CAUSE NO. D-1-GN-23-008361

THE TEXAS DEPARTMENT OF INSURANCE, *Plaintiff,*	§	IN THE DISTRICT COURT OF
V.	§	TRAVIS COUNTY, TEXAS
BRIGHT HEALTHCARE INSURANCE COMPANY OF TEXAS *Defendant.*	§	455th JUDICIAL DISTRICT

SPECIAL DEPUTY RECEIVER'S MOTION TO CONFIRM SPECIAL MASTER'S RECOMMENDATION AND FOR ENTRY OF ORDER GRANTING THE MOTION TO ENFORCE PERMANENT INJUNCTION AGAINST BRIGHT HEALTH MANAGEMENT, INC.

CANTILO & BENNETT, L.L.P., the Special Deputy Receiver of Bright Healthcare Insurance Company of Texas (the "SDR" and "BHICOT," respectively), files its *Motion to Confirm Special Master's Recommendation and for Entry of Order Granting the SDR's Motion to Enforce Permanent Injunction Against Bright Health Management, Inc.* (the "Motion to Confirm").

I. INTRODUCTION

1.1. The Motion to Confirm is filed pursuant to Tex. R. Civ. P. 171. Special Master Tom Collins ("Special Master") issued a Memorandum Recommendation and Report of Special Master Regarding Special Deputy Receiver's Motions to Enforce Permanent Injunction Against Bright Health Management, Inc. and to Strike the Testimony of Angela O'Neal and Bright Health Management, Inc.'s Cross-Motion For Entry of Order Governing Electronically Stored Information ("Special Master's Recommendation") (attached) granting the SDR's *Motion to Enforce Permanent Injunction Against Bright Health Management, Inc* ("Motion to Enforce"). "The court may confirm, modify, correct, reject, reverse or recommit the report, after it is filed, as the court may deem proper and necessary in the particular circumstances of the case." TEX. R. CIV. P. 171. Respondent Bright Health Management, Inc. ("BHM") filed its Objections to the

Recommendation (the "BHM Objections") on February 7, 2025. The SDR moves the Court to confirm the Recommendation, deny the Objections, and for entry of an Order granting the Motion to Enforce in conformance with the Recommendation.

1.2 The SDR moves for admission into evidence the Recommendation, all exhibits admitted into evidence by the Special Master at his hearing on the SDR's Motion to Enforce, and the transcript of the September 30, 2024, hearing. This Motion to Confirm references exhibits admitted into evidence by the Special Master at the hearing by identifying them as "SDR Exhibit _" and the transcript by referencing the page as "Tr., p. _" of the hearing.

1.3 In summary, the Recommendation enforces what the Receivership Court ordered in the *Agreed Order Appointing Liquidator, Permanent Injunction, and Notice of Automatic Stay* (the "Permanent Injunction"), SDR Exhibit 1, in that BHM must turn over all BHICOT business records in its possession to the SDR. The SDR filed the Motion to Enforce because BHM refuses to turn over BHICOT books and records even though the Permanent Injunction explicitly orders it to do so, multiple sections of the Texas Insurance Code require it to do so,[1] and, before receivership, it agreed to do so "immediately" in the event BHICOT was placed into receivership in the Management Services Agreement ("MSA") between the parties. SDR Exhibit 2.

1.4 Further, the Recommendation correctly finds: (1) BHM is a party in interest to this dispute; (2) emails are books and records; and (3) creates a process for the turnover of records.

[1] *See* TEX. INS. CODE §§ 443.010(a)(2)(B) (requiring cooperation with SDR including turnover of records of or pertaining to the insurer and in the person's possession, custody, or control), 443.017(a) (SDR may immediately take possession of all records of insurer and persons holding such records shall release them to SDR), 443.151(a) (liquidation order vests ownership of records in SDR), 443.154(n) (SDR entitled to take possession of records of the insurer), and 443.002 (In the event of a conflict between the insurer receivership laws and the provisions of any other law, the insurer receivership laws prevail).

II. THE LIQUIDATION ORDER REQUIRES BHM TO TURN OVER THE RECORDS

2 .1 The Permanent Injunction [SDR Exhibit 1], citing the Texas Insurer Receivership Act, Chapter 443 of the Texas Insurance Code ("TIRA"), which requires the turnover of the materials without any exception. For example only, it states:

> *2.5 Pursuant to Section 443.151(a), the Liquidator shall be directed to take possession and control of Defendant's property, wherever located . . . .*
>
> *3.2 Pursuant to Section 443.151(a), title to all of Defendant's property, including but not limited to all the assets and rights described in this Order, is vested in the Liquidator. The Liquidator is authorized to take control and possession of Defendant's property, wherever located, and remove all such property from Defendant's premises.*
>
> *TO: Defendant and its agents, including but not limited to:*
>
> *Defendant's* ***current and former officers, directors,*** *underwriters,* ***managers*** *and employees,* ***including but not limited to, Jeff Craig and Jay Matushak****; owners and affiliates, including but not limited to, Bright Health Group, Inc.;* ***Bright Health Management, Inc.;*** *. . . ;*
>
> *Each of you are hereby RESTRAINED and ENJOINED from taking any and all of the following actions: . . . .*
>
> *EACH OF YOU ARE FURTHER SPECIFICALLY ORDERED to make available and disclose to the Liquidator or the Liquidator's designees the nature, amount, and location of Defendant's property, and promptly surrender all such property to the Liquidator or the Liquidator's designees.*
>
> *DEFENDANT AND DEFENDANT'S PRESENT OR FORMER OFFICERS, MANAGERS, DIRECTORS, TRUSTEES, OWNERS, EMPLOYEES, AGENTS, AND ANY OTHER PERSONS WITH AUTHORITY OVER OR IN CHARGE OF DEFENDANT'S AFFAIRS ARE FURTHER ORDERED to cooperate with the Liquidator, or the Liquidator's designees as required by Section 443.010(a).*

III. BHM IS A PARTY IN INTEREST THAT HOLDS PROPERTY OF THE ESTATE

3.1. In its Objection, BHM claims to be a "non-party" (Objections, p. 3 – 4) without mentioning that it is expressly named in the Permanent Injunction. The Special Master found, and the record emphatically proves, BHM is a party to this delinquency proceeding under TIRA. For

example, BHM is specifically named and enjoined in the Permanent Injunction. SDR Exhibit 1. The District Clerk served and issued a writ of injunction against BHM. SDR Exhibit 3.

3.2. What BHM has not done is telling – it has not objected to personal or subject matter jurisdiction. BHM has not filed a motion to quash the Writ, or limited its participation in this case as "subject to" or similar limiting contention. Further, BHM filed its own motion in this case, the "ESI Motion," and now BHM seeks relief from the Court through its Objections.

3.3 Further BHM's "non-party" argument ignores the realities of its relationship with BHICOT and the express language of the Permanent Injunction. As recognized by the Special Master, BHM was BHICOT for all intents and purposes. Rec., p. 2. Effective January 1, 2022, BHM entered into the MSA with BHICOT. SDR Exhibit 2. Under the MSA, BHM agreed to operate all aspects of BHICOT's business, to comply with Texas law, and to be governed by Texas law. Id. The MSA expressly obligates BHM to create and maintain "books and records" for BHICOT and that such "books and records" belong to BHICOT. Id.

3.4 Finally, the Court should reject BHM's efforts to keep BHICOT's records, which are "property of the estate." BHM claims to have already turned over the documents that the SDR needs to liquidate BHICOT. First, the testimony at the hearing established that BHM has not fully turned over what it claims to have provided. Tr., p. 50, lines 13 – 23. Second, the Permanent Injunction, following TIRA, orders BHM to produce **all** records, not some, not what BHM can conveniently produce, and not what it thinks the SDR needs. Likewise, the MSA contains no such limitations.

3.5 BHM's Objection claims the SDR's Motion to Enforce seeks non-BHICOT records. To the contrary, the SDR seeks only BHICOT records. Tr., p. 54, lines 20 – 23. BHM complains about broad scope of the Recommendation concerning what records need to be turned

over. However, BHM's Objection ignores the scope of its obligations to BHICOT under the MSA.

The MSA provides:

> [5.] Company [BHM] shall keep sufficient Books and Records for the express purpose of recording therein the nature and details of the management services and financial transactions undertaken for Insurer [BHICOT] pursuant to this Agreement [MSA]. **All Books and Records maintained by Company that pertain to the management services performed by Company pursuant to this Agreement are and shall remain the property of Insurer and shall be maintained in a fiduciary capacity by Company for the benefit, and subject to the ultimate control, of Insurer. "Books and Records" shall mean all books and records developed or maintained pursuant to or related to this Agreement. The Books and Records of Company shall be so maintained as to clearly and accurately disclose the nature and details of the transactions including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective Parties.** In order to fulfill its obligations under this Agreement or state or federal law, Company may, at the discretion of Insurer, during the term of this Agreement and thereafter, have access to such Books and Records.

SDR Exhibit 2 at ¶ 5 (emphasis supplied).[2]

[2] *See also* SDR Exhibit 2 at ¶¶ 1.2, 1.4, 1.7, 2: "The establishment and maintenance on behalf of Insurer of complete and accurate books and records of all Insurer's transactions in form and substance determined by Insurer provided that such form is in all material respects as required by applicable insurance laws and regulations, all other applicable laws and regulations, financial accounting standards and the requirements of federal, state and local taxing authorities;
. . . .

[1.4] The maintenance for Insurer of all financial and business records required by applicable laws and regulations and generally accepted insurance and statutory accounting practices, and the preparation for and on behalf of Insurer of all reports required by governmental and nongovernmental regulatory and supervisory authorities with adherence to risk based capital requirements;
. . . .

[1.7] The monitoring of the legal affairs of Insurer, and in each case on behalf of Insurer, complying with applicable legal requirements and making required filings with the Texas Department of Insurance (the "TDI") and all other governmental authorities having jurisdiction over Insurer;
. . . .

[2.] Management Fee . . . Company shall provide Insurer, on a monthly basis, with itemized financial statements, which shall include line item fees and expenses paid to each third party vendor. Company shall further document and make available upon request sufficient detail regarding the actual costs of services rendered on behalf of Insurer to support the reasonableness of the Management Fee. Further, Company and Insurer shall ensure that all books and records will ensure compliance with SSAP No. 70, including with respect to the allocation of expenses."

IV. EMAILS ARE BUSINESS RECORDS

4.1 The Recommendation notes, "[t]here can be no doubt that emails, generally being the means for corresponding in our modern world, are part of the books and records of a company." *See* Recommendation, p. 14. BHM objects to this finding that emails are books and records. BHM erroneously claims that the injunction's "books and records" only applies to "traditional" books and records. Obj., p. 6.

4.2 There is nothing that limits the production of records to "traditional" records in Texas insurance law, TIRA, the Permanent Injunction, or the MSA. BHM has offered no legal, statutory, or contractual support for its assertion that emails are not "books and records." No reference is made in TIRA, the Permanent Injunction or the MSA to "traditional" business records. Instead, the MSA tracks Texas insurance law and makes no reference to "traditional" business records and contains no definition of "traditional" business records. Even BHM's own policies defines "records" as "any recorded information, regardless of format or medium." Recommendation, p. 14; SDR Exhibit 24, BHG Policies and Procedures.

4.3 BHM admits that there are thousands of emails pertaining to BHICOT in its possession; many of them between BHICOT officers and directors. SDR Exhibit 5 (email from BHM counsel – "so far, searches for 'Texas,' 'Tex,' and 'TX' resulted in 61,084 documents [emails]." For example, BHICOT entered a contract with an affiliate, Neuehealth Partners Texas RBE, LLC ("Neuehealth"), that provided for Neuehealth to share in BHICOT's profits and be responsible for a share of any losses. SDR Exhibit 14, BHICOT – Neuehealth Agreement. The Special Master scrutinized BHICOT's contract with Neuehealth. Rec., p. 17 ("Clearly the circumstances surrounding this debt, its creation and its status are important questions that the SDR must assess and answer---and promptly."). BHICOT and Neuehealth had overlapping officers and directors, including BHM's lead witness at the hearing attorney Jeff Craig. *See, e.g.*,

Tr., pgs. 38 – 39; SDR Exhibits 12, 13, and 15. After receivership, BHM admitted that Neuehealth had no assets, not even a bank account. SDR Exhibit 16 ("The TX RBE [Neuehealth] does not have any cash (or a bank account).") The SDR testified that the SDR lacks records relating to the Neuehealth contract. Tr. at 43 – 44. BHM does not deny that there are emails documenting how BHICOT entered the Neuehealth contract. Tr., p. 223, lines 10 – 15. These business records are the only source of information about this $124,000,000 debt to BHICOT. Tr. at 43 – 44. The SDR is unaware of any waiver for Mr. Craig's conflict of interest in serving as an attorney for both BHICOT and Neuehealth. Tr., p. 44, lines 6 – 13.

V. BHM'S OBJECTIONS TO THE SPECIAL MASTER'S INSTRUCTIONS ON THE TURNOVER PROCESS SHOULD BE OVERRULED

5.1 The Court should reject BHM's objection to the Recommendation that requires BHM to turn over the business records within 90 days and provide status reports on its progress.

5.2 BHM has now had over 13 months to comply with the MSA and the Permanent Injunction, which was entered on November 29, 2023. BHM was required to turn over the materials "immediately." The Special Master's recommended schedule is a generous concession to BHM's failure to comply with the Permanent Injunction.

5.3 BHM's obligations under TIRA are expressly recognized in the MSA. In the event of BHICOT's receivership, the MSA requires the following:

> [9.] Receivership, Etc.
>
> (a) If Insurer is placed into Rehabilitation or Liquidation by the Texas Insurance Commissioner ("Commissioner") [sic] applicable Texas law, then:
>
> (i) all of the rights under this Agreement for management services for Insurer shall belong to the Commissioner; and
>
> (ii) all books and records developed or maintained under and related to this Agreement will immediately be made available to the receiver or Commissioner and **must be turned over to the receiver or Commissioner immediately upon request.** (Emphasis added.)

SDR Exhibit 2 at ¶ 9.

PRAYER

WHEREFORE, PREMISES CONSIDERED, CANTILO & BENNETT, L.L.P., SDR of BHICOT, prays that this Court admit into evidence the Special Master's Recommendation, the exhibits admitted into evidence at the hearing and its transcript, grant the Motion for Entry, confirm the Recommendation, deny BHM's Objections, enter an order in conformance with the Recommendation, and grant the SDR such other and further relief to which it may be justly entitled.

Respectfully submitted,

/s/ Greg Pierce

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CERTIFICATE OF SERVICE

I certify that on March 25, 2025, a true and correct copy of the foregoing *Motion to Confirm Special Master's Recommendation and for Entry of Order Granting the SDR's Motion to Enforce Permanent Injunction Against Bright Health Management, Inc.* was served pursuant to the Order of Reference to Master, the Texas Rules of Civil Procedure and TEX. INS. CODE 443.007(d) on the following by email, except as specifically otherwise noted.

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CAUSE NO. D-1-GN-23-008361

THE TEXAS DEPARTMENT OF INSURANCE, *Plaintiff,*	§	IN THE DISTRICT COURT OF
v.	§	TRAVIS COUNTY, TEXAS
BRIGHT HEALTHCARE INSURANCE COMPANY OF TEXAS, *Defendant.*	§	455th JUDICIAL DISTRICT

MEMORANDUM RECOMMENDATION AND REPORT OF SPECIAL MASTER REGARDING SPECIAL DEPUTY RECEIVER'S MOTIONS TO ENFORCE PERMANENT INJUNCTION AGAINST BRIGHT HEALTH MANAGEMENT, INC. AND TO SRTIKE THE TESTIMONY OF ANGELA O'NEAL AND BRIGHT HEALTH MANAGEMENT, INC.'S CROSS-MOTION FOR ENTRY OF ORDER GOVERNING ELECTRONICALLY STORED INFORMATION

Currently before the Special Master for report and recommendation to the District Court are three motions: CANTILO & BENNETT, L.L.P., Special Deputy Receiver ("SDR") for Bright Healthcare Insurance Company of Texas' Motion to Enforce Permanent Injunction Against Bright Health Management (the "Motion to Enforce"), its Motion to Strike the Testimony of Angela O'Neal (a witness presented by Bright Management), and Bright Health Management's Cross-Motion for Entry of Order Governing Electronically Stored Information (the "ESI Motion"). After consideration of the controlling law, briefing, testimony, and documentary evidence offered by the SDR and Bright Health Management, Inc., the Special Master recommends as follows:

I. Introduction

The motions before the Texas Insurance Receivership Court raise issues of first impression for this Court. Frankly, these issues may be relatively new as well with regard to insurance receiverships nationwide.

The State of Texas through its Department of Insurance placed the insurance company, Bright Healthcare Insurance Company of Texas ("Bright Healthcare" or "the Estate") into receivership approximately one year ago. One of the fundamentals of a receivership is that the receiver, here the SDR, suddenly charged with taking over a business has as one of its first orders of business the duty to take immediate possession of all the books and records of the company. For obvious reasons, this is an essential and critical first step. In the days of hard copies in files and filing cabinets for the company's books and records typically physically maintained in its offices and/or at storage locations, taking possession and control of all the receivership estate's books and records was and is a "no brainer."

Here, however, Bright Healthcare was a "virtual insurance company," meaning it had no offices, employees, furniture, etc. It also did not maintain hard copies of most all, if not all, of its books and records generated in operating its business. Rather, all is in an electronic format. If this one company stood alone, that fact in and of itself would not be problematic.

However, such is not the case here. Bright Healthcare and at least 13 other virtual companies operating in 14 states in the United States (Bright Management refers to almost two dozen affiliated companies) were operated under the corporate umbrella of the Bright Health Group by Bright Health Management, Inc. ("Bright Management"). Bright Management used its employees and offices located in Minneapolis, Minnesota, to manage and run the day-to-day operations of not only Bright Healthcare but also the 13 other virtual subsidiary companies under its corporate umbrella (primarily appearing to be insurance companies in other states).

The obvious advantage of such an arrangement, made much easier by modern technology, is the economies-of-scale that are achieved by one set of offices, employees, officers, directors, etc., overseeing and operating at least 14 subsidiary and affiliated companies. As Bright

Management notes in its proposed Memorandum Recommendation at page 1: "[F]or operational efficiencies and economies of scale, Bright Healthcare utilized an affiliated administrative entity, Bright Management, to provide services described in the Master Services Agreement ("MSA")."

In and of itself, saving money by having one entity run at least 14 subsidiary or affiliated companies would not cause a problem. But here, Bright Management maintained one single electronic platform(s) where all the books, records, emails, and the other information of all the subsidiary and affiliated companies were and are kept. There was one email box per employee, and an employee might work on matters for all the affiliated companies. But emails were not kept separated by company under the Bright Management umbrella. Because the records were not maintained separately and earmarked by company (whether possible to do that or not, and whether now common in the insurance industry to do that or not), they thus are commingled. Thus, emails of Bright Management employees, officers and directors that relate to the business of Bright Healthcare are embedded in Bright Management's general email servers (with one box per employee) and cannot be retrieved easily as might be the case if they were somehow separately earmarked and stored for easy retrieval by company, including the Bright Healthcare Estate.

The evidence at the hearing made clear that the system that Bright Management set up has caused a practical and costly nightmare to now (1) search for and retrieve off the Bright Management electronic system all the books, records, documents and information that relate to or pertain to or concern Bright Healthcare, and (2) separate them from the records of the other companies. This one key fact plagues this Estate and the turnover to the SDR by Bright Management of all the records and information in its possession, custody or control related to or pertaining to or concerning the receivership estate of Bright Healthcare. The instant motions and relief sought by each side all flow from Bright Management's commingling of the records and

information of all the companies it was managing and running when Bright Healthcare was placed into the instant liquidation proceeding by the State of Texas.

There are three main issues. First, the SDR by its Motion to Enforce Permanent Injunction seeks from Bright Management a number of categories of books, records and information. In response, Bright Management seeks protection primarily against turning over records that do not relate in any way to Bright Healthcare and/or are covered by a privilege held by another company. Second, given the acknowledged substantial challenges of searching for, reviewing and turning over documents (and portions of documents) that relate solely to Bright Healthcare versus unrelated or privileged documents belonging to other companies, Bright Management moves the Court to enter an Electronically Stored Information ("ESI") Order compelling the SDR to work with Bright Management to agree on a process including search terms, etc., to try to retrieve all the records related to Bright Healthcare that are commingled with the numerous other virtual companies that Bright Management has operated. And third, Bright Management requests that the Court order the Estate to reimburse it for the extremely substantial cost associated with the search, review, separation and production of the Estate's books, records and information from Bright Management.

II. Procedural Background

Bright Healthcare is a Texas-domiciled insurance company. It sold individual health coverage (under the federal Affordable Care Act as well as off the Federal exchange) in the State of Texas during calendar year 2022. As noted above, Bright Management managed Bright Healthcare and a number of other subsidiary companies as "virtual" insurance companies. This was done pursuant to a Management Servies Agreement ("MSA") effective January 1, 2022, that was not actually signed by representatives of the two affiliated companies until May 2, 2022. As

already discussed, Bright Healthcare had no employees, offices, fixtures, furniture or equipment. It relied solely on Bright Management to perform all the functions necessary to run the company, including managing its records and data. Bright Healthcare did have officers and directors (who apparently also served in capacities for Bright Management): Jeff Craig, Jay Matushak, Eric Halverson and Jeff Scherman.

The Texas Department of Insurance ("TDI") placed Bright Healthcare into an interim step of Supervision in October 2022. However, on November 15, 2023, TDI filed its Plaintiff's Original Petition, Application for Order Appointing Liquidator, and Request for Permanent Injunction to ultimately place Bright Healthcare into liquidation under the Texas Insurance Code. On November 29, 2023, the Court entered its Permanent Injunction placing Bright Healthcare into receivership. Bright Management is expressly named and enjoined in the Permanent Injunction. Bright Management was served with the Writ for Permanent Injunction on December 6, 2023.

This matter thus arises under the Texas Insurer Receivership Act, Chapter 443 of the Texas Insurance Code ("TIRA"). Movant, the SDR, was appointed by the Commissioner of Insurance in her capacity as the Liquidator of Bright Healthcare. Under TEX. INS. CODE § 443.154 (a), the SDR "has all powers of the liquidator granted by this section, unless specifically limited by the liquidator, and serves at the pleasure of the liquidator."

Bright Management is a "party in interest" in this receivership because it owns one hundred percent of the equity of Bright Healthcare. TEX. INS. CODE § 443.004 (a)(17).

After entry of the Permanent Injunction, the SDR requested that Bright Management turn over the books and records of Bright Healthcare. Bright Management has provided a number of categories of Bright Healthcare books and records to the SDR. The evidence also suggests some earlier delays or lack of cooperation as to certain categories of records (such as certain records of

third-party administrators as testified by the SDR representative Mr. Marcin). Bright Management makes clear that it does not dispute the SDR's entitlement to the Estate's books and records, and agrees not all records have been produced. As summarized above, the dispute centers on how a search for all additional records, especially emails, is to be conducted; what role, if any, the SDR should play in such efforts as an active participant coordinating with Bright Management in formulating search terms, etc.; and whether the Estate should pay the very substantial cost ahead for Bright Management to do a full, thorough review, sorting out and turning over all books, records, documents, communications and information related to or pertaining to or concerning Bright Healthcare.

The parties spent months starting at the end of 2023 discussing how to resolve these electronic document issues, but to no avail. The SDR eventually filed its Motion to Enforce Permanent Injunction on June 28, 2024. Bright Management responded by filing its Response and ESI Cross-Motion on July 12, 2024. After conferring with the Special Master, the parties agreed to a briefing schedule.

Following briefing, the Special Master heard the competing motions at an evidentiary hearing on September 30, 2024. At this hearing, the Special Master admitted into evidence all the parties' offered exhibits and received into evidence the testimony of four witnesses. The SDR called Michael Marcin and Brian Falligant as witnesses. Bright Management called Jeff Craig and Andrea O'Neal as witnesses. All proffered testimony by the four witnesses was received into evidence. The SDR does now urge by motion that the testimony of Ms. O'Neal be striken (addressed below).

The parties each submitted at the end of October a proposed Memorandum Recommendation for consideration and entry by the Special Master.

III. Legal Basis for the Turnover of the Estate's Records and Information Relating to or Pertaining to or Concerning Bright Healthcare to the SDR

The SDR's right to recover all books, records and information in Bright Management's possession, custody or control that pertain to, relate to or concern Bright Healthcare is established by three sources: (1) **legislatively** by the Texas Insurance Code, and in particular the provisions of TIRA; (2) **judicially** by the Court's Permanent Injunction; and (3) **contractually** by the Management Services Agreement between Bright Healthcare and Bright Management. Bright Management does not challenge the applicability or scope of the provisions in TIRA or the Permanent Injunction, but it nonetheless is important to set out the numerous provisions that the Texas Legislature and the Receivership Court in its Permanent Injunction devote to the receiver's entitlement to the Estate's books, records and information, as well as the duties of compliance and cooperation placed on Bright Management. Bright Management places too much emphasis on particular definitions with urged narrow readings. In so doing, it misses the mark because the Texas law set forth in Section 443.010 of TIRA addresses and emphasizes the special **cooperation** that Bright Management, as the prior owner and manager of Bright Healthcare, and its management and employees must provide the SDR as the SDR takes over the business that had been run by Bright Management. Going forward, the Special Master intends to closely monitor evidence of cooperation or any lack thereof---as further discussed below.

A. Legislatively The Texas Insurer Receivership Act Requires Bright Management to Turn Over the Records

Texas law applicable to this dispute is straightforward. TIRA governs the receivership of insurance companies in Texas. *See* TEX. INS. CODE §443.001, *et seq.* This Court "has exclusive jurisdiction of all property of the insurer, wherever located, including property located outside the territorial limits of the state." TEX. INS. CODE §443.005(c). The Act explicitly addresses Bright

Management's obligation to turn over records of the Bright Healthcare to the SDR. The scope of the obligation to provide "books and records" to the SDR pursuant to the statute is expansive. TEX. INS. CODE §443.004 broadly defines "property of the estate" to include:

> all records and data that are otherwise the property of the insurer, **in whatever form maintained**, within the possession, custody, or control of a ... management company.... (emphasis added).

Thus, "records or data" that are the property of the insurer, in whatever form, are "property of the estate" regardless of who holds them.

Additionally, TEX. INS. CODE §443.017(a) provides:

> Upon entry of an order of rehabilitation or liquidation, the receiver is vested with title to all of the books, documents, papers, policy information, and claim files, and all other records of the insurer, of whatever nature, in whatever medium, and wherever located, regardless of whether the records are in the custody and control of a third-party administrator, managing general agent, attorney, or other representative of the insurer. The receiver may immediately take possession and control of all of the records of the insurer, and of the premises where the records are located. A third-party administrator, managing general agent, attorney, or other representative of the insurer shall release all records described by this subsection to the receiver, or the receiver's designee, at the request of the receiver.

The Act's command that Bright Management turn over records pertaining to or concerning Bright Healthcare to the SDR is broader than merely the turnover of the "business records" of the Bright Healthcare Estate. Section 443.010 of TIRA is a particularly important statute as applies to Bright Management. Given this statutory provision's special relevance to the relationship and dealings between the SDR, on the one hand, and Brright Management, on the other, the Special Master sets forth this critical provision in full:

"Cooperation of Officers, Owners, and Employees"

> (a) Any present or former officer, manager, director, trustee, owner, employee, or agent of any insurer, or any other persons with authority over or in charge of any segment of the insurer's affairs, shall cooperate with the commissioner or receiver in any proceeding under this chapter .... For purposes of this section:

(1) "person" includes any person who exercises control directly or indirectly over activities of the insurer through any holding company or other affiliate of the insurer; and

(2) "cooperate" includes:

(A) replying promptly in writing to any inquiry from the commissioner or receiver requesting the reply; and

(B) **promptly** making available to the commissioner or receiver any books, accounts, documents, or other records or information or property of **or pertaining to the insurer and in the person's possession, custody, or control.**

(b) A person may not obstruct or interfere with the commissioner or receiver in the conduct of any delinquency proceeding or any preliminary or incidental investigation.

(c) This section may not be construed to abridge otherwise existing legal rights, including the right to resist a petition for liquidation or other delinquency proceedings, or other orders.

(d) Any persson described by Subsection (a) who fails to cooperate with the commissioner or receiver, or any person who obstructs or interferes with the commissioner or receiver in the conduct of any deliquency proceeding or any preliminary or incidental investigation, or who violates any order validly issued under this chapter:

(1) commits an offense; and

(2) is subject to the imposition by the commissioner of an administrative penalty not to exceed $10,000 and subject to the revocation or suspension of any licenses issued by the commissioner in accordance with Chapters 82 and 84.

(e) An offense under Subsection (d) is punishable by a fine not exceeding $10,000 or imprisonment for not more than one year, or both fine and imprisonment. (emphasis added).

The Special Master emphasizes the following. First, the seriousness of this statutory obligation to cooperate legislatively placed on an entity such as Bright Management and its officers, directors, and employees is made clear by the Texas Legislature's inclusion of fines and even the surprising possibility of imprisonment. Second, Texas law requires the "prompt" making available of books, records or information. Third, the covered "books, accounts, documents, or other records or information or property" include those "pertaining to" Bright Healthcare that are in Bright

Management's possession, custody, or control. In other words, the required turnover is not limited to Bright Healthcare's business records. Fourth, as contemplated by subsection (c) above, the Special Master in this Report does address and affirm rights held by Bright Management regarding unrelated or privileged documents of other companies.

Given that the evidence establishes that Bright Management operated every aspect of Bright Healthcare's business prior to receivership, the Special Master in its oversight of hundreds of estates over the past thirty years has never seen an estate where active cooperation by Bright Management and its former and present officers, directors, and employees with the SDR is as essential as it is in this Estate Bright Management's counsel wisely has generally and more recently sought by its briefing and proferred evidence to show efforts at cooperation. Based on Section 443.010, Bright Management must be able to establish throughout the course of this proceeding its cooperation with the SDR, including producing all the information relating to or pertaining to or concerning Bright Healthcare.

B. Judicially the Permanent Injunction Requires Bright Management to Turn Over Bright Healthcare's Books and Records

The Permanent Injunction, which specifically named and enjoined Bright Management, provides the following:

> The Liquidator shall be vested by operation of law with title to all of Defendant's property as defined in Section 443.004(a)(20). Such property shall include property of any kind or nature, whether real, personal, or mixed, including but not limited to ... books, records, documents and insurance policies, ... intangible assets, whether owned individually, jointly, or severally, wherever located, and all right ... belonging to Defendant, whether asserted or not, ... The Liquidator's title shall extend to Defendant's property regardless of the name in which such items are held, or where such items are located.
>
> Pursuant to Section 443.151(a), the Liquidator shall be directed to take possession and control of Defendant's property, wherever located.
>
> The Liquidator may act as it deems necessary or appropriate to perform the Liquidator's duties pursuant to Section 443.151(a). The Liquidator shall have all the powers of

Defendant's directors, officers and managers, and the authority of such persons is suspended except as specifically permitted by the Liquidator or the Liquidator's designees.

Defendant and Defendant's present or former officers, managers, directors, trustees, owners, employees, agents, and any other persons with authority over or in charge of Defendant's affairs **shall be required to cooperate with the Liquidator and the Liquidator's designees pursuant to Section 443.010** (emphasis added).

....

Pursuant to Section 443.151(a), title to all of Defendant's property, including but not limited to all the assets and rights described in this Order, is vested in the Liquidator. The Liquidator is authorized to take control and possession of Defendant's property, wherever located, and remove all such property from Defendant's premises.

....

The Clerk of this Court shall issue a Permanent Injunction against the persons and entities named below, with the following force and effect:

TO: Defendant and its agents, including but not limited to:

Defendant's **current and former officers, directors,** underwriters, **managers** and employees, **including but not limited to, Jeff Craig and Jay Matushak**; owners and affiliates, including but not limited to, Bright Health Group, Inc.; **Bright Health Management, Inc.;** . . . .

Each of you are hereby RESTRAINED and ENJOINED from taking any and all of the following actions:

....

Wasting, disposing of, converting, dissipating, or concealing, in any manner, any of Defendant's property;

Using, releasing, transferring, selling, assigning, canceling, hypothecating, withdrawing, allowing to be withdrawn, offsetting, asserting ownership of, concealing, in any manner, or removing from this Court's jurisdiction or from Defendant's place of business, any of Defendant's property, ...

....

Doing anything to prevent the Liquidator or the Liquidator's designees from gaining access to, acquiring, examining, or investigating any of Defendant's property or any other property, books, documents, records, or other materials **concerning Defendant's business, under whatever name they may be found** (emphasis added);

....

EACH OF YOU ARE FURTHER SPECIFICALLY ORDERED to make available and disclose to the Liquidator or the Liquidator's designees the nature, amount, and location of Defendant's property, and promptly surrender all such property to the Liquidator or the Liquidator's designees.

> DEFENDANT AND DEFENDANT'S PRESENT OR FORMER OFFICERS, MANAGERS, DIRECTORS, TRUSTEES, OWNERS, EMPLOYEES, AGENTS, AND ANY OTHER PERSONS WITH AUTHORITY OVER OR IN CHARGE OF DEFENDANT'S AFFAIRS ARE FURTHER ORDERED to cooperate with the Liquidator, or the Liquidator's designees as required by Section 443.010(a).

Again, the Court's Order and Permanent Injunction directing that Bright Management and the other above-named entities and individuals **cooperate** with the SDR is paramount in this Estate.

One final note regarding TIRA and the Permanent Injunction. TIRA in discussing records uses the phrase "pertaining to;" the Permanent Injunction uses the phrase "concerning" Bright Healthcare's business. The Special Master thus is employing the phrase "relating to or pertaining to or concerning" throughout this Report to include both the statutory and judicial duties placed on Bright Management.

C. Contractually the Management Services Agreement Requires Bright Management to Produce Bright Healthcare's Books and Records Immediately

Bright Management's obligation to turn over the records sought by the SDR is further supported by the MSA which it signed with Bright Healthcare. The MSA broadly defines "books and records" as follows:

> "Books and Records" shall mean all books and records developed or maintained pursuant to or related to this Agreement.

This definition is expansive and not limited to any type of document or record.

Furthermore, the remainder of ¶ 5 of the MSA makes clear that Bright Management was required to keep "sufficient" books and records for the "express purpose of recording therein" the "nature and details of the management services and financial transactions undertaken for [Bright

Healthcare]" as well as the "nature and details of the transactions." MSA ¶ 5]. This broad obligation is echoed by the MSA's recitation of Bright Management's obligations under the MSA, which include:

> The establishment and maintenance on behalf of Insurer of complete and accurate books and records of all Insurer's transactions in form and substance determined by Insurer provided that such form is in all material respects as required by applicable insurance laws and regulations, all other applicable laws and regulations, financial accounting standards and the requirements of federal, state and local taxing authorities;
>
> ....
>
> The maintenance for Insurer of all financial and business records required by applicable laws and regulations and generally accepted insurance and statutory accounting practices, and the preparation for and on behalf of Insurer of all reports required by governmental and nongovernmental regulatory and supervisory authorities with adherence to risk based capital requirements;
>
> ....
>
> The monitoring of the legal affairs of Insurer, and in each case on behalf of Insurer, complying with applicable legal requirements and making required filings with the Texas Department of Insurance (the "TDI") and all other governmental authorities having jurisdiction over Insurer;

MSA ¶¶ 1.2, 1.4, 1.7.

The MSA further specifies that all such "books and records" are and shall remain the "property" of Bright Healthcare and shall be maintained by Bright Management in a "fiduciary capacity." MSA¶ 5. The broad definition of "books and records" in the MSA echoes that provided in TIRA.

Finally, the MSA expressly incorporates Bright Management's legal obligation to "immediately" turn over records to the SDR upon receivership. Paragraph 9 of the MSA provides:

> If [Bright Healthcare] is placed into Rehabilitation or Liquidation by the Texas Insurance Commissioner ... then:
>
> ....

All books and records developed or maintained under and related to this Agreement will **immediately** be made available to the receiver or Commissioner and must be turned over to the receiver or Commissioner immediately upon the receiver's or Commissioner's request (emphasis added).

MSA ¶ 9. Frankly, there is no evidence in this record that Bright Management made any meaningful effort at all after the MSA was signed to be able to comply with its obligation to **immediately** make available and turn over the books and records. Based on the electronic system maintained by Bright Management, and its own evidence presented at the hearing, it was and is a practical impossibility for Bright Management to comply with its promise.

IV. Special Master Recommendations Regarding Various Issues Pertaining to the Required Turnover of the Estate's Books, Records and Information by Bright Management to the SDR

First of all, Bright Management does not contest that the SDR has the right to all of Bright Healthcare's books and records held by it. Based on that acknowledgement, Bright Management has turned over, and as of the evidentiary hearing, is continuing to turn over records in many categories.

The SDR by its motion seeks an Order requiring Bright Management to deliver to the SDR (in ten days) certain categories of documents. Before addressing as necessary these categories, the Special Master recommends the following guidelines should apply (which guidelines address various issues teed up by the parties in their briefing).

A. Emails

There can be no doubt that emails, generally being the means for corresponding in our modern world, are part of the books and records of a company and are covered by the "books and records" definitions discussed above. The TIRA describes the covered records and data "in whatever form maintained." The internal policies and procedures of Bright Management (as part of the Bright Health Group) defines "records" as "any recorded information, regardless of format

or medium." At times it is unclear whether Bright Management is contending that an email per se is not a business record of Bright Healthcare, or whether emails that do not relate to or pertain to or concern Bright Healthcare—but rather relate solely to another company or are otherwise privileged under a privilege umbrella of another company---are not books and records of Bright Healthcare. For now, and subject to the discussions that follow below, suffice it to say that the Special Master recommends that there is no exclusion for emails per se.

B. Scope of the Documents to be Turned Over

The parties to some extent pass each other in the night arguing past each other what is required to be produced. The Special Master recommends the following general guidelines and rules. There are two general categories of documents that are to be delivered to the SDR. First, any document generated or received by any person or entity in connection with the business of Bright Healthcare constitutes a book/record of the Estate, and is to be turned over. Secondly, whether an actual business record of Bright Healthcare or not, if a document in Bright Management's possession, custody or control (including on its electronic data storage system(s)) "pertains to" Bright Healthcare, regardless of the email's author, purpose, content or whether written for the benefit or detriment of Bright Healthcare from a financial or other standpoint, that document is to be turned over to the SDR based on the legislative edict in Section 443.010(a)(2)(B) previously discussed. Additionally, as noted above, this Court's Permanent Injunction at Paragraph 4.6 enjoins Bright Management and all former and current officers, directors, managers and employees of Bright Healthcare from "[d]oing anything to prevent the Liquidator or the Liquidator's designees [the SDR] from gaining access to, acquiring, examining, or investigating any of Defendant's [Bright Healthcare] property or any other property, books, documents, records, or other materials **concerning Defendant's business, under whatever name they may be**

found." (emphasis added). These two applicable provisions expand Bright Management's duty to provide documents in its possession beyond documents that would be defined as the typical business books and records of Bright Healthcare. In other words, given the entities and persons associated with the receivership estate who are named in the Permanent Injunction, the SDR is not required to launch a separate document discovery effort to obtain from the enjoined parties all information that pertains to or concerns Bright Healthcare. Thus, for example, an email between two Bright Management officers/directors discussing in any way Bright Healthcare would be turned over because it "pertains" to or "concerns" Bright Healthcare, whether it is an actual business record of Bright Healthcare or not (subject to any valid claim of privilege).

Any document, including any document relating solely to the business of Bright Management or any of its affiliated entities, that falls outside the above provisions and thus in no way relates to or pertains to or concerns Bright Healthcare is not required to be turned over.

The Special Master recommends that Bright Management be ordered to turn over all documents and information in its possession consistent with the guidelines set forth above, regardless of whether they are covered by the specific categories the SDR seeks by its motion.

C. Privileged Documents

The SDR succeeds to and holds all privileges held by Bright Healthcare. Bright Management correctly does not contest that the SDR owns and holds all such privileges and is entitled to all of Bright Healthcare's privileged information.

Bright Management has not waived any privilege that applies to its information or that of any affiliated company. The fact that records are commingled in electronic storage does not constitute a waiver of privilege. Any argument by the SDR to that effect should be denied. Bright Management uses the example of an attorney who maintains all his privileged information for all

his or her clients on a single email site, and that the attorney does not waive the privilege as to all the information because it is commingled in his single server. The Master agrees.

The Special Master anticipates that issues may arise as to what, if any, privileges apply regarding certain documents. Given the Bright Health overall corporate organization, certain individuals—particularly officers and directors---have worn multiple hats on behalf of multiple companies in the corporate umbrella. Thus, officers/directors of Bright Management apparently also served in similar capacities for Bright Healthcare. And at least one such person, Jeff Craig, has a law degree and would have had an attorney-client relationship with both entities. This creates challenges based on fiduciary obligations. This challenge, for example, is highlighted here by the fact that the receivership estate of Bright Healthcare is shown to be owed by a Neuehealth-related entity, a Bright-affiliated company, an amount over $124,000,000.00. However, there are documents in the record reflecting that the Chief Accounting Officer of Neuehealth indicates the receivable owed to the Estate by a related company is not collectible because there is "0 cash for the Neuehealth RBE to pay it." Clearly the circumstances surrounding this debt, its creation, and its status are important questions that the SDR must assess and answer---and promptly. And there may be issues of privilege that arise relating to this debt.

To the extent Bright Management withholds information from turnover to the SDR based on an assertion of privilege, it is to maintain a detailed privilege log regarding same. This log must be regularly updated and provided to SDR counsel at least every twenty (20) days from entry of a Court Order confirming same. To the extent the SDR briefly has argued that Bright Management and its representatives are not authorized to view any privileged document of Bright Healthcare, this argument (while it may be based on undisputed legal principles) certainly must be denied here

based on common sense because documents must be reviewed to determine if they are to be turned over or not.

In the process ahead, counsel should confer as to how to best "tee up" before the Special Master any disputes regarding documents being withheld in whole or in part by way of redactions because of an assertion by Bright Management or other company of privilege.

V. Specific Categories of Information Sought by the SDR in its Motion to Enforce

The SDR seeks the following:

A. All Bright Healthcare-related emails to or from Bright Healthcare officers and directors Jeff Craig, Jay Matushak, Eric Halverson and Jeff Scherman;

B. All records maintained in the Office 365 data suite: SharePoint, OneDrive, and Teams for all Bright Healthcare officers and directors;

C. All Bright Healthcare-related emails from any Bright Management employee, affiliate, agent or vendor;

D. All books and records relating to all debts owed to Bright Healthcare by Bright Management affiliate, Neuehealth Partners Texas RBE, LLC;

E. All books and records relating to all debts owed by Bright Healthcare to the federal government;

F. A complete set of the Bright Healthcare Board of Directors minutes, resolutions, and all other corporate books and records; and

G. An organizational chart identifying those individuals, including job titles, dates of employment, and email account(s), and a separate list of all email accounts, including individual accounts and accounts associated with a business unit or function such as "claims" or "potential security incident"; who provided services under the Bright

Healthcare and Bright Management Management Services Agreement, regardless of what entity/entities employed the person.

Most of the disputes arising under these categories are addressed above by the Special Master. Bright Management states that it has produced to the SDR the information sought in categories D, E and F. Obviously the duty to turn over documents is a continuing one.

All the categories are reasonable, relevant requests. To the extent information and documents have not been produced based on the disputes addressed above, the process must now commence in earnest to produce and provide all information and documents in all these categories that relate to or pertain to or concern Bright Healthcare---subject to the discussions above as to unrelated and privileged documents.

Category C includes the terms "affiliate, agent or vendor," and it is appropriate for the SDR to require Bright Management to cooperate with it by seeking all Bright Healthcare-related emails from these persons/entities based on the information within the possession of Bright Management. The Permanent Injunction expressly covers "agents" with an extensive listing of persons and entities that might qualify as agents, and thus use of the terms "affiliates, agents and vendors" cannot properly be objected to as inappropriate vague terms. The SDR may, but is in no way required, to provide lists of afffiliates, agents and vendors to Bright Management as it may discover them during the course of this proceeding.

Regarding Category F and Board of Directors minutes and any other records relating to actions of the Board, Bright Management's witness, Mr. Craig, testified that all of these records had been turned over and were admitted into evidence in SDR Exhibit 19. However, he confirmed that much of the work done by Bright Healthcare directors was conducted informally in emails, which have not been turned over to the SDR. It is essential (as to this and all other categories

sought by the SDR) that Bright Management conduct a thorough review of all the materials in its possession to confirm that all the Board of Director-related materials, including any emails or other informal discussions, have been turned over to the SDR. Also, it is essential that Bright Management's review of all documents be based on the test of whether the document relates to or pertains to or concerns Bright Healthcare.

Proper and legally-required cooperation by Bright Management with the SDR pursuant to TIRA §443.010 includes producing (and even preparing) information consistent with the SDR's understandable requests in category G for organizational charts and a list of email accounts of employees. Bright Management in its initial Objection and Cross-Motion argued it did not have to create any documents for the SDR, citing a discovery case not relevant to the issue here. Fortunately, Bright Management at the hearing dropped this improper opposition and apparent lack of cooperation as now reflected in its Exhibits 3, 8 and 9. Bright Management is to continue its efforts to cooperate with the SDR and provide the SDR all the information sought by category G.

VI. Bright Management's Cross-Motion for Order Governing the Production of Electronically Stored Information ("ESI")

Bright Management essentially seeks two things: (a) that the SDR be directed to cooperate and coordinate with Bright Management in the process of identifying and producing the documents and information on Bright Management's integrated system "without impinging upon the protected rights of third parties not before this Court," (Bright Management proposed Memorandum Recommendation at p.11), and (b) a determination as to which party is to bear the costs associated with such review and production.

A. Who is Responsible for the ESI Search, Review, and Production?

The fundamental premise is as follows: Bright Management made the decision to set up a single electronic system for the numerous companies it operated, including Bright Healthcare. Given this fact that we now have the Estate's records and information commingled with numerous other companies, and given Bright Management's legal duty to provide to the SDR all documents and information related to or pertaining to or concerning Bright Healthcare, Bright Management understandably seeks to protect from disclosure information and documents on its system that do not relate to Bright Healthcare and/or is covered by an asserted privilege(s) that applies to a company other than Bright Healthcare. The review that has been necessary thus is to protect and benefit Bright Management, and not the Estate.

Accordingly, it is the sole responsibility of Bright Management to undertake expeditiously this search, review and production process. The SDR is not required to assist Bright Management in its effort to retrieve the documents and information off its commingled system that it created for its own economic benefit. Rather, Bright Management alone is to undertake---or continue to undertake---whatever process insures that every single document or piece of information in its possession, custody or control that relates to or pertains to or concerns Bright Healthcare is turned over. The SDR may voluntarily provide information to Bright Management to assist, but there is no duty on the SDR at all to do so. Bright Management created the system that now regretably confronts us; it must deal with the consequences flowing from the single system it established.

B. Cost

As to cost, Bright Management's argument that its MSA with Bright Healthcare obligates the Estate to pay the cost of this very substantial review and search effort is without merit. Whether common in the industry or not, Bright Management created and benefitted financially by the single

electronic system it created. Having created this fact of commingled records, and now confronted with the fact that one of its managed companies has been placed by the State of Texas into receivership, Bright Management now must comply with the judicial, legislative and contractual duties placed on it no matter the very substantial time and expense that will be required to turn over all the Estate's records it holds. In other words, having established an electronic system(s) of commingled records, it must now pay for the time and expense required to "un-commingle" the Estate's separate records and information that relates to or pertains to or concerns Bright Healthcare, protect unrelated or privileged records from disclosure, and turn over all the Estate's documents and information to the SDR as soon as possible. In addition, no provision of the Permanent Injunction or the Texas Insurance Code entitles Bright Management to be reimbursed for the cost of searching for and separating Bright Management's records and those of other affiliated companies from those of Bright Healthcare.

In sum, Bright Management created the substantial problem on records we now have notwithstanding its admitted knowledge of the MSA's terms. Bright Healthcare's policy holders and creditors do not pay for a situation of Bright Management's own making. The Special Master accordingly recommends that Bright Management's Cross-Motion should be denied.

VII. The SDR's Motion to Strike the Testimony of Angela O'Neal

The SDR's Motion to Strike the Testimony of Angela O'Neal is denied because, whether meritoriuos or not, her testimony has not been relied upon by the Special Master in any manner adverse to the SDR for purposes of weighing the evidence and making this Recommendation. If anything, it simply makes clear the extremely substantial effort and expense now required of Bright Management to retrieve and produce all the records and information as directed in this

Memorandum Recommendation and Report while preserving its right not to produce commingled records of other companies, including any privileges that would apply for other companies.

VIII. The Timetable for a Completed Turn Over of Records and Information

The timetable for Bright Management's required turn over is an extremely problematic issue because Bright Management clearly cannot comply with what the law requires. As discussed, Bright Management in the MSA promised in Section 9(a)(ii) that if Bright Healthcare were placed in Liquidation by the Texas Insurance Commissioner, "all books and records developed or maintained under and related this Agreement will **immediately** be made available to the receiver or Commissioner and must be turned over to th [sic] receiver or Commissioner immediately upon the receiver's or Commisioner's request." The Texas Insurance Code and the Permanent Injunction also express and direct **prompt** compliance with Bright Management's turnover obligations.

But the reality given how Bright Management opted to maintain and store records for all the companies it operates on a single electronic platform is that this promised and ordered performance is impossible in a timely manner. The evidence introduced by Bright Management itself clearly establishes this fact.

The SDR seeks a turnover of all the categories of records and information within ten (10) days of the date of the Court's Order on its Motion to Enforce. While legally supported, it simply cannot be done and would be an exercise in futility.

This Estate now is over one year old. Claims are being filed. The Court has set a claims filing deadline of February 3, 2025. Precious time has been lost regarding turning over the required information. Time thus is of the essence for the categories of records described above to be turned over.

The Special Master appreciates the very substantial time, effort, manpower and cost required for Bright Management to retrieve and sort the Estate's records and information from that of all its other subsidiary companies. Frankly, any time limit recommended and set by the Special Master will appear impractical and naïve given what all has to be done. BUT that time and effort must now occur---and promptly. The Special Master therefore recommends that, no matter the voluminous cost and the amount of manpower in likely short-term hires required, all the records and information addressed in this Memorandum Recommendation and Report be turned over to the SDR within ninety (90) days of the date of entry of a Court Order consistent with this recommendation. Bright Management cannot be heard to complain that this ninety (90) day deadline is unrealistic, because that deadline far exceeds the "immediate" turnover that Bright Management promised, and that the Texas Insurance Code and Permanent Injunction contemplate.

The Master further recommends that Bright Management be ordered to file a Status Report with the Court and Special Master every twenty (20) days during this ninety (90) day period updating the Court in detail of the efforts made in the prior twenty-day period and for the next twenty-day period to comply with the terms of the Court's Order.

IX. Procedural Process and Timetable Regarding this Memorandum Recommendation and Report

The Order of Reference to Master in this cause contemplates that any objection to this Memorandum Recommendation and Report is to be filed within ten (10) days of the submission of this recommendation and a proposed order to the Court. The Special Master is not at this time submitting a proposed Order to the Court. Rather, given the approaching holidays the procedure will be as follows: (1) the ten (10) day period to object is not triggered because a proposed Order is not now being submitted to the Court; (2) any objection to this Memorandum Recommendation and Report by either or both sides is be filed by on or before Monday, January 6, 2025; (3) if an

objection is filed, the Court will take the motions and this Memorandum Recommendation and Report up in due course and, pursuant to Texas Rule of Civil Procedure 171, the Court may confirm, modify, correct, reject, reverse or recommit the Master's report; (4) if no objections are filed, then counsel for both parties shall work to prepare an Agreed Order as to form consistent with this report and submit it to the Special Master in Word Format by on or before Friday, January 10, 2025, for his review, comment and submission to the Court.

SIGNED this 17th day of December, 2024.

Tom Collins, Special Master

EXHIBIT 1

Cause No. D-1-GN-23-008361

TEXAS DEPARTMENT OF INSURANCE, Plaintiff	§ § §	IN THE DISTRICT COURT OF
v.	§ §	TRAVIS COUNTY, TEXAS
BRIGHT HEALTHCARE INSURANCE COMPANY OF TEXAS, Defendant	§ § §	455th JUDICIAL DISTRICT

AGREED ORDER APPOINTING LIQUIDATOR, PERMANENT INJUNCTION, AND NOTICE OF AUTOMATIC STAY

On this day, the Court heard the *Plaintiff's Original Petition, Application for Order Appointing Liquidator, and Request for Permanent Injunction* (Application) filed by the Texas Department of Insurance through the Office of the Attorney General of Texas.

The Application requests an order placing Bright Healthcare Insurance Company of Texas (Defendant) into liquidation pursuant to Texas Insurance Code Chapter 443,[1] the Insurer Receivership Act, and appointing the Commissioner of the Texas Department of Insurance (Commissioner) as Liquidator of Defendant (Liquidator). The Application also requests a Permanent Injunction pursuant to Section 443.008(a) enjoining Defendant and its agents from conducting Defendant's business and enjoining other parties from taking any actions against Defendant or its property in violation of the Insurer Receivership Act.

The Texas Department of Insurance (Plaintiff) appeared by and through the Office of the Attorney General. Defendant appeared by and through its counsel of record. Having considered the Plaintiff's verified petition, the evidence presented and the arguments of counsel, the Court finds that the Application should be GRANTED, and enters this Order.

Exhibit 1

[1] All statutory references are to the Texas Insurance Code unless otherwise indicated.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED as follows:

I. FINDINGS OF FACT

1.1 Defendant is a "covered person" as defined in Section 443.003.

1.2 Defendant is impaired as defined in Section 443.004(a)(12). Defendant does not have admitted assets at least equal to all its liabilities together with the minimum surplus required to be maintained under Chapter 841.

1.3 Defendant is insolvent as defined in Section 443.004(a)(13). Defendant does not have admitted assets at least equal to all its liabilities.

1.4 Defendant has fully cooperated with Plaintiff and consented to the entry of an order of liquidation under Section 443.057(20) and a permanent injunction under Section 443.008(a).

II. CONCLUSIONS OF LAW

2.1 This Court has jurisdiction over the parties and the subject matter of this action under Section 443.005(c).

2.2 Grounds have been established to place Defendant into liquidation under Section 443.057. These grounds include, but are not limited to, finding that Defendant:

1. is impaired as defined in Section 443.004(a)(12);
2. is insolvent as defined in Section 443.004(a)(13); and
3. has consented to the entry of an order of liquidation under Section 443.057(20) and a permanent injunction under Section 443.008(a).

2.3 In accordance with Section 443.058, Plaintiff is entitled to an order of liquidation, and the Commissioner must be appointed as Liquidator of Defendant pursuant to Section 443.151.

2.4 The Liquidator shall be vested by operation of law with title to all of Defendant's property as defined in Section 443.004(a)(20). Such property shall include property of any kind or nature, whether real, personal, or mixed, including but not limited to money, funds, cash, stock, bonds, account deposits, statutory deposits, special deposits, contents of safe deposit boxes, funds

held in shared, escrow or trust accounts, retainages and retainers, letters of credit, real estate, fixtures, furniture, equipment, books, records, documents and insurance policies, intellectual property, computer software and systems, information technology, internet domain names, patents and intangible assets, whether owned individually, jointly, or severally, wherever located, and all rights, claims or causes of action belonging to Defendant, whether asserted or not, including but not limited to accounts receivable, notes, premiums, subrogation, insurance and reinsurance proceeds, and all licenses held by Defendant (collectively, Defendant's property). The Liquidator's title shall extend to Defendant's property regardless of the name in which such items are held, or where such items are located.

2.5 Pursuant to Section 443.151(a), the Liquidator shall be directed to take possession and control of Defendant's property, wherever located.

2.6 The Liquidator may act as it deems necessary or appropriate to perform the Liquidator's duties pursuant to Section 443.151(a). The Liquidator shall have all the powers of Defendant's directors, officers and managers, and the authority of such persons is suspended except as specifically permitted by the Liquidator or the Liquidator's designees.

2.7 Defendant and Defendant's present or former officers, managers, directors, trustees, owners, employees, agents, and any other persons with authority over or in charge of Defendant's affairs shall be required to cooperate with the Liquidator and the Liquidator's designees pursuant to Section 443.010.

2.8 Pursuant to Section 443.008(c), an automatic stay is in effect with respect to actions against Defendant or its property, effective on the commencement of this proceeding. Pursuant to Section 443.008(d), an automatic stay is in effect with respect to actions against insureds of Defendant, commencing on the entry of this Order. In addition to the stays under Section 443.008, a stay is in effect with respect to a proceeding in which the Defendant is a party or is obligated to defend a party in a court in this state, other than a proceeding directly related to the receivership

or that is brought by the Liquidator based on this Court's finding of fact and conclusion of law that the Defendant is impaired pursuant to Section 463.404 commencing on the entry of this Order.

2.9 Pursuant to Section 443.008(a), it is necessary for this Court to issue a permanent injunction pursuant to Section 443.008(a) to carry out the provisions of Chapter 443 and prevent injury, loss and damage to the general public and Defendant's creditors. A necessity exists to enjoin Defendant and Defendant's agents from conducting Defendant's business, except as specifically permitted by the Liquidator or the Liquidator's designees; to enjoin financial institutions or depositories from taking any actions in connection with Defendant's property, except as directed by the Liquidator or Liquidator's designees; and to enjoin all claimants or creditors from asserting claims or causes of action against Defendant, except as permitted by the Insurer Receivership Act.

2.10 Pursuant to Section 443.151(a), this proceeding is exempt from any dormancy requirements.

2.11 Section 443.001(b) provides that the Insurer Receivership Act may not be interpreted to limit the powers granted to the Commissioner under other provisions of law. Accordingly, this Order shall not be construed as a limitation of the Commissioner's powers granted under such provisions.

III. APPOINTMENT OF LIQUIDATOR

The Commissioner is appointed as Liquidator of Defendant, and granted the following powers:

3.1 The Liquidator has all powers and authority granted by the Insurer Receivership Act, specifically, without limitation, Section 443.151 *et seq.* and any and all other powers and authority under applicable statutes and the common law of this State.

3.2 Pursuant to Section 443.151(a), title to all of Defendant's property, including but not limited to all the assets and rights described in this Order, is vested in the Liquidator. The

Liquidator is authorized to take control and possession of Defendant's property, wherever located, and remove all such property from Defendant's premises.

3.3 Pursuant to Section 443.154(w), the Liquidator is vested with all of Defendant's rights, including:

(a) the authority to direct, manage, and supervise Defendant's directors, officers, managers, employees, or agents, and compensate them as the Liquidator deems necessary from Defendant's funds, or to suspend or discharge such persons at the Liquidator's discretion;

(b) the authority to exercise the Defendant's rights as the customer of a financial institution, such as withdrawing Defendant's property from any banks, financial institutions and other depositories, agencies of any state or the federal government, and any other entities, or continuing the operation of any accounts of Defendant, at the Liquidator's discretion; and

(c) all legal remedies available to Defendant, such as the authorization to file, prosecute, defend, or settle any action as the Liquidator deems necessary, including any action to enforce the provisions of this Order.

3.4 Pursuant to Section 443.154(k), the Liquidator may enter into contracts as necessary to perform the Liquidator's duties and may assume or reject any executory contract or unexpired lease to which Defendant is a party at the Liquidator's discretion pursuant to Section 443.013. The Liquidator is authorized to:

(a) change the locks on any property owned, leased, or occupied by Defendant;

(b) exclude any person from any property owned, leased, or occupied by Defendant, at the Liquidator's discretion; and

(c) receive, collect, control, open and review all mail addressed to or intended for Defendant, or arriving at Defendant's address.

3.5 Section 443.154(a) authorizes the Liquidator to appoint a Special Deputy and employ or contract with legal counsel and other personnel as the Liquidator deems necessary. Pursuant to Section 443.015(b), the Liquidator is authorized to set the compensation of any such Special Deputy or other persons as the Liquidator deems necessary and pay for such services from Defendant's funds. The Liquidator's designees and any Special Deputy appointed under Section 443.154(a) have all the rights and powers of the Liquidator, subject to any limitations imposed by the Liquidator.

3.6 Pursuant to Section 443.008(m), the Commissioner is not required to file a bond in connection with this proceeding, in the Liquidator's capacity as Liquidator or otherwise.

3.7 In accordance with Section 443.151(a), any successor to the Commissioner shall be appointed as the Liquidator of Defendant. In the event a successor is appointed to be the Commissioner, the successor shall become the Liquidator upon the Commissioner's appointment, and the former Commissioner shall be discharged as Liquidator as a matter of law.

3.8 The enumeration of the Liquidator's powers and authority in this Order shall not be construed as a limitation on the Liquidator to take any action authorized by the Insurer Receivership Act or other applicable law that is not specified in this Order.

IV. PERMANENT INJUNCTION

The Clerk of this Court shall issue a Permanent Injunction against the persons and entities named below, with the following force and effect:

TO: Defendant and its agents, including but not limited to:
Defendant's current and former officers, directors, underwriters, managers and employees, including but not limited to, Jeff Craig and Jay Matushak; owners and affiliates, including but not limited to, Bright Health Group, Inc.; Bright Health Management, Inc.; Bright Health Services, Inc.; Bright Health Company of Arizona; Bright Health Insurance Company of Colorado; Bright Health Insurance Company of New York; Bright Health Insurance Company of Tennessee; Bright Health Insurance Company of Ohio, Inc.; Bright Health Insurance Company of Illinois; Bright Health Insurance Company of Florida; Bright Health Company of Georgia; Bright Health Company of North Carolina; Bright Health Company of South Carolina; Bright Health Company of California, Inc.; Universal Care Inc.

d/b/a Brand New Day; Central Health Plan of California, Inc.; True Health New Mexico, Bright HealthCare Company of Florida, Inc.; NeueHealth Partners Texas RBE, LLC; Bright HealthCare Company of Florida; NeueHealth Networks of Texas, Inc., NeueHealth Partners LLC, local recording agents, managing general agents, agents, third party administrators, representatives, associates, servants, adjusters, attorneys, including but not limited to, Mitchell, Williams, Selig, Gates & Woodyard, PLLC, Maynard Nexsen PC, accountants and those acting in concert with them;

Financial institutions, including but not limited to:
Any and all banks, savings and loan associations; trust companies; credit unions; or any other financial or depository institutions in the possession of any of Defendant's property, including but not limited to, U.S. Bank Interstate (including, but not limited to accounts ending in 1272, 1264, and 0659); and

All other parties, including but not limited to:
Creditors, claimants, insurers, intermediaries, attorneys and all other persons, associations, corporations, or any other legal entities asserting claims or causes of action of any kind against Defendant, or in possession of any of Defendant's property, and the United States Postmaster.

Each of you are hereby RESTRAINED and ENJOINED from taking any and all of the following actions:

4.1 Doing, operating, or conducting Defendant's business under any charter, certificate of authority, license, permit, power, or privilege belonging to or issued to Defendant, or exercising any direction, control, or influence over Defendant's business, except through the authority of the Liquidator or the Liquidator's designees;

4.2 Transacting any business of Defendant in any manner except through the authority of the Liquidator or the Liquidator's designees;

4.3 Wasting, disposing of, converting, dissipating, or concealing, in any manner, any of Defendant's property;

4.4 Using, releasing, transferring, selling, assigning, canceling, hypothecating, withdrawing, allowing to be withdrawn, offsetting, asserting ownership of, concealing, in any manner, or removing from this Court's jurisdiction or from Defendant's place of business, any of Defendant's property, or any other items purchased by Defendant, or any items into which such

property has been transferred, deposited or placed, or any other items owned by Defendant, wherever located, except through the authority of the Liquidator or the Liquidator's designees;

4.5 Releasing, transferring, selling, assigning, or asserting ownership of, in any manner, any claims, accounts receivable, or causes of action belonging to Defendant, whether asserted or not, except through the authority of the Liquidator or the Liquidator's designees;

4.6 Doing anything to prevent the Liquidator or the Liquidator's designees from gaining access to, acquiring, examining, or investigating any of Defendant's property or any other property, books, documents, records, or other materials concerning Defendant's business, under whatever name they may be found;

4.7 Obstructing or interfering in any way with the conduct of this proceeding or any incidental investigation as prohibited by Section 443.010(b);

4.8 Interfering with these proceedings or with the lawful acts of the Liquidator or the Liquidator's designees in any way;

4.9 Intervening in this proceeding for the purpose of obtaining a payment from the receivership estate of Defendant as prohibited by Section 443.005(i);

4.10 Making any claim, charge or offset, or commencing or prosecuting any action, appeal, or arbitration, including administrative proceedings, or obtaining any preference, judgment, attachment, garnishment, or other lien, or making any levy against Defendant, Defendant's property, or any part thereof, or against the Liquidator, except as permitted by the Insurer Receivership Act.

EACH OF YOU ARE FURTHER SPECIFICALLY ORDERED to make available and disclose to the Liquidator or the Liquidator's designees the nature, amount, and location of Defendant's property, and promptly surrender all such property to the Liquidator or the Liquidator's designees.

DEFENDANT AND DEFENDANT'S PRESENT OR FORMER OFFICERS,

MANAGERS, DIRECTORS, TRUSTEES, OWNERS, EMPLOYEES, AGENTS, AND ANY OTHER PERSONS WITH AUTHORITY OVER OR IN CHARGE OF DEFENDANT'S AFFAIRS ARE FURTHER ORDERED to cooperate with the Liquidator, or the Liquidator's designees as required by Section 443.010(a).

IT IS FURTHER ORDERED that the United States Postmaster and any other delivery services shall deliver to the Liquidator any items addressed to or intended for Defendant.

V. STAY OF PROCEEDINGS

5.1 An automatic stay is in effect with respect to actions against Defendant or its property as provided in Section 443.008(c). In accordance with Section 443.008(f), such stay of actions against Defendant is in effect for the duration of this proceeding, and the stay of actions against Defendant's property is in effect for as long as the property belongs to the receivership estate.

5.2 An automatic stay is in effect with respect to actions against a party insured by Defendant as provided in Section 443.008(d). Such stay shall continue for 90 days after the date of this Order, or such further time as ordered by this Court.

5.3 A stay is in effect with respect to a proceeding in which the Defendant is a party or is obligated to defend a party in a court in this state, other than a proceeding directly related to the receivership or that is brought by the Liquidator based on this Court's finding of fact and conclusion of law that the Defendant is impaired as provided by Section 463.404.

VI. CONTINUATION OF COVERAGE

6.1 All reinsurance contracts by which Defendant has assumed insurance obligations of another insurer are canceled upon entry of this order pursuant to Section 443.152(a).

6.2 Unless further extended by the Liquidator with the approval of this Court pursuant to Section 443.152(b), all policies, insurance contracts, surety bonds or surety undertakings issued by Defendant in effect at the time of issuance this order shall continue in force only until the earlier

of:

(a) the date of expiration of the policy coverage;

(b) the date the insured has replaced the insurance coverage or otherwise terminated the policy;

(c) the date of any transfer of a policy obligation by the Liquidator pursuant to Section 443.154(h); or

(d) the date proposed by the Liquidator to cancel coverage.

VII. OTHER ORDERS

7.1 This Order shall issue and become effective immediately and shall continue in full force and effect until the entry of an order by this Court terminating liquidation under Section 443.352.

7.2 Pursuant to Section 443.055, this Order constitutes a final judgment, provided that this Court shall retain jurisdiction to issue further orders pursuant to the Insurer Receivership Act.

7.3 The Texas Department of Insurance and the Attorney General of Texas shall have a claim for reasonable attorneys' fees and court costs, provided that the amount and payment of such claim are subject to the provisions of Chapter 443.

7.4 In accordance with Section 443.001(b), this Order does not limit the rights of the Commissioner or the Texas Department of Insurance to take any administrative action or issue any administrative order.

7.5 Notice of Plaintiffs Petition and this Order shall be provided under Section 443.052(b) by first class mail or electronic communication.

7.6 Pursuant to Section 443.007(e), the Liquidator may provide notice of any application in the time periods prescribed in Rule 21a of the Texas Rules of Civil Procedure if it determines that an expedited hearing is necessary. In accordance with Section 443.007(d), the Liquidator may provide notice of any application by first class mail, electronic mail, or facsimile

transmission, at the Liquidator's discretion.

7.7 Anyone over the age of 18 who is not a party to nor interested in the outcome of this suit may serve all citations, writs, and notices in this cause.

7.8 All of the foregoing is subject to further orders of this Court.

SIGNED at Austin, Travis County, Texas, on this the 29th day of NOV, 2023, at 9:15 o'clock AM.

F. Scott McCown
DISTRICT JUDGE PRESIDING

AGREED AS TO FORM AND SUBSTANCE:

Dated November 28, 2023.

KEN PAXTON
Attorney General

BRENT WEBSTER
First Assistant Attorney General

GRANT DORFMAN
Deputy First Assistant Attorney General

JAMES LLOYD
Deputy Attorney General for Civil Litigation

Respectfully submitted.

KIMBERLY GDULA
Division Chief, General Litigation Division

/s/ Zachary L. Rhines
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COUNSEL FOR DEFENDANT
BRIGHT HEALTHCARE INSURANCE §
COMPANY OF TEXAS

EXHIBIT 2

CONFIDENTIAL

MANAGEMENT SERVICES AGREEMENT
Between
BRIGHT HEALTH MANAGEMENT, INC.
And
BRIGHT HEALTHCARE INSURANCE COMPANY OF TEXAS

This Management Services Agreement (this "Agreement") is made effective as of January 1, 2022, by and among BRIGHT HEALTH MANAGEMENT, INC., a corporation organized under the laws of the State of Delaware, having its place of business in Minneapolis, MN ("Company"), and BRIGHT HEALTHCARE INSURANCE COMPANY OF TEXAS, a corporation organized under the laws of the State of Texas, having its place of business in Texas ("Insurer"). Company and Insurer are each sometimes hereinafter referred to as a "Party" and together as the "Parties".

Background:

Insurer provides health insurance policies to policyholders domiciled in the State of Texas ("Policies"). Insurer is managed by Company under the terms of this Agreement, which describes the management services that Company provides to Insurer. Insurer desires that Company, through its employees and approved vendors, provide management services as described in this Agreement to Insurer, and Company is willing to provide such services under the terms and conditions of this Agreement.

In performing management services under this Agreement, Company will be subject to the supervision and authority of the Board of Directors of Insurer.

Therefore, the Parties agree as follows:

1. Management Services. Company agrees to provide sufficient personnel and supplies for the performance by it of all necessary and appropriate management services and functions to Insurer, as sets forth below. Such management services shall provide for the

Exhibit 2

operational support to all of Insurer's lines of business, including without limitation benefit plans issued or administered by Insurer in commercial individual and group markets and benefit plans issued by Insurer pursuant to the Medicare Advantage, Part D, or other government programs.

1.1 The administration, operations, and management of the day-to-day operational requirements for Insurer;

1.2 The establishment and maintenance on behalf of Insurer of complete and accurate books and records of all of Insurer's transactions in form and substance determined by Insurer provided that such form is in all material respects as required by applicable insurance laws and regulations, all other applicable laws and regulations, financial accounting standards and the requirements of federal, state and local taxing authorities;

1.3 The collection, receipt and accounting of all funds and receipts of Insurer, and the timely deposit of all such funds and receipts in a bank or banks in the name of Insurer; the establishment and monitoring of Insurer's loss reserves; the maintenance of the funds of Insurer in accordance with applicable law; and on behalf of Insurer, the investment of Insurer's investable assets in accordance with applicable legal requirements;

1.4 The maintenance for Insurer of all financial and business records required by applicable laws and regulations and generally accepted insurance and statutory accounting practices, and the preparation for and on behalf of Insurer of all reports required by governmental and nongovernmental regulatory and supervisory authorities with adherence to risk based capital requirements;

1.5 The maintenance for Insurer of all necessary records and reporting in connection with the reinsurance of Insurer, the taking of all actions or the making of any claims

required or permitted by such reinsurance, and the collection, at the expense of Insurer, of reinsurance recoverable payable to Insurer;

1.6 The provision and maintenance through the Insurer's Claims Service guidelines and manuals of claims supervision and facilities for the timely processing of all claims, notices and proofs of loss against Insurer and for the timely payment of claims on behalf of and at the expense of Insurer, including the employment of claims examiners, attorneys and such other professional and other personnel to handle claims on behalf of Insurer all at the expense of Insurer;

1.7 The monitoring of the legal affairs of Insurer, and in each case on behalf of Insurer, complying with applicable legal requirements and making required filings with the Texas Department of Insurance (the "TDI") and all other governmental authorities having jurisdiction over Insurer;

1.8 The commencement and defense, at the expense of Insurer, of legal and administrative proceedings brought by or against Insurer, including acceptance of service of process on behalf of Insurer, entering legal appearances on behalf of Insurer, and the compromise, prosecution, defense and settlement of losses and claims, including those losses and claims under the Insurer's Claims Service guidelines and manuals;

1.9 On behalf of Insurer, the filing of enterprise risk reports pursuant to the insurance laws of Texas;

1.10 The provision of assistance to the independent accountants for Insurer selected by Insurer, in connection with the annual financial audit of Insurer, and with respect to such other matters as may be reasonably directed by Insurer;

1.11 The provision of assistance to the assigned actuaries of Insurer selected by Insurer in connection with the actuaries' review of the insurance loss reserves of Insurer and with respect to such other matters as may be reasonably directed by Insurer;

1.12 The assistance of Insurer in filing federal, state and local tax returns that Insurer is required to file;

1.13 The provision of other management services as Insurer shall reasonably request; provided, however, if such other management services are not within the scope of this Agreement or the Insurer's Claims Service guidelines and manual, as reasonably determined by Company, such management services shall be at the expense of Insurer; and

1.14 In connection with the provision of any data services or information technology services, Insurer shall provide Company, at no cost to Company, with access to any and all of its information technology systems and databases, including, but not limited to, its existing policyholder services, claims and claims management databases. The covenant of Insurer in this Section 1.14 to provide Company with access to systems and data and information relating to existing Policies and policyholders shall survive any termination or the expiration of this Agreement to the extent necessary to meet the obligations of this agreement or otherwise required by state or federal law or regulation. At all times during the Term of this Agreement and thereafter, the Parties shall keep all of such data and information confidential and not disclose any such data or information without the prior written consent of the other Party.

Insurer and its Board of Directors shall maintain oversight of the management services and functions provided to it by Company, and shall monitor such services and functions, at least annually, for quality assurance.The CEO of the Insurer shall report to the Board of Directors of the Insurer, who shall retain the exclusive right to terminate the CEO. For purposes

of reporting to Insurer, unless otherwise directed by Insurer subsequent to the date hereof, Company will have fulfilled its reporting obligations to Insurer to the extent such reports have been presented to Insurer with a copy to Bright Health, Inc. Insurer hereby appoints the Appointed Chief Executive Officer (CEO) as its representative (i) to receive any and all information and any and all reports required under the terms of this Agreement; and (ii) to provide Company with instructions as to any matter covered by the terms of this Agreement. Company shall be entitled to rely on and act on the instructions of Appointed Chief Executive Officer (CEO) as if such instructions were delivered directly to Company by and pursuant to the authority of Insurer.

1.15 Provide or arrange for the provision of operational support to the MA to include all of the services set forth in this Section 1; and such additional MA services imposed by Centers for Medicare and Medicaid Services ("CMS"), including without limitation the design and implementation of MA plans and preparation of MA bids, establishment and management of a provider network, establishment and maintenance of a medical policy committee to oversee medical utilization and other clinical policies, claims processing and payment, enrollment and other member activities, appeals and grievances, and all other MA services.

Provide or arrange for the provision of operational support to the Part D business to include all of the services set forth in this Section 1; and such additional Part D services imposed by the (CMS), including without limitation the design and implementation of Part D plans and formularies, preparation of Part D bids, establishment and management of a retail and mail order pharmacy network, establishment and maintenance of a pharmacy and therapeutic committee to oversee drug utilization and other clinical policies, claims processing and payment, enrollment

and other member activities, coordination of True Out-of-Pocket Cost (TrOOP), appeals and grievances, and all other Part D services.

2. Management Fee. As compensation for the management services performed by Company, as set forth in Section 1, Insurer agrees to pay Company a management fee (the "Management Fee") as set forth below. In consideration of the Management Fee, Company shall pay the salaries and benefit expenses of Company's employees, rent and other occupancy expenses, supplies, data processing costs, loss adjustment expenses (LAE), legal expenses, the fees of attorneys, actuaries and accountants, audit and actuarial fees, data processing systems expenses, and costs for the Loomis Company Third Party Administrator (TPA) functions, including electronic data interchange functions. Insurer shall be responsible for any and all other fees and expenses incurred by Company in connection with the provision of services under this Agreement.

The Management Fee under this Agreement shall be equal to the actual cost to provide services as described herein. Company will provide all staffing, IT, enrollment, billing and cash collection, claims adjudication, a comprehensive network, utilization management, marketing, office space and other general expenses. Company will contract for and pass through to Insurer vendor provided services for health improvement costs. This Agreement is intended to provide for and address functions for local Texas staffing.

Beginning with the calendar year effective 2021, and for each subsequent calendar year while this Agreement is in effect, the Management Fee shall be reviewed by Company and Insurer to determine its reasonableness in relation to the management services provided herein. Upon completion of this review, Company shall provide any proposed adjustment to the

Management Fee to the contact identified in Section 1 not less than sixty (60) days prior to the first day of the calendar year for which the adjusted Management Fee shall apply.

Insurer shall notify Company, in writing, of any objection to the adjusted Management Fee at least thirty (30) days prior to the effective date of the adjusted Management Fee. If an objection is raised, the adjusted Management Fee shall go into effect as proposed while the Parties make a good faith effort to resolve their differences regarding the adjusted Management Fee. If those differences are resolved, the agreed to adjusted Management Fee shall be effective retroactive to the first day of that calendar year.

Company shall provide Insurer, on a monthly basis, with itemized financial statements, which shall include line item fees and expenses paid to each third-party vendor. Company shall further document and make available upon request sufficient detail regarding the actual costs of services rendered on behalf of Insurer to support the reasonableness of the Management Fee. Further, Company and Insurer shall ensure that all books and records will ensure compliance with SSAP No. 70, including with respect to the allocation of expenses.

Any adjusted Management Fee shall be evidenced by a written amendment of this Agreement signed by both Parties hereto.

Monthly Management Fees shall be paid by Insurer to Company not later than 15 days after the end of each calendar month.

Insurer shall not advance any payments or funds to Company except as provided in this Agreement for the purpose of funding payment of the Management Fee and expenses for the management services performed by Company to Insurer pursuant to Section 1 of this Agreement.

3. Payment of Expenses of Insurer. Company, on behalf of Insurer, shall utilize the funds of Insurer to pay all of the expenses of Insurer, including, without limitation by reason of

specification, the following: losses; investment expenses; damages, court costs, taxes, assessments and license fees; the fees of investment and other advisors; the fees and expenses of the Directors and officers of Insurer; governmental fines and penalties; and any guaranty or similar assessment, if any, imposed by any Governmental Agency. Insurer shall fund a bank account (and grant Company check writing authority on such account) with amounts sufficient to fund the Management Fees and expenses incurred by Company on behalf of Insurer, and to the extent such funding is insufficient to pay such Management Fees and expenses, advance funds to Company to pay for the Management Fees and expenses as specified in this paragraph. This Agreement, and any amendments, will be subject to the approval of the TDI.

All funds and invested assets of Insurer are the exclusive property of Insurer, shall be held for the benefit of Insurer, and, at all times, are subject to the control of Insurer. The expenses incurred and payments received shall be allocated to Insurer in conformity with statutory accounting practices consistently applied.

4. Services Not Covered. Services not intended to be covered by this Agreement are: the actual costs for broker commissions; accrual for claims adjustment expenses; bank and credit card fees; member fulfillment and policyholder communications; premium taxes; exchange fees; risk adjustment fees; and income taxes

5. Records; Right to Audit. Company shall keep sufficient Books and Records for the express purpose of recording therein the nature and details of the management services and financial transactions undertaken for Insurer pursuant to this Agreement. All Books and Records maintained by Company that pertain to the management services performed by Company pursuant to this Agreement are and shall remain the property of Insurer and shall be maintained in a fiduciary capacity by Company for the benefit, and subject to the ultimate control, of

Insurer. "Books and Records" shall mean all books and records developed or maintained pursuant to or related to this Agreement. The Books and Records of shall be so maintained as to clearly and accurately disclose the nature and details of the transactions including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective Parties. In order to fulfill its obligations under this Agreement or state or federal law, Company may, at the discretion of Insurer, during the term of this Agreement and thereafter, have access to such Books and Records. Company shall, at all times during the term of this Agreement and thereafter, keep such Books and Records confidential and not disclose any such Books and Records without the express prior written consent of Company.

Insurer and any regulatory authority having jurisdiction over Insurer shall, during the term of this Agreement and thereafter, have the right to examine and audit, at the Texas offices of Company at all reasonable times, the books and records of Company that pertain solely to the management services performed by Company pursuant to this Agreement. This right of examination and audit shall survive the termination of this Agreement and shall remain in effect for so long as either Company or Insurer has any rights or obligations under this Agreement.

6. Term and Termination. This Agreement is effective as of the date hereof and shall continue in effect for a period of five (5) years from the date hereof, and thereafter for successive one (1) year terms unless Company or Insurer provides to the other Party written notice of termination not less than six (6) months prior to the expiration of either (i) the initial four (4) year term or (ii) any of the successive one (1) year terms. In addition, this Agreement may be terminated (i) by mutual agreement of the Parties, (ii) for cause, or (iii) upon termination of the Claims Services provisions. Cause shall mean any material violation of the terms or conditions of this Agreement that is not cured within thirty (30) days after notice of such material

violation from a Party to this Agreement. Such notice shall describe in reasonable detail the material violation or violations giving rise to the notice. If the material violation[s] is[are] not cured during such thirty (30) day period, this Agreement may be terminated on the date that is thirty (30) days subsequent to the date that notice of termination is delivered to the Party in violation of this Agreement; provided, however, no termination notice shall be effective if Section 7 (Arbitration) has been invoked until a decision of the arbitrators has been delivered to Company and to Insurer. Orders issued by the TDI, the Texas Courts, or any other state insurance department or any federal, state or local court shall not constitute a material violation so long as any such orders do not affect compensation paid to Company. For purposes of this Agreement, a failure to make any payment due will be a material violation and for which termination may be effected on five (5) days' notice after expiration of any applicable cure period. In addition, this Agreement may be terminated by either Party if the other Party repeatedly fails to perform its duties under this Agreement to the satisfaction of the complaining Party, notwithstanding the fact that such failure does not rise to the level of a material breach; provided, however, that such termination shall not be available to a Party unless the Chief Executive Officer, or appointee, of such Party has provided the Chief Executive Officer, or appointee, of the other Party with notice of such dissatisfaction and the officers have attempted in good faith to resolve any such dissatisfaction; provided, further, however, that no such termination described in this Section 6 may be effected until one hundred and eighty (180) days after the officers have determined that such issues cannot be resolved. Notwithstanding anything to the contrary above, upon ninety (90) days' notice prior to the expiration of the second year of this Agreement, Insurer may provide notice to Company of its intent to terminate this Agreement and such termination shall be effective as of the last day of the second year of this Agreement.

7. Arbitration. If any dispute or difference of opinion arises between the Parties with respect to this Agreement, Company and Insurer agree that such dispute or difference of opinion shall be submitted to arbitration before a panel of three arbitrators, each of whom shall be an active or retired disinterested officer of a life and health insurance company. One such arbitrator shall be chosen by Company, one such arbitrator shall be chosen by Insurer and the third arbitrator shall be chosen by the other two arbitrators. If either Party hereto refuses or neglects to appoint an arbitrator within sixty (60) days after the other Party requests it to do so, or if the two arbitrators selected by Company and Insurer fail to agree upon a third arbitrator within thirty (30) days after the appointment of the second arbitrator to be appointed, such arbitrator or arbitrators, as the case may be, shall, upon the application of either Party, be appointed by the Austin, Texas office of the American Arbitration Association and the arbitrators shall thereupon proceed. The arbitration shall proceed under the rules of the American Arbitration Association. The arbitrators shall consider this Agreement as an honorable engagement rather than merely as a legal obligation and they are relieved of all judicial formalities and may abstain from following the strict rules of law and evidence. The decision of the majority of the arbitrators shall be final and binding on both Parties. Said decision shall be a Reasoned Award Decision. Each Party shall bear the expense of its own arbitrator and shall bear one-half of the expenses of the third arbitrator and of the arbitration. Any such arbitration shall take place in either Austin, Texas or Wilmington, Delaware unless otherwise agreed by the Parties hereto. An arbitration award may be enforced by any court of competent jurisdiction.

8. Indemnification.

(a) Insurer shall, jointly and severally, indemnify, defend and hold harmless Company, Bright Health, Inc. ("Parent") and its affiliates, and each member, director, manager,

officer, employee and agent thereof (each a "Company Indemnified Party"), from and against all claims, losses, damages, liabilities and expenses, including, without limitation, settlement costs and any reasonable legal fees and expenses or other expenses for investigation and defending any actions or threatened actions ("Losses"), incurred by such Company Indemnified Party as a result of any threatened, pending or completed action, suit or proceeding, whether civil, criminal or investigative, including an action by or in the right of Insurer, relating to or arising out of the services performed by Company hereunder, except to the extent the act or failure to act giving rise to the claim for indemnification is determined by a court to have constituted the willful misconduct or gross negligence of the Company Indemnified Party. Orders issued by the TDI, the Texas Courts, or any other state insurance department or any federal, state or local court shall be given precedence.

(b) Company (the "Company Indemnifying Party") shall indemnify, defend and hold harmless Insurer and each member, director, manager, officer, employee and agent thereof (each an "Insurer Indemnified Party"), from and against all Losses incurred by such Insurer Indemnified Party as a result of any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative relating to or arising out of (i) a material breach of the representations, warranties or covenants of Company under this Agreement, or (ii) the willful misconduct or gross negligence of any Company Indemnifying Party.

(c) The indemnifying party shall advance expenses incurred by an Indemnified Party in defending any action or proceeding referred to in this Section 8 in advance of the final disposition of such action or proceeding upon receipt of an undertaking by or on

behalf of such indemnified party to repay such amount if it shall ultimately be determined that such indemnified party is not entitled to be indemnified by the indemnifying party.

9. Receivership, Etc.

(a) If Insurer is placed into Rehabilitation or Liquidation by the Texas Insurance Commissioner ("Commissioner") applicable Texas law, then:

(i) all of the rights under this Agreement for management services for Insurer shall belong to the Commissioner; and

(ii) all books and records developed or maintained under and related to this Agreement will immediately be made available to the receiver or Commissioner and must be turned over to th receiver or Commissioner immediately upon the receiver's or Commissioner's request.

(b) Company will continue to maintain the systems, programs and "other infrastructure" supporting this Agreement notwithstanding a seizure of Insurer by the Commissioner under the Texas Insurance Code, and will make them available to the Commissioner for so long as Company receives timely payment for such services rendered. "Other infrastructure" shall include hard operating assets inclusive of: claims data system; telephones; computers; furniture; filing cabinets; stationary items; recording devices; fax machines; printers; and monitors. Such hard operating assets are subject to transfer to Company, or as directed by the Insurance Commissioner.

(c) The Company shall have no automatic right to terminate this Agreement if Insurer is placed into rehabilitation, receivership or liquidation as described in this Section. This Agreement may only be terminated as provided in Section 6 herein, or pursuant to a court order.

(d) The Company acknowledges that the Insurer is a third party beneficiary to material contracts of the Company and as such, the Insurer, and the Insurance Commissioner if the Insurer is placed under rehabilitation, receivership or liquidation, shall at all times retain privity rights to enforce any contract held by Company that may encompass services or goods furnished to Insurer pursuant to this agreement.

10. Miscellaneous.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

(b) Company is authorized, from time to time in its discretion, to contract with others for the performance of the management services Company has agreed to provide to Insurer under this Agreement, provided, however, that Company shall remain responsible to Insurer for the proper and timely performance of all management services contemplated by this Agreement. Neither Party may assign this Agreement without the written consent of the other Party, and any attempted assignment without such consent shall be void; provided, however, that Company may assign this Agreement to any company owned or controlled, in each case directly or indirectly, by Parent, Bright Health, Inc.

(c) Any notice made under this Agreement shall be in writing, shall be delivered either by registered US Mail, return receipt requested, or by a recognized over-night delivery service, and shall be addressed to the receiving party at its principal business address. Notices shall be deemed delivered when received by the Party to whom the notice was addressed.

(d) Any amendment or revision, and any waiver, of this Agreement shall be in writing and signed by both Parties hereto.

(e) This Agreement is the entire agreement between the Parties with respect to the subject matter hereof and supersedes any prior or contemporaneous agreement, whether written or oral, with respect to such subject matter.

(f) This Agreement shall be binding on the successors and permitted assigns of the Parties.

(g) This agreement shall incorporate the attached Medicare Advantage and Medicare Part D regulatory addendum.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first above written by the undersigned thereunto duly authorized.

BRIGHT HEALTH MANAGEMENT, INC.

By:_____
Name: _____
Title: _____
Date: _____

BRIGHT HEALTHCARE INSURANCE COMPANY OF TEXAS

By:_____
Name: _____
Title: _____
Date: _____

Exhibit A

AFFILIATES OF BRIGHT HEALTH MANAGEMENT INC.

Bright Health, Inc.

Bright Health Insurance Company of Alabama, Inc.

Bright Health Company of Arizona

Bright Health Company of Georgia

Bright Health Company of North Carolina

Bright Health Company of South Carolina, Inc.

Bright Health Insurance Company

Bright Health Insurance Company of Illinois

Bright Health Insurance Company of Florida

Bright Health Insurance Company of New York

Bright Health Insurance Company of Ohio, Inc.

Bright Health Insurance Company of Tennessee

Bright HealthCare Insurance Company of Texas

Universal Care, Inc.

MEDICARE ADVANTAGE REGULATORY ADDENDUM

Bright Health Management, Inc., and its affiliates (Bright Health Insurance Company and its other health plan affiliates) are engaged in the business of Medicare Advantage and Part D coverage through a contract with the Center for Medicare & Medicaid Services (CMS) ("MA Plan(s)"). Vendor or Provider provides services to MA Plan Members pursuant to an agreement with MA Plan (Agreement). Accordingly, Vendor or Provider agrees, on behalf of itself and its affiliates performing services to MA Members under the Agreement, to comply with the following provisions.

Any term not defined in this addendum shall have the same meaning as set forth in the Agreement. For purposes of this addendum, "**Member**" shall mean an individual who is enrolled in Bright Health Plans' MA coverage. In the event of a conflict with the Agreement, the terms of this addendum will control.

General Compliance Provisions

1. Delegated Activities and Reporting Requirements. The delegated activities and reporting responsibilities are specified in the Agreement. 42 CFR §§ 422.504(i)(4)(i).

2. Compliance with Medicare Laws, Regulations, and CMS Guidance. Vendor or Provider agrees to comply with all applicable Medicare laws, regulations, and CMS guidance. 42 CFR §§ 422.504(i)(4)(v) and 423.505(i)(4)(iv).

3. Compliance with MA Plan's Contract with CMS. Any services or other activity performed in accordance with this Agreement by Vendor or Provider are consistent and comply with the MA Plan's contractual obligations with CMS. 42 C.F.R. § 422.504(i)(3)(iii).

4. Medicare Compliance Program. Vendor or Provider agrees to develop and maintain an effective MA compliance program that meets CMS requirements and that includes without limitation: (a) an effective system for routine monitoring and auditing to identify compliance risks; (b) procedures and systems for prompt response to compliance issues; (c) written policies, procedures, and standards of conduct that articulate the Vendor or Provider's commitment to comply with all applicable Federal and state standards and describes compliance expectations; (d) designation of a compliance office and compliance committee responsible for oversight of the compliance plan; (e) an effective compliance training program that includes fraud, waste, and abuse training; (f) effective lines of communication between the compliance officer and the MA Plan and the compliance officer and Vendor or Provider employees and contractors; (g) published and enforced disciplinary standards for noncompliance by employees and contractors, up to and including termination. Provide Medicare Standards of Conduct and policies and procedures to all employees and contractors who perform services pursuant to the Agreement. 42 CFR 422.503(b).

5. Report Compliance Concerns. Vendor or Provider agrees to report compliance or Fraud, Waste and Abuse ("FWA") concerns to the MA Plan within five (5) calendar days of discovery of an actual, suspected or potential compliance concern or FWA concern. If the matter is emergent, either because beneficiary access to care is affected or because of other critical impacts, Vendor or Provider must notify the MA Plan as soon as reasonably possible, and no later than twenty-four (24) hours from discovery. Vendor or Provider shall coordinate with MA Plan to (a) timely investigate compliance or FWA risk; (b) mitigate the FWA or compliance concern, and (c) implement the appropriate corrective action. 42 CFR § 422.503(b).

6. Exclusion. Vendor or Provider certifies that no member of its governing bodies and advisory boards, individual employed or contracted practitioners, all other employees and contractors, or

affiliated provider organizations has been excluded from participation in federal contracts by: (a) U.S. Treasury Office of Foreign Assets Control; (b) Office of Inspector General of the Department of Health and Human Services; or (c) U.S. General Services Administration (GSA). Vendor or Provider agrees to monitor the exclusion lists published by the above federal agencies and perform background checks prior to hire and monthly thereafter for all employees, independent contractors, volunteers, and members of its governing bodies and advisory boards. Vendor or Provider shall also require any of its subcontracts to include such checks prior to hire and on a monthly basis thereafter. If any of its employees or other individuals are excluded by such federal agencies, Vendor or Provider agrees to notify the MA Plan and immediately remove the individual from any services performed under the Agreement on behalf of the MA Plan. 42 CFR § 422.503(b); 422.752(a); 423.504(d) and (i).

7. Investigations, Legal Actions, and Arbitrations. Vendor or Provider acknowledges to the best of its knowledge, information and belief, there are no past or pending investigations, legal actions, or matters subject to arbitration involving Vendor or Provider or any of its employees, contractors, Governing Body members, Downstream Entities, or any major shareholders (5% or more) on matters relating to payments from governmental entities, both federal and state, for health care and/or prescription drug services.

8. Convictions and Civil Judgements. Vendor or Provider acknowledges to the best of its knowledge, information, and belief that neither Vendor or Provider, nor any of its employees, contractors, Governing Body members, Downstream Entities, or any major shareholders (5% or more) have been criminally convicted nor has a civil judgment been entered against them for fraudulent activities nor are they sanctioned under any Federal program involving the provision of health care and/or prescription drug services.

9. Section 1557 of the Patient Protection and Affordable Care Act (ACA). Vendor or Provider shall comply with the nondiscrimination provisions, meaningful access requirements, language assistance services, and requirements of Section 1557 of the ACA requirements. 45 CFR §§ 92.1 – 92.303.

10. Certifications to Accuracy, Completeness, and Truthfulness of Data. If Vendor or Provider generates data to determine payment on behalf of MA Plan, then Vendor or Provider must certify (based on best knowledge, information and belief) the accuracy, completeness, and truthfulness of the data.

11. Marketing Guidelines. To the extent Vendor or Provider performs services or functions that are governed by the CMS Manual System, Pub. 100-16 Medicare Managed Care, Chapter 3, Medicare Marketing Guidelines for the Department of Health & Human Services Centers for Medicare & Medicaid Services, as amended, Vendor or Provider agrees to comply with such guidelines.

Records

12. Record Retention and Audit. Vendor or Provider agrees to retain any books, records, contracts, and other documents related to the MA Plan's MA contract with CMS for a period of ten (10) years from the final date of the MA contract or the completion of any audit, whichever is later. Vendor or Provider agrees to comply at no additional charge with any document requests by the MA Plan pursuant to an audit, for purposes of MA Plan oversight, or for any other reason related to the operation of the MA business. Vendor or Provider agrees to allow HHS, the Comptroller General, or their designees to audit and inspect any books, records, contracts, and other

documents related to the MA Plan's MA contract with CMS for a period of ten (10) years from the final date of the MA contract or the completion of any audit, whichever is later. 42 CFR §§ 422.504(i)(2)(i) - 422.504(i)(2)(iv).

13. Data Privacy and Confidentiality of Records. Vendor or Provider shall establish procedures that comply with the privacy, confidentiality and accuracy of Member record requirements including without limitation, abiding by all Federal and State laws regarding use and disclosure of medical records, or other protected health and enrollment information, and safeguarding the privacy of information that identifies a particular Member. Vendor or Provider shall have procedures that, (1) specify for what purpose the information is used by Vendor or Provider, 2) specify to whom and for what purpose it discloses the information to third parties, 3) ensure that medical information is released only in accordance with applicable Federal or State law, or pursuant to court orders or subpoenas, (4) specify that the records and information are maintained in an accurate and timely manner, and (5) ensure timely access by Members to the records and information that pertain to them. 42 C.F.R. §§ 422.504(a)(13); 422.118; and 42 C.F.R §423.136

General Contract Provisions

14. Vendor Offshore Services. Vendor agrees that it will not perform offshore administrative services, or any other services on behalf of the MA Plan, or delegate to offshore entities without obtaining written prior approval from the MA Plan. If such approval is granted, Vendor agrees to demonstrate compliance with all laws, rules, and CMS guidance related to offshore services and related to the transmission of electronic data and protected health information offshore. MA Plan has the right to conduct an annual audit of the Vendor to evaluate the practices and procedures, including but not limited to PHI privacy and security controls, of the Vendor and the audit results will be used to evaluate the continuation of the offshore relationship.

15. Amendments Required by Law. If Medicare laws, regulations, or CMS guidance require a change to the terms of this addendum, this addendum may be modified by the MA Plan to reflect the changed requirements and such modification will become immediately upon written notice by the MA Plan providing the modified addendum to the Vendor or Provider without the need to amend the Agreement.

16. Monitoring and Termination. The MA Plan will monitor the Vendor or Provider's performance under the Agreement and this addendum on an ongoing basis. The MA plan and CMS have the right to revoke the delegation activities and may terminate the Agreement with Vendor or Provider if the MA Plan or CMS determines that Vendor or Provider has committed a violation of CMS rules, committed FWA, or has not performed satisfactorily under this addendum. 42 CFR § 422.504(i)(4) ((ii)-(iii).

17. Flow-Down Requirements. Vendor or Provider (where services are delegated) will incorporate these requirements into its agreements with downstream providers, subcontractors, and delegated entities. The MA Plan retains the right to approve, suspend, or terminate Vendor or Provider's agreements with downstream providers, subcontractors, and delegated entities. 42 CFR § 422.504(i)(5), 423.505.

    Vendor or Provider shall monitor and audit its downstream providers, subcontractors, and delegated entities ("Downstream Entity(ies)") to ensure that they are in compliance with all applicable laws, regulations, and contractual requirements, including compliance with these Medicare Advantage provisions. If Vendor or Provider determines a Downstream Entity requires corrective action(s), Vendor or Provider shall ensure that such corrective action(s) are taken by its

Downstream Entity. Vendor or Provider shall provide information about its Downstream Entity oversight, including any corrective action plans, to MA Plan upon request.

Notwithstanding any relationships that MA Plan may have with first tier, downstream, and related entities, MA Plan maintains ultimate responsibility for adhering to and otherwise fully complying with all terms and conditions of its contract with CMS. Vendor or Provider shall participate in and comply with MA Plan's oversight program, including but not limited to, attending meetings; providing attestations; responding to document requests, FWA and General Compliance Training, policy, and procedure review requests; implementing corrective action plans imposed by MA Plan or CMS; participating in monitoring and reviews; and providing MA Plan with similar information about Vendor's or Provider's Downstream Entities.

Requirements Applicable Only to Providers

1. Hold Harmless. Provider agrees to accept the MA Plan's MA contracted rate as payment in full and agrees not to hold Members liable for the payment of any fees that are the obligation of the MA Plan. 42 CFR §§ 422.504(i)(3)(i) and § 422.504(g).

2. Medicare-Medicaid Enrollees: For Members eligible for both Medicare and Medicaid, Provider agrees not to hold MA Enrollees liable for Medicare Part A and Part B cost sharing amounts where the Members are eligible for Medicare and Medicaid coverage and the state is responsible for paying such amounts. The Provider shall not impose cost-sharing that exceeds the amount of cost-sharing that would be permitted with respect to the individual under Title XIX if the individual were not enrolled in such a plan. Providers will: (1) accept the MA plan payment as payment in full, or (2) bill the appropriate State source. 42 CFR §§ 422.504(i)(3)(i) and § 422.504(g)(1)(iii).

3. Credentialing. Where MA Plan has delegated credentialing to Provider for provider organizations and/or individual practitioners, Provider agrees to submit its credentialing process and upon reasonable request, the credentials of individual medical professionals and organizations affiliated with Provider, to the MA Plan for review and approval and Provider agrees that the MA Plan may monitor and audit the credentialing process on an ongoing basis. 42 CFR § 422.504(i)(4(iv).

4. Termination Rights. MA Plan retains the right to approve, suspend, or terminate the selection of provider organizations and individual practitioners and MA Plan also retains the right to revoke the delegation of credentialing to Provider without triggering a termination of the Agreement. 42 CFR § 422(i)(5).

5. Prompt Payment. MA Plan agrees to pay clean claims within the time period required by MA regulations. If MA Plan reimburses clean claims outside of the time period required by MA regulations, MA Plan agrees to pay interest as set forth by the Department of Treasury pursuant to the federal Prompt Payment Act. Where Provider is responsible for paying claims on behalf of the MA Plan, Provider agrees to include in its contracts and adhere to all applicable federal and state requirements for the prompt payment of claims with respect to downstream providers. 42 CFR § 520(b)(1) & 504(c).

6. Stop-loss Protection. Where Provider accepts financial risk in its Agreement with the MA Plan, Provider agrees to comply with all CMS rules for physician incentive plans applicable to the arrangement, including without limitation obtaining stop-loss protection where required. 42 CFR § 422.208.

7. Non-Covered Services. With the exception of an explicitly excluded service in the Member's MA Evidence of Coverage, Providers may not permit a Member to self-pay for a non-covered service unless the Member, or the Provider on the Member's behalf, has first obtained an organization determination from the MA Plan denying coverage for the service. For an explicitly excluded service, Providers may permit the Member to self-pay for the service without an organization determination.

8. Provider Offshore Services. Provider agrees that it will notify the MA Plan before performing offshore administrative services, or any other services on behalf of the MA Plan. Provider agrees to demonstrate compliance with all laws, rules, and CMS guidance related to offshore services and related to the transmission of electronic data and protected health information offshore. MA Plan has the right to conduct an annual audit of the Provider to evaluate the practices and procedures.

CAUSE NO. D-1-GN-23-008361

THE TEXAS DEPARTMENT OF INSURANCE, *Plaintiff,*	§	IN THE DISTRICT COURT OF
v.	§	TRAVIS COUNTY, TEXAS
BRIGHT HEALTHCARE INSURANCE COMPANY OF TEXAS *Defendant.*	§	455th JUDICIAL DISTRICT

ORDER GRANTING SPECIAL DEPUTY RECEIVER'S MOTION TO CONFIRM SPECIAL MASTER'S RECOMMENDATION AND FOR ENTRY OF ORDER GRANTING THE MOTION TO ENFORCE PERMANENT INJUNCTION AGAINST BRIGHT HEALTH MANAGEMENT, INC.

The Court heard the *Motion to Confirm Special Master's Recommendation and for Entry of Order Granting the SDR's Motion to Enforce Permanent Injunction Against Bright Health Management, Inc.* (the "Motion to Confirm") filed by CANTILO & BENNETT, L.L.P., Special Deputy Receiver of Bright Healthcare Insurance Company of Texas (the "SDR" and "BHICOT," respectively) and the Objections to the Memorandum Recommendation and Report of Special Master (the "BHM Objections") filed by Respondent Bright Health Management, Inc. ("BHM"). The SDR appeared by and through its counsel. BHM appeared by and through its counsel. When called for hearing, the parties announced ready.

On June 28, 2024, the SDR filed its *Motion to Enforce Permanent Injunction Against Bright Health Management, Inc.* (the "Motion to Enforce"). On July 12, 2024, BHM filed its *Objection and Response to Motion to Enforce Permanent Injunction Against Bright Health Management, Inc. and Cross-Motion for Entry of Order Governing Electronically Stored Information* ("BHM Response and ESI Cross-Motion*").*

The Motion to Enforce was submitted to the Special Master appointed in this cause in accordance with the Order of Reference to Master ("Order of Reference"). The Special Master issued a *Memorandum Recommendation and Report of Special Master Regarding Special Deputy Receiver's Motions to Enforce Permanent Injunction Against Bright Health Management, Inc. and to Strike the Testimony of Angela O'Neal and Bright Health Management, Inc.'s Cross Motion for Entry of Order Governing Electronically Stored Information* (the "Special Master's Recommendation") under Rule 171 of the Texas Rules of Civil Procedure, which is incorporated.

The Court admits into evidence the Special Master's Recommendation, all exhibits admitted into evidence by the Special Master at the hearing on the SDR's Motion to Enforce and BHM's Objections and ESI Cross Motion and the transcript of the hearing.

Having considered the pleadings, the evidence, the exhibits, the arguments of counsel, the Special Master's Recommendation, and the applicable law, the Court finds that the Motion to Confirm should be granted, the SDR's Motion to Enforce should be granted as set forth in the Special Master's Recommendation and hereby issues this Order.

All capitalized terms used herein shall have the same meaning as used in the Motion to Enforce.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED as follows:

1. The Master's Recommendation is CONFIRMED;
2. The SDR's Motion to Enforce against BHM is GRANTED;
3. The Court orders that the term "BHICOT books and records" shall mean all business records in the possession or control of BHM that refer to or relate to, in any manner to BHICOT, including but not limited to emails;

4. BHM shall produce all BHICOT books and records to the SDR without expense to the SDR within ninety (90) days, including but not limited to, the following specific items or categories of materials:

a. All BHICOT related emails to or from BHICOT officers and directors Jeff Craig, Jay Matushak, Eric Halverson, and Jeff Scherman;

b. All records maintained in the Office 365 data suite: SharePoint, OneDrive, and Teams for all BHICOT officers and directors;

c. All BHICOT related emails from any BHM employee, affiliate, agent, or vendor;

d. All books and records relating to all debts owed to BHICOT by BMH affiliate, Neuehealth Partners Texas RBE, LLC;

e. All books and records relating to all debts owed by BHICOT to the federal government;

f. A complete set of the BHICOT Board of Directors minutes, resolutions, and all other corporate books and records, including but not limited to any informal recordation of Board matters as testified to by Mr. Craig;

g. An organizational chart identifying those individuals, including job title, dates of employment, and e-mail account(s), and a separate list of all e-mail accounts, including individual accounts and accounts associated with a business unit or function such as "claims" or "potential security incident;" who provided services under the BHICOT — BHM MSA, regardless of what entity/entities employed the person;

5. The SDR may seek turnover of additional categories of BHICOT books and records not specifically identified in this Order;

6. All costs incurred with the turn over of the records and information described in this Order shall be borne solely by BHM and the SDR shall not be responsible for any expense associated with the production;

7. BHM shall file a Status Report with the Court and Special Master every twenty (20) days during the ninety (90) day period updating the Court in detail of the efforts made in the prior twenty-day period and for the next twenty-day period to comply with the terms of this Order;

8. To the extent BHM withholds documents or information from turnover to the SDR based on an assertion of privilege, it is to maintain a detailed privilege log regarding same. The log must be regularly updated and provided to SDR counsel at least every twenty (20) days from entry of this Order;

9. The SDR's Motion to Strike the Testimony of Angela O'Neal is denied;

10. BHM's ESI Cross-Motion is denied; and

11. This Order constitutes a final order fully resolving all issues relating to the Motion of Enforce and the ESI Cross-Motion.

Signed on _____, 2025.

_____
JUDGE PRESIDING

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Greg Pierce on behalf of Greg Pierce
Bar No. 15994250
gpierce@gpiercelaw.com
Envelope ID: 98881676
Filing Code Description: Motion (No Fee)
Filing Description: SPECIAL DEPUTY RECEIVER'S MOTION TO CONFIRM SPECIAL MASTER'S RECOMMENDATION AND FOR ENTRY OF ORDER GRANTING THE MOTION TO ENFORCE PERMANENT INJUNCTION AGAINST BRIGHT HEALTH MANAGEMENT, INC.
Status as of 3/26/2025 10:17 AM CST

Case Contacts

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Milan Shah		Milan.Shah@cms.hhs.gov	3/25/2025 5:14:08 PM	SENT
Kelly Drury		Kelly.Drury@cms.hhs.gov	3/25/2025 5:14:08 PM	SENT
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Blake Gould		Bgould@fmdlegal.com	3/25/2025 5:14:08 PM	SENT

Associated Case Party: BRIGHT HEALTH MANAGEMENT, INC.

Name	BarNumber	Email	TimestampSubmitted	Status
Rachael Padgett	24065861	rpadgett@maynardnexsen.com	3/25/2025 5:14:08 PM	SENT
Lisa Alcantar	24069284	lalcantar@maynardnexsen.com	3/25/2025 5:14:08 PM	SENT
Carlos Soltero	791702	csoltero@maynardnexsen.com	3/25/2025 5:14:08 PM	SENT

Associated Case Party: BRIGHT HEALTHCARE INSURANCE COMPANY OF TEXAS

Name	BarNumber	Email	TimestampSubmitted	Status
Stanton Strickland	786392	Stanton.Strickland@USAA.com	3/25/2025 5:14:08 PM	SENT

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Greg Pierce on behalf of Greg Pierce
Bar No. 15994250
gpierce@gpiercelaw.com
Envelope ID: 98881676
Filing Code Description: Motion (No Fee)
Filing Description: SPECIAL DEPUTY RECEIVER'S MOTION TO CONFIRM SPECIAL MASTER'S RECOMMENDATION AND FOR ENTRY OF ORDER GRANTING THE MOTION TO ENFORCE PERMANENT INJUNCTION AGAINST BRIGHT HEALTH MANAGEMENT, INC.
Status as of 3/26/2025 10:17 AM CST

Associated Case Party: BRIGHT HEALTHCARE INSURANCE COMPANY OF TEXAS

Stanton Strickland	786392	Stanton.Strickland@USAA.com	3/25/2025 5:14:08 PM	SENT
Carlos Soltero	791702	csoltero@maynardnexsen.com	3/25/2025 5:14:08 PM	SENT

Associated Case Party: TEXAS LIFE & HEALTH INSURANCE GUARANTY ASSOCIATION

Name	BarNumber	Email	TimestampSubmitted	Status
Daniel Price	24041725	dprice@sp-legal.com	3/25/2025 5:14:08 PM	SENT
Jacqueline Rixen	16962550	jrixen@rixenlaw.com	3/25/2025 5:14:08 PM	SENT

Associated Case Party: TEXAS DEPARTMENT OF INSURANCE

Name	BarNumber	Email	TimestampSubmitted	Status
Shawn Martin		Shawn.Martin@tdi.texas.gov	3/25/2025 5:14:08 PM	SENT
Zachary Rhines	24116957	zachary.rhines@oag.texas.gov	3/25/2025 5:14:08 PM	SENT
Special Master Clerk		specialmasterclerk@tdi.texas.gov	3/25/2025 5:14:08 PM	SENT