



Contract Number
23-322

SAP Number

Arrowhead Regional Medical Center

Department Contract Representative	William L. Gilbert
Telephone Number	(909) 580-6150
Contractor	Optum360 LLC
Contractor Representative	Matt Clapham
Telephone Number	(801) 963-7179
Contract Term	May 1, 2023 through April 30, 2028
Original Contract Amount	\$139,200
Amendment Amount	
Total Contract Amount	\$139,200
Cost Center	8533

Briefly describe the general nature of the contract: Agreement with Optum360 LLC, for licenses, support, maintenance, including non-standard terms, for software that help manage revenue cycle issues associated with medical billing coding and compliance, in the amount of \$139,200, for a five-year period retroactively effective May 1, 2023 through April 30, 2028

FOR COUNTY USE ONLY

Approved as to Legal Form

► *Bonnie Uphold*
Bonnie Uphold, Supervising Deputy County Counsel

Date 5-1-2023

Reviewed for Contract Compliance

►

Date

Reviewed/Approved by Department

► *William L. Gilbert*
William L. Gilbert, Director

Date

5/2/23

**OPTUM 360 LICENSE AGREEMENT
for Web Applications**

Customer Name: San Bernardino County on behalf of Arrowhead Regional Medical Center ("Customer")

Customer Number: Sales Order Number(s):

Contact name: Telephone:

E-mail address: Fax number:

Address: 400 N Pepper Ave City: Colton State: CA Zip Code: 92324-1801

By signing below, Customer and Optum360, LLC ("Optum") agree as follows:

1. **Product:** Optum hereby licenses the following products (the "Products") to Customer for use by the specified number of Users as set forth in the table below.

Product	Number of Users
EnterpriseChargemasterExpert.com	5
RevenueCyclePro.com w/eCME	10
DRG Grouper Calculator	1
DrugReimbursement.com Add-on	1
Medicaid Edits CA for eCME Add-on H	1
Medical Hospital Ref CA Add-on HPP	1
OP Margin Report +5 Add-on	1
Optum Supply Lookup & Edits for eCME	1
Pharmacy Lookup & Edits for eCME Hospital	1

2. **Agreement Effective Date:** May 1, 2023

3. **Term:** This Agreement shall commence on the Effective Date and continue for an initial term of five (5) years thereafter, unless terminated sooner. If one party breaches any material provision of this Agreement, the non-breaching party may begin the process to terminate this Agreement by giving written notice of termination to the breaching party. If the breach is capable of being cured and is reasonably cured within thirty (30) days after receipt of the notice, the termination shall not become effective. If the breach is not capable of being cured or is not reasonably cured within thirty (30) days after receipt of the notice, the non-breaching party may terminate this Agreement by delivering a second notice to the breaching party, specifying a termination date not later than ninety (90) days after the expiration of the cure period. Customer agrees that Optum may terminate Customer's access to the Product at any time if Optum reasonably believes that Customer is in violation of this Agreement.

4. **Price:** For each year of this Agreement, Customer shall pay an annual subscription license fee to Optum, set forth in the table below, for use of the Product by the number of named users specified above. Annual license fees are payable at the beginning of each contract year, and payment is due upon receipt of an invoice. The price is based on use of the Product only at the location, customer and/or number of named users specified above. Use at additional locations, customers and/or number of named users requires additional fees. Customer understands and agrees that it is obligated to pay the annual fees each year of the term, regardless of any attempt to terminate this Agreement. Customer may terminate this Agreement during the term, without cause, only upon payment to Optum of early termination fees in the amount of all unpaid fees for the initial term.

Product	Number of Users	Year 1		Year 2		Year 3		Year 4		Year 5	
		Per User License Fee	License Fee Subtotal	Per User License Fee	License Fee Subtotal	Per User License Fee	License Fee Subtotal	Per User License Fee	License Fee Subtotal	Per User License Fee	License Fee Subtotal
EnterpriseChargemasterExpert.com	5	\$3,000.00	\$15,000.00	\$3,100.00	\$15,500.00	\$3,200.00	\$16,000.00	\$3,300.00	\$16,500.00	\$3,400.00	\$17,000.00
RevenueCyclePro.com w/eCME	10	\$300.00	\$3,000.00	\$325.00	\$3,250.00	\$350.00	\$3,500.00	\$375.00	\$3,750.00	\$400.00	\$4,000.00
DRG Grouper Calculator	1	\$75.00	\$75.00	\$85.00	\$85.00	\$95.00	\$95.00	\$105.00	\$105.00	\$115.00	\$115.00
DrugReimbursement.com Add-on	1	\$75.00	\$75.00	\$85.00	\$85.00	\$95.00	\$95.00	\$105.00	\$105.00	\$115.00	\$115.00
Medicaid Edits CA for eCME Add-on H	1	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00
Medical Hospital Ref CA Add-on HPP	1	\$400.00	\$400.00	\$400.00	\$400.00	\$400.00	\$400.00	\$400.00	\$400.00	\$400.00	\$400.00
OP Margin Report v5 Add-on	1	\$250.00	\$250.00	\$250.00	\$250.00	\$250.00	\$250.00	\$250.00	\$250.00	\$250.00	\$250.00
Optum Supply Lookup & Edits for eCME	1	\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00
Pharmacy Lookup & Edits for eCME Hospital	1	\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00
Total			\$26,300.00		\$27,070.00		\$27,840.00		\$28,610.00		\$29,380.00

5. **Restrictions on Use of Product:** Optum is the sole and exclusive owner of the Product and/or has been licensed to distribute the Product. Customer has the nonexclusive, nontransferable right to use the Product for its internal, lawful business use. Customer acquires no right to the Product or to the information and data set forth in the Product, except the right to use the information and data solely for Customer's own internal business purposes, in accordance with this Agreement. Customer agrees to hold the Product, and the data contained therein, in strict confidence and agrees not to provide, disclose or otherwise make available any of such to any third party. Customer shall have no right to allow any person or entity that is not an employee or consultant of Customer to access the Product on-line, directly or indirectly in any way. Customer shall not publish, translate or transfer possession of the Product. This provision shall survive the termination of this Agreement.

6. **Confidentiality:** "Confidential Information" means all confidential or proprietary information of a party ("Disclosing Party") disclosed or made available to the other party ("Receiving Party") including information about its financial information, technology, software, and materials comprising or relating to intellectual property rights, including without limitation, trade secrets and other sensitive or proprietary information, whether disclosed orally or in writing, that is designated as confidential and falls within a recognized exemption to the San Bernardino County Sunshine Ordinance, County Code of Ordinances Section 19.0101, California Government Code 54950, and California Public Records Act (Government Code Section 6250). Each party agrees that (a) it will use the other party's Confidential Information only as may be necessary in the course of performing duties, receiving services or exercising rights under this Agreement; (b) it will treat such information as confidential and proprietary; (c) it will not disclose such information orally or in writing to any third party without the prior written consent of the other party; and (d) it will take all reasonable precautions to protect the Confidential Information. At a minimum, each party agrees to take at least such precautions to protect the other party's Confidential Information as it takes to protect its own Confidential Information. Upon termination, each party will return to the other party or certify as destroyed all tangible items containing any of the other party's Confidential Information that are held by that party or its employees, agents or contractors, unless required to retain such Confidential Information by law. Each party agrees to notify the other party if it becomes aware of any unauthorized use or disclosure of the other party's Confidential Information. These restrictions do not apply to information that was in the receiving party's possession prior to receiving the Confidential Information; or is or later becomes available to the public; or the recipient develops internally, without reference to the other party's Confidential Information; or the recipient receives from a third party. If a party receives a subpoena, other validly issued administrative or judicial process, or public records request requesting Confidential Information of the other party, it will, to the extent legally permissible, promptly notify the other party and if requested by the other party, tender to the other party the defense of the subpoena or process. Unless the subpoena or process is timely limited, quashed or extended, the receiving party will then be entitled to comply with the request to the extent permitted by law.

7. **Licensed Content:** Certain Products contain Current Procedural Terminology Codes ("CPT") owned and copyrighted by the American Medical Association ("AMA"), and/or Current Dental Terminology ("CDT") codes owned and copyrighted by the American Dental Association ("ADA"), and/or ASA content ("ASA Content") owned and copyrighted by the American Society of Anesthesiologists ("ASA"), and/or AHA content ("AHA Content") owned and copyrighted by the American Hospital Association ("AHA") (collectively, the "Vendors"). Collectively, the CPT codes, CDT codes, ASA Content and AHA Content are referred to as the "Licensed Content." The terms of Exhibit A apply only to Software and Data Products that contain Licensed Content. The fees herein include fees for any third party-owned pieces of the Products. Optum may increase the fees above, to the extent that the Vendors increase the price for the products to Optum. Optum shall, prior to imposing an increase, notify Customer of the effective date of the increase.

8. **Accuracy and Errors:** Customer agrees that Optum and its employees and agents shall not be held responsible or liable for any actions taken by Customer, or any error, inaccuracy, or omission in any report or analysis Customer prepares in connection with or through use of the Product, or for any damage (including, but not limited to consequential damages) resulting from it. No later than thirty (30) days from the date of Customer's receipt of access to the Product or any update of the Product, Customer shall advise Optum in writing of any known errors or suspected errors that may materially affect the Product.

9. **Disclaimer of Warranties:** Optum warrants that the Product performs in accordance with the documentation for it. To the extent that the Product contains information Optum has received from third parties, Optum warrants only that the Product contains an accurate copy of the information that was delivered to Optum. Except as expressly provided in this Agreement, OPTUM MAKES NO WARRANTIES OR REPRESENTATIONS RELATING TO THE PRODUCT OR ANY OTHER SERVICES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

10. **Limits on Liability:** Each party's liability to the other party for direct damages arising out of this Agreement shall not exceed the amount Customer has paid or owes Optum under this Agreement in the year in which the cause of action rose. Under no circumstances will either party be responsible under this Agreement for any indirect, incidental, special or consequential damages resulting from either party's performance or failure to perform under this Agreement, including, without limitation, the use of or inability to use the Product, any damage to equipment and any cost of recovering lost data or of reprogramming.

11. **Assignability.** Without the prior written consent of the other party, this Agreement is not assignable by either party in whole or in part and such consent shall not to be unreasonably withheld, conditioned or delayed.

12. **Governing Law; Venue; Attorneys' Fees.** This Agreement shall be governed by and construed according to the laws of the State of California.

13. **Indemnification and Insurance.** Optum will indemnify, defend, and hold harmless Customer and its officers, employees, agents and volunteers, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement of any United States patent, copyright, trademark or trade secret ("Intellectual Property Rights") in the performance under this Agreement for any Product. If a credible claim is made or threatened, including without limitation the filing of a lawsuit against Customer, or Customer receives a demand or notice claiming actual or potential infringement or misappropriation of any Intellectual Property Rights, Customer will use reasonable efforts to notify Optum promptly of such lawsuit, claim or election. However, Customer's failure to provide or delay in providing such notice will relieve Optum of its obligations only if and to the extent that such delay or failure materially prejudices Optum's ability to defend such lawsuit or claim. Customer will give Optum sole control of the defense and settlement of such claim; provided that Optum may not settle the claim or suit absent the written consent of Customer unless such settlement (a) includes a release of all claims pending against Customer, (b) contains no admission of liability or wrongdoing by Customer, and (c) imposes no obligations upon Customer other than an obligation to stop using the Product that is the subject of the claim. Without in anyway affecting the indemnity herein provided and in addition thereto, the Contractor shall secure and maintain throughout the contract term the types of insurance with limits as shown in Attachment 1, as attached hereto and hereby incorporated herein.

14. **General Terms:** The person choosing to indicate acceptance of this Agreement below represents that he/she is acting on behalf of Customer, and that she/he has the authority to bind Customer. Terms of a purchase order or other ordering or shipping document do not modify, amend, or add to the terms of this Agreement, and shall have no effect. In the event that a provision of this Agreement is determined to violate any law or is unenforceable, the remainder of the Agreement shall remain in full force and effect. Optum's relationship to Customer is that of an independent contractor. Neither party shall be deemed to be or hold itself out as a partner, agent, employee or joint venture partner of the other party.

15. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same document. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

Optum360, LLC

Signature: 
Signature Sample (Apr 12, 2023 09:11:00)
 Print Name: Jeremy Knight
 Title: SVP
 Date: Apr 12, 2023
 Agreement Number: 00913480.0

San Bernardino County on behalf of Arrowhead Regional Medical Center

Signature: 
 Print Name: Dawn Rowe
 Title: Chair, Board of Supervisors
 Date: MAY 09 2023

SIGNED AND CERTIFIED THAT A COPY OF
 THIS DOCUMENT HAS BEEN DELIVERED
 TO THE CHAIRMAN OF THE BOARD
 LYNNA MONELL
 Clerk of the Board of Supervisors
 of the County of San Bernardino

By 
 Deputy

Exhibit A

LICENSED CONTENT FLOW DOWN TERMS

Optum's agreements with the Vendors require that Customer agree to the following.

1. **Grant.** Optum grants Customer a nontransferable, nonexclusive license, for the sole purpose of internal use of the Licensed Content by Customer within the United States. Customer is prohibited from publishing, distributing via the Internet or other public computer based information system, creating derivative works (including translating), transferring, selling, leasing, licensing or otherwise making available to any unauthorized party the Licensed Content, or a copy or portion of Licensed Content. Customer must ensure that anyone with authorized access to the Licensed Content will comply with the provisions of this Agreement.
2. **Vendors.** Provision of updated Licensed Content is dependent on continuing contractual relationships between Optum and the Vendors. Customer grants Optum permission to provide Vendors with Customer's name.
3. **Copyright.** CPT is copyrighted by the AMA and that CPT is a registered trademark of the AMA. ADA owns all right, title and interest (including all intellectual property rights) in CDT, all other rights of commercialization, rental or sale of CDT or any part thereof, the right to make derivatives of CDT and the right to distribute CDT and copies thereof. Except for the limited rights expressly granted to Customer herein, all other rights in Licensed Content are owned and retained by Vendors. Customer shall not remove copyright notices.
4. **Disclaimers.** EXCEPT AS EXPRESSLY STATED HEREIN, THE LICENSED CONTENT IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF PERFORMANCE OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. END USER BEARS ALL RISK RELATING TO QUALITY, ACCURACY AND PERFORMANCE OF THE LICENSED CODES. **Vendors have no liability for consequential or special damages, or lost profits for sequence, accuracy, or completeness of Licensed Content, or that it will meet the Customer's requirements, and that the Vendors' sole responsibility is to make available to Optum replacement copies of the Licensed Content if the data is not intact; and that the Vendors disclaim any liability for any consequences due to use, misuse, or interpretation of information contained or not contained in Licensed Content.**
5. **Beneficiaries.** Vendors are third-party beneficiaries of this Agreement.
6. **U.S. Government Rights.** This product includes CPT which is commercial technical data, which was developed exclusively at private expense by the American Medical Association (AMA), 330 North Wabash Avenue, Chicago, Illinois 60611. The AMA does not agree to license CPT to the Federal Government based on the license in FAR 52.227-14 (Data Rights - General) and DFARS 252.227-7015 (Technical Data - Commercial Items) or any other license provision. The AMA reserves all rights to approve any license with any Federal agency.

CDT Flow Down Terms

7. **Use of CDT Codes.** This Agreement grants Customer the right: to install and use the CDT on Customer's computer system; to retrieve CDT codes, descriptors and nomenclature via commands contained in the Optum Products for the exclusive use of Customer its employees; to reproduce and distribute partial listings of the CDT codes, nomenclature and descriptors in various printed and electronic documents for purposes of claims processing, billing and patient treatment, via commands contained in the Software or Data Product; to print limited portions of the CDT solely for the exclusive use of Customer; and to print a complete listing of the CDT codes, nomenclature and descriptors solely for the exclusive use of Customer.
8. **Restrictions.** Except as expressly permitted in this Agreement, Customer may not and may not permit anyone else to (a) copy the CDT; (b) alter, amend, change or modify the CDT, including the CDT codes, nomenclature and descriptors or other content of the CDT; (c) remove any copyright or other proprietary notices, labels or marks from the CDT or from output created by using the Software or Data Product; or (d) use the CDT, whether on a time-sharing, remote job entry or other multiple user arrangement. Customer shall take reasonable measures to maintain the security of the CDT. Customer shall not add additional content to the Software or Data Products. IN NO EVENT SHALL END USER USE THE CDT CODES FOR OR ON BEHALF OF ANY THIRD PARTY, INCLUDING BUT NOT LIMITED TO USE OF THE CDT PRODUCTS TO PROVIDE CONSULTING, TIME- SHARING OR OUTSOURCING SERVICES OR TO ACT AS A SERVICE BUREAU OPERATION. END USER IS EXPRESSLY PROHIBITED FROM DISTRIBUTING OUTPUT, INCLUDING THE CODE OR PORTIONS THEREOF, TO ANY PERSON, FIRM OR ENTITY. The foregoing restriction shall not be deemed to restrict the Customer from using the CDT codes in the ordinary

course of its business, to identify procedures used in the treatment of patients and processing of insurance claims.

9. Indemnification. Customer agrees to indemnify ADA (including reasonable attorneys' fees and costs of litigation) against and hold ADA harmless from any and all claims, liability, losses, damages and expenses resulting from Customer's use of the CDT, in breach of any of the terms of this Agreement, or Customer's use of any data or documentation received from ADA, regardless of the form of action.

AHA Flow Down Terms

10. Use of AHA Content. This License grants Customer the right: to install and use the AHA Content on Customer's computer system; to reproduce and distribute excerpts of AHA Content without modification in various printed and electronic documents solely for purposes of claims processing, billing and patient treatment, via commands contained in the Optum Product; and to print limited portions of the AHA Content without modification solely for the exclusive use of Customer with copyright and government rights notices.

11. AHA Disclaimer. AHA disclaims, and shall have no liability for, any errors, omissions or inaccuracies in the AHA Content or any uses, misuses or interpretations of the information contained in or not contained in the AHA Content. AHA also does not warrant that the AHA Content will be accessible in any particular hardware/software environment. Customer shall be solely responsible for the use, efficiency, and suitability of the AHA Content. AHA's liabilities under this Agreement, if any, shall in no event exceed the sum of the fees actually received by Optum in connection with this Agreement for the applicable AHA Content.

12. AHA Content for Government Users. The Software and Data may contain AHA CODING CLINIC® FOR ICD, AHA CODING CLINIC® FOR HCPCS, and/or OFFICIAL UB-04 DATA SPECIFICATIONS MANUAL content which is commercial technical data and/or computer data bases and/or commercial computer software and/or commercial computer software documentation, as applicable, which was developed exclusively at private expense by the American Hospital Association, 155 N. Wacker Dr., Suite 400, Chicago, Illinois 60606. U.S. government rights to use, modify, reproduce, release, perform, display, or disclose these technical data and/or computer data bases and/or computer software and/or computer software documentation are subject to the limited rights restrictions of DFARS 252.227-7015(b)(2) (November 1995) and/or subject to the restrictions of DFARS 227.7202-1(a) (June 1995) and DFARS 227.7202-3(a) (June 1995), as applicable, for U.S. Department of Defense procurements and the limited rights restrictions of FAR 52.227-14 (December 2007) and/or subject to the restricted rights provisions of FAR 52.227-14 (December 2007) and FAR 52.227-19 (December 2007), as applicable, and any applicable agency FAR Supplements, for non-Department of Defense Federal procurements.

ATTACHMENT 1
INSURANCE REQUIREMENTS

Optum agrees to provide insurance set forth in accordance with the requirements herein. If Optum uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, Optum agrees to amend, supplement or endorse the existing coverage to do so.

1. Without in anyway affecting the indemnity herein provided and in addition thereto, Optum shall secure and maintain throughout the Agreement term the following types of insurance with limits as shown:

- a. Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of Optum and all risks to such persons under this Agreement. If Optum has no employees, it may certify or warrant to Customer that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by Customer's Director of Risk Management.
- b. Commercial/General Liability Insurance – Optum shall carry General Liability Insurance covering all operations performed by or on behalf of Optum providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:
 - i. Premises operations and mobile equipment.
 - ii. Products and completed operations.
 - iii. Broad form property damage (including completed operations).
 - iv. Explosion, collapse and underground hazards.
 - v. Personal injury.
 - vi. Contractual liability.
 - vii. \$2,000,000 general aggregate limit.
- c. Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence. If Optum is transporting one or more non-employee passengers in performance of Agreement services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence. If Optum owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.
- d. Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising. The coverage shall also apply to automobile liability.
- e. Professional Liability – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim and two million (\$2,000,000) aggregate limits
or
Errors and Omissions Liability Insurance – Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits

If insurance coverage is provided on a "claims made" policy, the "retroactive date" shall be shown and must be before the date of the start of the Agreement work. The claims made insurance shall

be maintained or "tail" coverage provided for a minimum of five (5) years after Agreement completion.

- f. **Cyber Liability Insurance** - Cyber Liability Insurance with limits of no less than \$1,000,000 for each claim or event with an annual aggregate of \$2,000,000 covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall cover breach response cost as well as regulatory fines and penalties.
2. **Additional Insured.** All policies, except for Worker's Compensation, Cyber Liability, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming Customer and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for Customer to vicarious liability but shall allow coverage for Customer to the full extent provided by the policy.
3. **Waiver of Subrogation Rights.** Optum shall require the carriers of required coverages, with the exception of Professional Liability/Errors and Omissions and Cyber Liability, to waive all rights of subrogation against Customer, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit Optum and Optum's employees or agents from waiving the right of subrogation prior to a loss or claim. Optum hereby waives all rights of subrogation against Customer.
4. **Policies Primary and Non-Contributory.** All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by Customer.
5. **Severability of Interests.** Optum agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between Optum and Customer or between Customer and any other insured or additional insured under the policy.
6. **Proof of Coverage.** Optum shall furnish Certificates of Insurance to Customer Department administering the Agreement evidencing the insurance coverage at the time the Agreement is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Optum shall maintain such insurance from the time Optum commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this Agreement, Optum shall furnish a copy of the certificates of insurance and endorsements immediately upon request.
7. **Acceptability of Insurance Carrier.** Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".
8. **Failure to Procure Coverage.** In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, Customer has the right but not the obligation or duty to cancel the Agreement or obtain insurance if it deems necessary and any premiums paid by Customer will be promptly reimbursed by Optum or Customer payments to Optum will be reduced to pay for Customer purchased insurance.
9. **Insurance Review.** Insurance requirements are subject to periodic review by Customer. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available,

is unreasonably priced, or is not needed to protect the interests of Customer. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of inflation, or any other item reasonably related to Customer's risk. Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. Optum agrees to execute any such amendment within thirty (30) days of receipt. Any failure, actual or alleged, on the part of Customer to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of Customer.