes of calculating payments under the Program.

Sponsor shall be solely responsible for identifying, obtaining, and submitting to HHS any Claims data that originates with Sponsor or with any third party that is not subcontracted by BlueLink TPA.

If BlueLink TPA receives any post-point-of-sale price concessions with respect to Health Benefits for which Claims data has previously been submitted to Sponsor, BlueLink TPA shall promptly disclose the amount of such post-point-of-sale price concessions to Sponsor.

If Sponsor receives any post-point-of-sale price concessions with respect to Health Benefits for which Claims data has previously been provided to BlueLink TPA, Sponsor shall, in a time

frame consistent with 45 C.F.R. § 149.110(b), notify HHS of such post-point-of-sale price concessions in accordance with 45 C.F.R. § 149.110(b).

2. Duty to monitor. BlueLink TPA shall have no obligation to Sponsor to monitor whether Claims are re-adjudicated after being submitted to Sponsor. However, before submitting Claims data to Sponsor, BlueLink TPA will perform a data comparison to seek to identify claims that may have been re-adjudicated after BlueLink TPA submitted the previous batch of Claims data. With regard to any adjustments that are identified, BlueLink TPA will submit the updates to Sponsor with its next Claims submission, or at such other time as may be required pursuant to 45 CFR 149.110(b).

3. Receipt of Program payments. Sponsor shall receive all Program payments from the United States directly, and BlueLink TPA shall have no responsibility for receiving or handling such payments.

C. No obligation to submit inaccurate or incomplete data. BlueLink TPA shall have no obligation to provide or submit data in support of Sponsor's Program application or a submission to obtain payment under the Program when, in its sole discretion, BlueLink TPA believes that the data is or may be inaccurate or incomplete, or would otherwise not be in compliance with Program Requirements.

D. Corrections and modifications. Should BlueLink TPA learn that any data provided by either party to this Agreement or by any third party is or was inaccurate, that Sponsor is or has received Program overpayments, or that Sponsor's Program application, reimbursement data, or any submissions to HHS fail to comply with Program Requirements, then except as specifically provided in Section 4(B)(2), BlueLink TPA shall notify Sponsor and Sponsor shall have the sole responsibility for making necessary corrections and communications to HHS.

5. Compensation

Sponsor agrees to pay BlueLink TPA administrative fees as described in Appendix A for those services performed by BlueLink TPA under this Agreement.

6. Acknowledgement of purpose of data

Pursuant to 45 C.F.R § 149.40(f)(4)(ii), BlueLink TPA acknowledges that information it provides to Sponsor pursuant to this Agreement may be used by Sponsor for the purpose of obtaining federal funds.

7. Appeals

In the event that HHS makes an adverse reimbursement determination, BlueLink TPA shall not be responsible for any procedural or substantive activities associated with Sponsor's appeal rights described in 45 C.F.R Part 149, Subpart F. BlueLink TPA will provide Sponsor, at Sponsor's request, reasonable access to information that Sponsor may need to exercise its appeal rights, but Sponsor shall be solely responsible for submitting any request for appeal under 45 C.F.R. § 149.500(e).

8. Indemnification

Sponsor agrees to indemnify, defend (at BlueLink TPA's request), and hold harmless BlueLink TPA and its agents, officers, employees, directors, and subcontractors, against any loss, cost, suit, claim, damage, liability or expense, including reasonable attorneys' fees, arising (a) out of any audit, investigation, subpoena, investigative demand, action, proceeding, liability, judgment, settlement, or inquiry by HHS or any other government agency or entity or any other person or entity relating to Sponsor's participation in the Program; or (b) from any inaccurate or incomplete data provided to BlueLink TPA, or any non-compliance with the Program's requirements by Sponsor or any third party contracted by Sponsor in connection with the Program.

BlueLink TPA agrees to indemnify, defend (at Sponsor's request), and hold harmless Sponsor and its agents, officers, employees, directors and subcontractors, against any loss, cost, suit, claim, damage, liability or expense, including reasonable attorneys' fees, arising from any alleged or actual non-compliance with the Program's requirements by BlueLink TPA, but only to the extent that such non-compliance was willful or intentional or the result of gross negligence.

9. Limitation of liability

BlueLink TPA shall not be liable to Sponsor if HHS terminates or denies Sponsor's Program application, and BlueLink TPA shall not be liable to Sponsor for any amounts that are not paid or reimbursed by HHS under the Program or that HHS recoups or withholds for any reason. Any information provided by BlueLink TPA should not be considered advice, legal or otherwise, regarding Sponsor's compliance with any or all Program Requirements, and BlueLink TPA shall not be liable, in whole or in part, for Sponsor's reliance on such information. In all events, BlueLink TPA's liability to Sponsor under this Agreement is limited to the amount of compensation paid by Sponsor for services BlueLink TPA provides under this Agreement as set forth in Appendix A. Under no circumstances shall BlueLink TPA be liable for indirect, consequential, special or punitive damages.

10. No guarantee of Program participation or reimbursement

BlueLink TPA does not represent or guarantee that Sponsor is eligible to participate in the Program, that Sponsor's application for the Program will be accepted and Certified, that Sponsor will receive any funds in connection with the Program, or, if Sponsor does receive funds in connection with the Program, the amount of such funds.

11. Standard of care, cooperation, and regulatory changes

a. Standard of care. The parties recognize that because the Program is new, the Program Requirements and procedures are not fully defined and developed, and subsequent administrative guidance or requirements from HHS may materially alter the scope of services or manner in which the services contemplated by this Agreement are to be provided. In light of these factors, BlueLink TPA will make a good faith effort to compile and provide complete and accurate information in accordance its best understanding and interpretation of the Program Requirements. BlueLink TPA does not undertake to act, and shall not act, as a fiduciary under the Employee Retirement Income Security Act ("ERISA") or otherwise with respect to its

actions under the Program. Any fiduciary obligations under ERISA or otherwise with respect to the Program shall be the duties of Sponsor.

In satisfying its obligations under this Agreement, BlueLink TPA may utilize and/or obtain and/or provide data that is developed and maintained by third parties with which it contracts. By obtaining this data from a third-party source, BlueLink TPA does not warrant or assume responsibility for the accuracy of such data. In addition, BlueLink TPA may obtain or use data or information provided by Sponsor or third parties not contracted by BlueLink TPA. BlueLink TPA does not warrant and/or assume responsibility for the accuracy of any data provided by Sponsor or any third party not contracted by BlueLink TPA.

The parties recognize that BlueLink TPA's existing data sources, and those of its subcontractors, were not designed for purposes of the Program. Thus, BlueLink TPA can not and does not guarantee the accuracy of such information and data.

b. Cooperation. The parties recognize that they must mutually cooperate to perform the services required under this Agreement, and that BlueLink TPA shall not be responsible if it is unable to complete any tasks because Sponsor, or any third party contracted by Sponsor, fails to meet its obligations, including providing required data.

c. Regulatory changes. If either party believes that subsequent guidance or requirements from HHS have materially altered the scope of services or manner in which the services contemplated by this Agreement are to be provided, or that any provision of this Agreement is inconsistent with Program Requirements, that party shall promptly notify the other party in writing, and the parties shall negotiate to amend this Agreement.

12. Retention of records

BlueLink TPA and Sponsor shall maintain all records required by 45 C.F.R § 149.350(b) for a period not less than six years after the expiration of the Employment-Based Plan's plan year in which Program-reimbursable costs were incurred (without regard to the date the Agreement terminates), or as otherwise required by law.

13. HIPAA compliance

The parties acknowledge and agree that this Agreement involves the use and disclosure of HIPAA protected health information and that they have included specific provisions regarding such protected information in their third party administration agreement. The parties therefore agree that all uses and disclosures of HIPAA protected health information pursuant to this Agreement will be undertaken in compliance with all applicable HIPAA requirements. BlueLink TPA shall disclose HIPAA protected health information to a third party only upon Sponsor's written certification that such disclosure is permitted under HIPAA. BlueLink TPA and Sponsor agree that this Agreement satisfies the requirements of 45 C.F.R. § 149.35(b)(2).

BlueLink TPA shall provide HIPAA protected health information directly to Sponsor or Sponsor's designee under Section 4 only if Sponsor certifies in writing that: (A) appropriate HIPAA business associate agreements are in effect between BlueLink TPA, Sponsor, Sponsor's designee, and the Employment-Based Plan; (B) the plan documentation for the Employment-

Based Plan permits such disclosure; and (C) the Sponsor has taken all other steps required by HIPAA in order to legally receive such protected health information.

14. Miscellaneous provisions

- a. Amendments. All amendments to this Agreement must be agreed to in writing by the parties.
- b. Assignment. This Agreement may not be assigned by either party to an unrelated third party without the prior written consent of the other party. Sponsor, not BlueLink TPA, is responsible for giving advance notice of any change in ownership to HHS pursuant to 45 CFR § 149.700.
- c. Subcontracting. The parties acknowledge and agree that BlueLink TPA may use subcontractors to perform some or all of the services described in Section 4.
- d. Entire agreement. This Agreement is entered into by the parties in addition to and does not replace or modify the provisions of the third party agreement between them. Such third party agreement notwithstanding, with respect to the subject matter hereof, the specific terms and conditions of this Agreement supersede any and all other agreements, either oral or written, between the parties, and no other agreement, statement or promise relating to the subject matter of this Agreement will be valid or binding.
- e. Governing law. The laws of the State of Minnesota will govern the validity of this Agreement, the construction of its terms, and the interpretation of the rights and duties of the parties hereunder, without giving effect to principles of conflicts of law.
- f. No third-party beneficiary. Nothing in this Agreement is intended to create, or will be deemed or construed to create, any rights or remedies in any third party including, without limitation, Sponsor's active and retired employees (and their dependents).
- g. Notice. Any notice required or desired to be given relating to this Agreement will be in writing and will be either hand delivered, or sent by U.S. mail, postage prepaid and return-receipt requested (receipt will be deemed to be five days after postmark by the U.S. Postal Service), or overnight courier addressed as follows:

BlueLink TPA:
3535 Blue Cross Road
Eagan, MN 55122

Sponsor: _____

Notices given hereunder will be deemed given upon documented receipt. The addresses to which notices are to be sent may be changed by written notice given in accordance with this section.

- h. Severability. If any provision of this Agreement is rendered invalid or unenforceable by any local, state, or federal law, rule or regulation, or declared null and void by any court of competent jurisdiction, the remainder of this Agreement will remain in full force and effect.
- i. Status as independent entities. Nothing in this Agreement is intended to create, or will be deemed or construed to create, any relationship between BlueLink TPA and Sponsor other than that of independent entities contracting with each other solely for the purpose of effecting the provisions of this Agreement. Neither BlueLink TPA nor Sponsor, nor any of their respective agents, employees, subcontractors or representatives will be construed to be the agent, employee, subcontractor or representative of the other.
- j. Appendices. Each Appendix to this Agreement is made a part of this Agreement as though set forth fully herein. Unless otherwise specifically set forth in an Appendix, any provision of this Agreement that is in conflict with any provision set forth in an Appendix will take precedence and supersede the conflicting provision of the Appendix with respect to the subject matter covered by that provision of this Agreement.
- k. Calculation of time. Unless otherwise specifically stated in this Agreement, the parties agree that for purposes of calculating time under this Agreement, any time period of less than 10 days will be deemed to refer to business days and any time period of 10 days or more will be deemed to refer to calendar days.
- l. Force majeure. Neither BlueLink TPA nor Sponsor will be liable for its failure to perform any obligation under this Agreement because of contingencies beyond its reasonable control, including but not limited to strikes (other than strikes within such party's own labor force), riots, war, fire, acts of God, disruption or failure of electronic or mechanical equipment or communication lines, telephone or other interconnections, unauthorized access, theft, or acts in compliance with any law or government regulation. If a party's failure to perform continues for more than 20 business days, the other party will have the right to terminate this Agreement immediately.
- m. Headings. The headings in this Agreement have been included solely for reference and are to have no force or effect in interpreting its provisions.
- n. Counterparts. This Agreement may be executed in counterparts, any of which need not contain the signature of more than one party, but all of which taken together, will be one and the same agreement.
- o. Dispute resolution. BlueLink TPA and Sponsor agree to resolve any controversy or dispute that may arise out of or relate to this Agreement, or the breach thereof, whether involving a claim in tort, contract, or otherwise, pursuant to the dispute resolution provisions contractually in place between the parties.

- p. Survival. The provisions of Sections (Term and termination, Indemnification, Limitation of liability, Retention of records, HIPAA compliance, and Miscellaneous provisions) will survive the expiration or termination of the Agreement for any reason.

IN WITNESS WHEREOF, the parties have executed this Agreement.

[BlueLink TPA]

[SPONSOR]

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____