

## SECTION [XXV]

*{Drafting Note: Insert the appropriate section number, following the order of provisions in the Table of Contents.}*

### General Provisions

#### 1. Agreements Between Us and Participating Providers.

Any agreement between Us and Participating Providers may only be terminated by Us or the Providers. This [Contract; Policy] does not require any Provider to accept a Subscriber as a patient. We do not guarantee a Subscriber's admission to any Participating Provider or any health benefits program.

#### 2. Assignment.

You cannot assign any benefits under this [Contract; Policy] [or legal claims based on a [denial of benefits] [or] [request for plan documents]] to any person, corporation or other organization unless it is an assignment to Your Non-Participating Provider licensed under New York Public Health Law Article 30 for services described in the Ambulance and Pre-Hospital Emergency Medical Services Section of this [Certificate; Contract; Policy]. Any assignment of benefits [or legal claims based on a [denial of benefits] [or] [request for plan documents]] by You will be void and unenforceable.]

Assignment means the transfer to another person, corporation or other organization of Your right to the services provided under this [Contract; Policy] [or Your right to collect money from Us for those services] [or Your right to sue based on a [denial of benefits] [or] [request for plan documents]]. [Nothing in this paragraph shall affect Your right to appoint a designee or representative as otherwise permitted by applicable law.]

*{Drafting Note: If the legal claims language is used, insert the last bracketed sentence beginning with "Nothing in this paragraph..."}*

#### 3. Changes in this [Contract; Policy].

We may unilaterally change this [Contract; Policy] upon renewal, if We give You 60 days' prior written notice.

#### 4. Choice of Law.

This [Contract; Policy] shall be governed by the laws of the State of New York.

#### 5. Clerical Error.

Clerical error, whether by You or Us, with respect to this [Contract; Policy], or any other documentation issued by Us in connection with this [Contract; Policy], or in keeping any record pertaining to the coverage hereunder, will not modify or invalidate coverage otherwise validly in force or continue coverage otherwise validly terminated.

## **6. Conformity with Law.**

Any term of this [Contract; Policy] which is in conflict with New York State law or with any applicable federal law that imposes additional requirements from what is required under New York State law will be amended to conform with the minimum requirements of such law.

## **7. Continuation of Benefit Limitations.**

Some of the benefits in this [Contract; Policy] may be limited to a specific number of visits. You will not be entitled to any additional benefits if Your coverage status should change during the year. For example, Your coverage terminates and you enroll in the product later in the year.

## **[8.] Entire Agreement.**

This [Contract; Policy], including any endorsements, riders and the attached applications, if any, constitutes the entire [Contract; Policy].

*{Drafting Note: Paragraph 9 below is optional.}*

## **[9.] [Fraud and Abusive Billing.**

We have processes to review claims before and after payment to detect fraud and abusive billing. Members seeking services from Non-Participating Providers could be balance billed by the Non-Participating Provider for those services that are determined to be not payable as a result of a reasonable belief of fraud or other intentional misconduct or abusive billing.]

## **[10.] Furnishing Information and Audit.**

You will promptly furnish Us with all information and records that We may require from time to time to perform Our obligations under this [Contract; Policy]. You must provide Us with information over the telephone for reasons such as the following: to allow Us to determine the level of care You need; so that We may certify care authorized by Your Physician; or to make decisions regarding the Medical Necessity of Your care.

## **[11.] Identification Cards.**

Identification ("ID") cards are issued by Us for identification purposes only. Possession of any ID card confers no right to services or benefits under this [Contract; Policy].

## **[12.] Incontestability.**

No statement made by You in an application for coverage under this [Contract; Policy] shall avoid the [Contract; Policy] or be used in any legal proceeding unless the application or an exact copy is attached to this [Contract; Policy]. [After two (2) years from the date of issue of this [Contract; Policy], no misstatements, except for fraudulent misstatements made by You in the application for coverage, shall be used to void the [Contract; Policy] or deny a claim.]

*{Drafting Note: Paragraph 13 below is optional.}*

**[13.] [Independent Contractors.]**

Participating Providers are independent contractors. They are not Our agents or employees. We and Our employees are not the agent or employee of any Participating Provider. We are not liable for any claim or demand on account of damages arising out of, or in any manner connected with, any injuries alleged to be suffered by You while receiving care from any Participating Provider or in any Participating Provider's Facility.

*{Drafting Note: HMOs and coverage subject to Article 43 of the New York Insurance Law must include paragraph 14 below, and it should be used for other coverage, as applicable.}*

**[14.] [Input in Developing Our Policies.]**

You may participate in the development of Our policies by [XXX].

*{Drafting Note: Describe how subscribers may participate in the development of policies.}*

**[15.] Material Accessibility.**

We will give You] ID cards [Contracts; Policies], riders and other necessary materials.

**[16.] More Information about Your Health Plan.**

You can request additional information about Your coverage under this [Contract; Policy]. Upon Your request, We will provide the following information:

- A list of the names, business addresses and official positions of Our board of directors, officers and members; and Our most recent annual certified financial statement which includes a balance sheet and a summary of the receipts and disbursements.
- The information that We provide the State regarding Our consumer complaints.
- A copy of Our procedures for maintaining confidentiality of Subscriber information.
- A copy of Our drug formulary. You may also inquire if a specific drug is Covered under this [Contract; Policy].
- A written description of Our quality assurance program.
- A copy of Our medical policy regarding an experimental or investigational drug, medical device or treatment in clinical trials.
- Provider affiliations with participating Hospitals.
- A copy of Our clinical review criteria (e.g., Medical Necessity criteria), and where appropriate, other clinical information We may consider regarding a specific disease, course of treatment or Utilization Review guidelines, including clinical review criteria relating to a step therapy protocol override determination.
- Written application procedures and minimum qualification requirements for Providers.
- Documents that contain the processes, strategies, evidentiary standards, and other factors used to apply a treatment limitation with respect to medical/surgical benefits and mental health or substance use disorder benefits under the [Certificate; Contract; Policy].

**[17.] Notice.**

Any notice that We give You under this [Contract; Policy] will be mailed to Your address as it appears in Our records [or delivered electronically if You consent to electronic delivery]. [If notice is delivered to You electronically, You may also request a copy of the notice from Us.] You agree to provide Us with notice of any change of Your address. If You have to give Us any notice, it should be sent by U.S. mail, first class, postage prepaid to: [XXX; the address on Your ID card].

**[18.] Recovery of Overpayments.**

On occasion, a payment may be made to You when You are not covered, for a service that is not Covered, or which is more than is proper. When this happens, We will explain the problem to You and You must return the amount of the overpayment to Us within 60 days after receiving notification from Us. However, We shall not initiate overpayment recovery efforts more than 24 months after the original payment was made unless We have a reasonable belief of fraud or other intentional misconduct.

**[19.] Renewal Date.**

The renewal date for this [Contract; Policy] is 12 months after the effective date of this [Contract; Policy]. This [Contract; Policy] will automatically renew each year on the renewal date, as long as you remain eligible under the [Contract; Policy] and unless otherwise terminated by Us as permitted by this [Contract; Policy].

**[20.] Right to Develop Guidelines and Administrative Rules.**

We may develop or adopt standards that describe in more detail when We will or will not make payments under this [Contract; Policy]. Examples of the use of the standards are to determine whether: Hospital inpatient care was Medically Necessary; surgery was Medically Necessary to treat Your illness or injury; or certain services are skilled care. Those standards will not be contrary to the descriptions in this [Contract; Policy]. If You have a question about the standards that apply to a particular benefit, You may contact Us and We will explain the standards or send You a copy of the standards. We may also develop administrative rules pertaining to enrollment and other administrative matters. We shall have all the powers necessary or appropriate to enable Us to carry out Our duties in connection with the administration of this [Contract; Policy].

*{Drafting Note: The following paragraph is optional.}*

[We review and evaluate new technology according to technology evaluation criteria developed by Our medical directors and reviewed by a designated committee, which consists of Health Care Professionals from various medical specialties. Conclusions of the committee are incorporated into Our medical policies to establish decision protocols for determining whether a service is Medically Necessary, experimental or investigational, or included as a Covered benefit.]

**[21.] Right to Offset.**

If We make a claim payment to You or on Your behalf in error or You owe Us any money, You must repay the amount You owe Us. Except as otherwise required by law,

if We owe You a payment for other claims received, We have the right to subtract any amount You owe Us from any payment We owe You.

*{Drafting Note: Paragraph 22 below is optional.}*

**[22.] [Service Marks.**

[ ] is an independent corporation organized under the New York Insurance Law. [ ] also operates under licenses with [ ], licenses [ ] to use the [ ] service marks in a portion of New York State. [ ] does not act as an agent of the [ ]. [ ] is solely responsible for the obligations created under this agreement.]

**[23.] Severability.**

The unenforceability or invalidity of any provision of this [Contract; Policy] shall not affect the validity and enforceability of the remainder of this [Contract; Policy].

*{Drafting Note: Paragraph 24 below is optional.}*

**[24.] [Significant Change in Circumstances.**

If We are unable to arrange for Covered Services as provided under this [Contract; Policy] as the result of events outside of Our control, We will make a good faith effort to make alternative arrangements. These events would include a major disaster, epidemic, the complete or partial destruction of facilities, riot, civil insurrection, disability of a significant part of Participating Providers' personnel, or similar causes. We will make reasonable attempts to arrange for Covered Services. We and Our Participating Providers will not be liable for delay, or failure to provide or arrange for Covered Services if such failure or delay is caused by such an event.]

*{Drafting Note: The paragraphs in 25 below are optional.}*

**[25.] [Subrogation and Reimbursement.**

These paragraphs apply when another party (including any insurer) is, or may be found to be, responsible for Your injury, illness or other condition and We have provided benefits related to that injury, illness or condition. As permitted by applicable state law, unless preempted by federal law, We may be subrogated to all rights of recovery against any such party (including Your own insurance carrier) for the benefits We have provided to You under this [Contract; Policy]. Subrogation means that We have the right, independently of You, to proceed directly against the other party to recover the benefits that We have provided.

Subject to applicable state law, unless preempted by federal law, We may have a right of reimbursement if You or anyone on Your behalf receives payment from any responsible party (including Your own insurance carrier) from any settlement, verdict or insurance proceeds, in connection with an injury, illness, or condition for which We provided benefits. Under New York General Obligations Law Section 5-335, Our right of recovery does not apply when a settlement is reached between a plaintiff and defendant, unless a statutory right of reimbursement exists. The law also provides that, when entering into a settlement, it is presumed it shall be deemed that You did not take any action against Our rights or violate any contract between You and Us. The law

conclusively presumes that the settlement between You and the responsible party does not include any compensation for the cost of health care services for which We provided benefits.

We request that You notify Us within 30 days of the date when any notice is given to any party, including an insurance company or attorney, of Your intention to pursue or investigate a claim to recover damages or obtain compensation due to injury, illness or condition sustained by You for which We have provided benefits. You must provide all information requested by Us or Our representatives including, but not limited to, completing and submitting any applications or other forms or statements as We may reasonably request.]

**[26.] Third Party Beneficiaries.**

No third party beneficiaries are intended to be created by this [Contract; Policy] and nothing in this [Contract; Policy] shall confer upon any person or entity other than You or Us any right, benefit, or remedy of any nature whatsoever under or by reason of this [Contract; Policy]. No other party can enforce this [Contract; Policy]'s provisions or seek any remedy arising out of either Our or Your performance or failure to perform any portion of this [Contract; Policy], or to bring an action or pursuit for the breach of any terms of this [Contract; Policy].

**[27.] Time to Sue.**

No action at law or in equity may be maintained against Us prior to the expiration of 60 days after written submission of a claim has been furnished to Us as required in this [Contract; Policy]. You must start any lawsuit against Us under this [Contract; Policy] within [two (2); three (3)] years from the date the claim was required to be filed.

*{Drafting Note: Use 3 years for individual commercial (Article 32) insurance contracts; policies. Use 2 years for all other contracts; policies.}*

**[28.] Translation Services.**

Translation services are available free of charge under this [Contract; Policy] for non-English speaking Subscribers. Please contact Us at [XXX; the number on Your ID card] to access these services.

*{Drafting Note: Paragraph 29 below is optional.}*

**[29.] Venue for Legal Action.**

If a dispute arises under this [Contract; Policy], it must be resolved in a court located in the State of New York. You agree not to start a lawsuit against Us in a court anywhere else. You also consent to New York State courts having personal jurisdiction over You. That means that, when the proper procedures for starting a lawsuit in these courts have been followed, the courts can order You to defend any action We bring against You.]

**[30.] Waiver.**

The waiver by any party of any breach of any provision of this [Contract; Policy] will not be construed as a waiver of any subsequent breach of the same or any other provision. The failure to exercise any right hereunder will not operate as a waiver of such right.

**[31.] Who May Change this [Contract; Policy].**

This [Contract; Policy] may not be modified, amended, or changed, except in writing and signed by Our [Chief Executive Officer (“CEO”); Chief Operating Officer (“COO”); President] or a person designated by the [CEO; COO; President]. No employee, agent, or other person is authorized to interpret, amend, modify, or otherwise change this [Contract; Policy] in a manner that expands or limits the scope of coverage, or the conditions of eligibility, enrollment, or participation, unless in writing and signed by the [CEO; COO; President] or person designated by the [CEO; COO; President].

**[32.] Who Receives Payment under this [Contract; Policy].**

Payments under this [Contract; Policy] for services provided by a Participating Provider will be made directly by Us to the Provider. If You receive services from a Non-Participating Provider for Emergency Services, including inpatient services following Emergency Department Care[, air ambulance services], and surprise bills, We will directly pay the Provider. We reserve the right to pay either You or the Provider. If You assign benefits for a surprise bill to a Non-Participating Provider, We will pay the Non-Participating Provider directly. See the How Your Coverage Works section of this [Certificate; Contract; Policy] for more information about surprise bills.

For pre-hospital emergency medical services, emergency ground and water ambulance transportation, [and non-emergency ambulance transportation], if You assign benefits to a Non-Participating Provider licensed under New York Public Health Law Article 30, We will pay the Non-Participating Provider directly. If You do not assign benefits to a Non-Participating Provider licensed under New York Public Health Law Article 30, We will pay You and the Non-Participating Provider jointly.

{Drafting Note: Insert “you” or “the “subscriber” as applicable. Insert “air ambulance services” and “non-emergency ambulance transportation” for all individual and small group coverage and for large group.}

**[33.] Workers’ Compensation Not Affected.**

The coverage provided under this [Contract; Policy] is not in lieu of and does not affect any requirements for coverage by workers’ compensation insurance or law.

**[34.] Your Medical Records and Reports.**

In order to provide Your coverage under this [Contract; Policy], it may be necessary for Us to obtain Your medical records and information from Providers who treated You. Our actions to provide that coverage include processing Your claims, reviewing Grievances, Appeals or complaints involving Your care, and quality assurance reviews of Your care, whether based on a specific complaint or a routine audit of randomly selected cases. By accepting coverage under this [Contract; Policy], except as prohibited by state or federal law, You automatically give Us or Our designee permission to obtain and use Your medical records for those purposes and You authorize each and every Provider who renders services to You to:

- Disclose all facts pertaining to Your care, treatment, and physical condition to Us or to a medical, dental, or mental health professional that We may engage to assist Us in reviewing a treatment or claim, or in connection with a complaint or quality of care review;
- Render reports pertaining to Your care, treatment, and physical condition to Us, or to a medical, dental, or mental health professional that We may engage to assist Us in reviewing a treatment or claim; and
- Permit copying of Your medical records by Us.

We agree to maintain Your medical information in accordance with state and federal confidentiality requirements. However, to the extent permitted under state or federal law, You automatically give Us permission to share Your information with the New York State Department of Health, and other authorized federal, state and local agencies with authority over the Essential Plan, quality oversight organizations, and third parties with which We contract to assist Us in administering this [Contract; Policy], so long as they also agree to maintain the information in accordance with state and federal confidentiality requirements. If You want to take away any permissions you gave to release this information, you may call us at [###].

*{Drafting Note: HMOs must include paragraph 35 below and it should be used for other coverage as applicable. The bracketed language within paragraph 35 is optional }*

**[35.] [Your Rights [and Responsibilities]].**

[As a Member, You have rights and responsibilities when receiving health care. As Your health care partner, We want to make sure Your rights are respected while providing Your health benefits.] You have the right to obtain complete and current information concerning a diagnosis, treatment and prognosis from a Physician or other Provider in terms You can reasonably understand. When it is not advisable to give such information to You, the information shall be made available to an appropriate person acting on Your behalf.

You have the right to receive information from Your Physician or other Provider that You need in order to give Your informed consent prior to the start of any procedure or treatment.

You have the right to refuse treatment to the extent permitted by law and to be informed of the medical consequences of that action.

You have the right to formulate advance directives regarding Your care.

[You have the right to access Our Participating Providers.]

[As a Member, You should also take an active role in Your care. We encourage You to:

- Understand Your health problems as well as You can and work with Your Providers to make a treatment plan that You all agree on;
- Follow the treatment plan that You have agreed on with Your doctors or Providers;



- Give Us, Your doctors and other Providers the information needed to help You get the care You need and all the benefits You are eligible for under Your [Certificate; Contract; Policy]. This may include information about other health insurance benefits You have along with Your coverage with Us; and
- Inform Us if You have any changes to Your name, address or Dependents covered under Your [Certificate; Contract; Policy].]

[For additional information regarding Your rights and responsibilities, visit the FAQs on Our website at [XXX]. If You do not have internet access, You can call Us at [XXX; the number on Your ID card] to request a copy.] If You need more information or would like to contact Us, please go to Our website at [XXX] call Us at [XXX; the number on Your ID card].]