

**CONTRACT WITH AMENDMENT #1  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF FINANCE AND ADMINISTRATION,  
DIVISION OF TENNCARE  
AND  
PROCURING PARTY NAME**

This Contract, by and between the State of Tennessee, Department of Finance and Administration, Division of TennCare, hereinafter referred to as the "State" or "TennCare" and **Procuring Party Legal Entity Name**, hereinafter referred to as the "Procuring Party," is for the operation of a Medicare Advantage Plan, as further defined in the "SCOPE OF SERVICES."

The Procuring Party is **Non-Profit Corporation**  
Procuring Party Place of Incorporation or Organization: **Location**

**WHEREAS**, the Division of TennCare administers the Medicaid program in the State of Tennessee under Title XIX of the Social Security Act under the terms of the Tennessee State Medical Assistance Plan and the TennCare II Section 1115 research and demonstration waiver; and

**WHEREAS**, the Contractor has entered into a contract ("MA Agreement") with the Centers for Medicare and Medicaid Services ("CMS") to provide a Medicare Advantage Plan that is a Special Needs Plan ("SNP") for Dual Eligibles; and

**WHEREAS**, under the Medicare Improvement for Patients and Providers Act of 2008 ("MIPPA") and resulting regulations, CMS requires the SNP provider to enter into an agreement with the State to provide or arrange for Medicaid benefits to be provided to its Dual Eligible enrollees.

**NOW THEREFORE**, in order to assure the efficient implementation and operation of the above described program, TennCare and the Contractor agree to the following terms.

**A. SCOPE OF SERVICES:**

**A.1. DEFINITIONS:**

- a. Anchor Date – The date of receipt of notification by the Contractor of upcoming (i.e., planned) or current inpatient admissions and current or recently completed observation days or emergency department visits. The anchor date is not included in the calculation of days within which the Contractor is required to take action.
- b. Appeal – Any of the procedures that deal with the review of adverse organization determinations on the health care services an enrollee believes he or she is entitled to receive, including delay in providing, arranging for, or approving the health care services (such that a delay would adversely affect the health of the enrollee), or on any amounts the enrollee must pay for a service as defined in 42 C.F.R. Part 422. These procedures include reconsideration by the Medicare health plan and if necessary, an independent review entity, hearings before Administrative Law Judges, review by the Medicare Appeals Council, and judicial review.
- c. Business Day – Monday through Friday, except for State of Tennessee holidays.
- d. Care Coordinator – The individual who has primary responsibility for performance of care coordination activities for a CHOICES member as specified in the Contractor Risk Agreement and meets the qualifications specified in the Contractor Risk Agreement.
- e. Confidential Information - Any non-public, confidential or proprietary information, whether

written, graphic, oral, electronic, visual or fixed in any tangible medium or expression, which is supplied by TennCare to the Contractor under this Contract. Any information, whether written, graphic, oral, electronic, visual or fixed in any tangible medium or expression, relating to individuals enrolled in the TennCare program ("TennCare members"), or relating to individuals who may be potentially enrolled in the TennCare program, which is provided to or obtained through the Contractor's performance under this Contract, shall also be treated as "Confidential Information" to the extent that confidential status is afforded such information under state and federal laws or regulations. All confidential information shall not be subject to disclosure under the Tennessee Public Records Act.

- f. Contractor Risk Agreement (CRA) – The Contract between TennCare Managed Care Organizations and TennCare regarding requirements for operation and administration of the managed care TennCare program, including CHOICES and ECF CHOICES.
- g. Cost Sharing Obligations - Medicare deductibles, premiums, co-payments and coinsurance that TennCare is obligated to pay for certain Medicare beneficiaries (QMBs, SLMB-Plus's, and Other Medicare/Medicaid Dual Eligibles). For SLMB-Plus's and Other Medicare/Medicaid Dual Eligibles, TennCare is not required to pay Medicare co-insurance on those Medicare services that are not covered by TennCare unless the enrollee is a child under twenty-one (21) or an SSI beneficiary. No Plan can impose cost sharing obligations on its members which would be greater than those that would be imposed on the member if they were not a member of the Plan.
- h. Dual Eligible - As used in this Contract, a Medicare enrollee who is also eligible for TennCare and for whom TennCare has a responsibility for payment of Medicare Cost Sharing Obligations under the State Plan. For purposes of this Contract, Dual Eligibles are limited to the following categories of recipients: QMB Only, QMB Plus, SLMB Plus, and Other Full Benefit Dual Eligible ("FBDE").
- i. Dual Eligible Member - An enrollee who is Dual-Eligible and is enrolled in a Plan.
- j. Employment and Community First (ECF) CHOICES – A managed long-term services and supports program that offers home and community-based services to eligible individuals with intellectual and developmental disabilities enrolled in the program in order to promote competitive employment and integrated community living as the first and preferred option.
- k. Encounter - A Medicare Part C covered service or group of covered services, as defined by the MA-SNP Agreement, delivered by a health care service provider to a Dual Eligible Member during a visit between the Dual Eligible Member and health care service provider.
- l. Encounter Data - In the context of the MA Agreement, data elements from an Encounter service event for a fee-for-service claim or capitated services proxy claim.
- m. Full Benefit Dual Eligible (FBDE) - An individual who is eligible both for Medicare Part A and/or Part B benefits and for TennCare benefits [services], including those who are categorically eligible and those who qualify as medically needy under the State Plan.
- n. Fully Integrated Dual Eligible Special Needs Plan (FIDE SNP) - A D-SNP that meets the following five elements: (1) Enrolls special needs individuals entitled to medical assistance under a Medicaid State plan; (2) Provides dual eligible beneficiaries access to Medicare and Medicaid benefits under a single Managed Care Organization; (3) Has a CMS-approved MIPPA-compliant contract with a State Medicaid Agency that includes coverage of specified primary, acute, and long-term care benefits and services, consistent

with State policy, under risk-based financing; (4) Coordinates the delivery of covered Medicare and Medicaid health and long-term care services, using aligned care management and specialty care network methods for high-risk beneficiaries; and (5) Employs policies and procedures approved by CMS and the State to coordinate or integrate enrollment, member materials, communications, grievance and appeals, and quality improvement.

- o. Grievance - Any complaint or dispute, other than an organization determination, expressing dissatisfaction with the manner in which a Medicare health plan or delegated entity provides health care services, regardless of whether any remedial action can be taken. An enrollee or their representative may make the complaint or dispute, either orally or in writing, to a Medicare health plan, provider, or facility. An expedited grievance may also include a complaint that a Medicare health plan refused to expedite an organization determination or reconsideration, or invoked an extension to an organization determination or reconsideration time frame. In addition, grievances may include complaints regarding the timeliness, appropriateness, access to, and/or setting of a provided health service, procedure, or item. Grievance issues may also include complaints that a covered health service procedure or item during a course of treatment did not meet accepted standards for delivery of health care.
- p. Individually Identifiable Health Information – information that is a subset of health information, including demographic information collected from an individual, and: (1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) identifies the individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- q. MA Agreement - The Medicare Advantage Agreement between the Contractor and CMS to provide Medicare Part C and other health plan services to the Contractor's members.
- r. Marketing - Shall have the meaning established under 45 CFR § 164.501 and includes the act or process of promoting, selling, leasing or licensing any TennCare information or data for profit without the express written permission of TennCare.
- s. TennCare Member or Member - A TennCare member who enrolls in a TennCare MCO under the provisions of the Contractor Risk Agreement. Synonymous with enrollee.
- t. Observation – Observation services include short-term ongoing treatment and assessment for the purpose of determining whether a member can be discharged from the hospital or will require further treatment as an inpatient.
- u. Personally Identifiable Information (PHI) – any information about an individual maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and information which can be used to distinguish or trace an individual's identity, such as their name, Social Security Number, date and place of birth, mother's maiden name, biometric records, including any other personal information which can be linked to an individual.

- v. Protected Health Information/Personally Identifiable Information (PHI/PII) (45 C.F.R. § 160.103; OMB Circular M-06-19 located at <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2006/m06-19.pdf>) – Protected health information means individually identifiable health information that is: (i) Transmitted by electronic media; (ii) Maintained in electronic media; or (iii) Transmitted or maintained in any other form or medium.
- w. Qualified Medicare Beneficiary (QMB) - An individual who is entitled to Medicare Part A, who has income that does not exceed one hundred percent (100%) of the Federal Poverty Level (FPL), and whose resources do not exceed twice the Supplemental Security Income (SSI) limit. A QMB is eligible for Medicaid Payment of Medicare Premiums, Deductibles, Coinsurance, and Co-payments (except for Medicare Part D). Collectively, these benefits [services] are called “QMB Medicaid Benefits [Services].” Categories of QMBs covered by this Contract are as follows:
  - QMB Only – QMBs who are not otherwise eligible for full Medicaid.
  - QMB Plus – QMBs who also meet the criteria for full Medicaid coverage and are entitled to all benefits [services] under the State Plan for fully eligible Medicaid recipients.
- x. Specified Low-Income Medicare Beneficiary (SLMB) PLUS - An individual entitled to Medicare Part A who has income that exceeds 100% FPL but less than 120% FPL, and whose resources do not exceed twice the SSI limit, and who also meets the criteria for full Medicaid coverage. Such individuals are entitled to payment of the Medicare Part B premium, as well as full State Medicaid benefits.
- y. Special Needs Plan (SNP) or Plan - A type of Medicare Advantage plan that also incorporates services designed for a certain class of members. In the case of this Contract, the special class of members are persons who are both Medicare and Medicaid Dual eligible. These plans must be approved by CMS. A SNP plan may also provide Medicare Part D drug coverage.
- z. SSA-supplied Data – Information, such as an individual’s Social Security Number, supplied by the Social Security Administration to the State to determine entitlement or eligibility for federally-funded programs (Computer Matching and Privacy Protection Agreement, “CMPPA” between SSA and F&A; Individual Entity Agreement, “IEA” between SSA and the State).
- aa. State Plan - The program administered by TennCare pursuant to Title XIX of the Social Security Act and the Section 1115 research and demonstration waiver granted to the State of Tennessee and any successor programs.
- bb. Subcontract - An agreement between the MA Health Plan and a third party under which the third party agrees to accept payment for providing health care services for the MA Health Plan’s members.
- cc. Subcontractor - A third party with which the MA Health Plan has a subcontract.
- dd. Support Coordinator – The individual who has primary responsibility for performance of support coordination activities for an ECF CHOICES member as specified in the Contractor Risk Agreement and meets the qualifications specified in the Contractor Risk Agreement.
- ee. TennCare - The medical assistance program administered by Tennessee’s Division of TennCare pursuant to Title XIX of the Social Security Act, the Tennessee State Plan, and

the Section 1115 research and demonstration waiver granted to the State of Tennessee and any successor programs.

- ff. TennCare CHOICES in Long-Term Care (CHOICES) – A program in which long-term care services for elders and/or persons with physical disabilities are integrated into TennCare’s managed care delivery system.
- gg. TennCare MCO or MCO - A Managed Care Organization (MCO) under contract with the State to provide TennCare benefits.

## **A.2. CONTRACTOR’S RESPONSIBILITIES:**

### **a. Service Area.**

The Plan shall specify its service area as Statewide, a specific Grand Region or regions of the State, or other specific geographic criteria (i.e., specific counties or metropolitan areas). The service area for this contract shall be the counties specified in Attachment H.

### **b. Benefits.**

1. TennCare uses a modified MCO system to provide TennCare benefits to TennCare enrollees. Each TennCare member is enrolled in an MCO. There are carve-outs for retail pharmacy services and dental services as applicable. It is the understanding of the Parties that any benefits provided by the Plan, even if they are also covered benefits under TennCare, are provided pursuant to the understanding between the Plan and the enrollee. TennCare shall not be responsible for payment for these benefits, nor shall TennCare be responsible for ensuring the availability or quality of these benefits. TennCare will pay the appropriate cost sharing for these services as mandated by Federal law and TennCare rules.
2. The Contractor shall not be responsible for the provision or reimbursement of any Medicaid benefits, unless such benefits are also covered by the Contractor, in which case, the Contractor shall be responsible for the provision and reimbursement of such covered services in accordance with its summary of benefits, and for coordination of Medicaid benefits beyond the scope of its covered benefits as described in A.2.b.6. TennCare’s list of covered benefits is set forth in Attachment D.
3. The Contractor shall provide the Summary of Benefits to its members as detailed in Attachment A.
4. The Contractor shall provide a copy of the Summary of Benefits as approved by CMS at the beginning of each Plan year. The Contractor should consult TennCare Rule 1200-13-13-04 and the TennCare website under Members: Benefits-Covered Services for a comprehensive list of covered TennCare benefits and the fit between Medicare and TennCare coverage. Further, to the extent necessary, the State will provide the Plan with information regarding Medicaid benefits in order for the Plan to meet CMS requirements for the Statement of Benefits.
5. The Contractor shall refer a Dual Eligible Member who is a QMB Plus or other FBDE to the member’s TennCare MCO for the provision of TennCare benefits that are not covered by the Plan.
6. The Contractor shall be responsible for providing care coordination for all Medicare and Medicaid services for all FBDE members, pursuant to this Contract and to policies and protocols developed by TennCare. The Contractor shall coordinate

TennCare benefits not covered by the Contractor with the FBDE member's TennCare MCO. The Contractor shall be responsible for the following:

- (a) Providing notification within two (2) business days from the anchor date to a FBDE member's TennCare MCO of all FBDE members' inpatient admissions, including planned and unplanned admissions to the hospital or a SNF, as well as observation days and emergency department visits. The Contractor shall report each inpatient admission, observation day, and emergency department visit separately. The Contractor's implementation of emergency department visit notifications will occur at a later date to be determined by TennCare.
- (b) Coordinating with a FBDE member's TennCare MCO regarding discharge planning from any inpatient setting when Medicaid LTSS (NF or HCBS) or Medicaid home health or private duty nursing services, may be needed upon discharge in order to ensure that care is provided in the most appropriate, cost effective and integrated setting. The Contractor shall engage in care coordination with a FBDE member and the member's TennCare MCO following observation days and emergency department visits to address member needs and coordinate Medicaid benefits, as appropriate. Discharge planning shall meet minimum requirements as specified by TennCare in policy or protocol.
- (c) Coordinating with a FBDE member's TennCare MCO regarding CHOICES or ECF CHOICES LTSS that may be needed by the member; however, the Contractor shall remain responsible for ensuring access to all Medicare benefits covered by the Contractor, including Skilled Nursing Facility (SNF) and home health, and shall not supplant such medically necessary covered services with services available only through TennCare.
- (d) Coordinating with a FBDE member's TennCare MCO Care Coordinator or Support Coordinator, as applicable, and ensuring timely access to medically necessary covered Medicare benefits needed by a FBDE member enrolled in the CHOICES or ECF CHOICES program.
- (e) Participating upon request in needs assessments and/or the development of an integrated person-centered plan of care or person-centered support plan, as applicable, for a TennCare CHOICES or ECF CHOICES member, encompassing Medicare benefits provided by the Contractor as well as Medicaid benefits provided by the TennCare MCO.
- (f) Coordinating with a FBDE member's TennCare MCO and ensuring timely access to medically necessary covered Medicare benefits needed by a FBDE member.
- (g) Accepting and processing in a timely manner referrals for case management and/or disease management from a FBDE member's MCO, including a CHOICES or ECF CHOICES member's TennCare MCO Care Coordinator or Support Coordinator, as applicable.
- (h) Coordinating with each TennCare MCO for nursing facility diversion program to:
  - (1) Facilitate appropriate communication among the Contractor's providers (including hospitals and physicians) and the member's TennCare MCO;
  - (2) Provide training for the Contractor's key staff and providers regarding NF diversion and HCBS alternatives;

- (3) Identify members who may be candidates for diversion (both CHOICES and ECF CHOICES members and non-CHOICES and non-ECF CHOICES members who may need NF services and qualify for CHOICES or ECF CHOICES upon hospital discharge or exhausting a Medicare SNF benefit); and
  - (4) Carry out follow-up activities to help sustain community living.
- (i) Referring to a FBDE member's TennCare MCO any FBDE member receiving SNF services that may be a candidate for transition to the community and coordinating with the FBDE member's TennCare MCO to facilitate timely transition, as appropriate, including coordination of services covered by the Contractor and services covered only by the TennCare MCO.
  - (j) Including as part of the Contractor's SNP Model of Care, training for staff and providers regarding the following:
    - (1) The Contractor's responsibility for coordination of Medicare and Medicaid benefits for FBDE members;
    - (2) The Contractor's policies and processes for coordination of Medicare and Medicaid benefits for FBDE members; and
    - (3) The target populations for TennCare managed long-term services and supports programs, including the CHOICES and ECF CHOICES program.
    - (4) Benefits covered under the TennCare program, including the CHOICES and ECF CHOICES program.
  - (k) For the Contractor's members who are enrolled via Default Enrollment, the Contractor shall be responsible, in collaboration with the member's MCO, for the management, coordination, and continuity of the member's care and shall develop and maintain policies and procedures to address this responsibility.
    - (1) For each member seamlessly enrolled in the Contractor's D-SNP plan (and who is thus also enrolled in a TennCare MCO operated by the Contractor), the Contractor shall be responsible for continuing to provide covered services authorized by the member's TennCare MCO, without regard to whether such services are being provided by contract or non-contract providers for at least thirty (30) days, which shall be extended as necessary to ensure continuity of care pending the provider's contracting with the Contractor or the member's transition to a contract provider, completion of a Health Risk Assessment, and any needed actions to mitigate potential negative consequences related to transition of providers. If the member is transitioned to a contract provider, the Contractor shall facilitate seamless transition to the new provider.
    - (2) For CHOICES and ECF CHOICES members, the Contractor's policies and procedures regarding continuity of care shall specify the role of the Care Coordinator/Care Coordination Team or Support Coordinator/Support Coordination Team, as applicable, in ensuring continuity and coordination among physical health, behavioral health, and long-term services and supports.

7. In the event a specific benefit is covered by both the Plan and TennCare, TennCare shall be the payor of last resort.
8. The Contractor agrees that all instances in the Contractor's marketing materials that include reference to "more", "extra", or "additional" Medicare benefits, or use similar language to indicate the receipt of benefits above and beyond traditional Medicare benefits, must explicitly state that such increased benefits are applicable to Medicare only and do not indicate increased Medicaid benefits to avoid potential member confusion. Additionally, each marketing item must include the following disclaimer:

**Notice: TennCare is not responsible for payment for these benefits, except for appropriate cost sharing amounts. TennCare is not responsible for guaranteeing the availability or quality of these benefits.**

9. The Contractor shall develop policies and procedures for coordination of Medicare and Medicaid benefits for FBDEs and shall submit such policies and procedures to TennCare for review and written approval prior to implementation. The Contractor's operations shall be subject to on-site review, observation, and audit by TennCare to confirm the Contractor's compliance with approved policies and procedures regarding coordination of Medicare and Medicaid benefits and the terms of this Contract.
10. The Contractor shall make available to TennCare upon request all information regarding the Contractor's performance for the D-SNP plan, including, but not limited to, HEDIS and CAHPS data, Medicare Advantage Star Quality ratings, including poor performing icons, notices of non-compliance, audit findings and corrective action plans. The Contractor shall conduct additional quality improvement activities as determined by and at the request of TennCare based on poor performance or opportunities for improved quality and cost efficiency.
11. The Contractor shall participate in meetings as requested by TennCare to discuss the program and its operations, and to address performance issues and concerns. The Contractor shall be required to have appropriate staff attend certain on-site meetings held at TennCare offices or at other sites as requested and designated by TennCare. TennCare shall notify the Contractor in writing of any specific performance deficiencies and request corrective action. The Contractor shall respond in writing with a corrective action plan within thirty (30) calendar days of receipt of such notification and implement and monitor the plan upon approval by TennCare. Additionally, both Parties agree to cooperate in carrying out the activities described in any applicable Corrective Action Plan mandated by CMS.
12. The Contractor shall operate a call center with dedicated representatives who are trained on Medicare and TennCare benefits provided and/or coordinated under this Contract and who are capable of handling questions and concerns regarding the benefits provided across both contracts. For any instance in which additional expertise is needed to assist the member, e.g., for questions specifically concerning the Contractor's behavioral health or long-term services and supports, the Contractor's staff shall be responsible for conducting warm transfers to appropriate contacts who can address these issues for the caller.
13. The Contractor shall provide its Health Risk Assessment and Medicare plan of care template and policies to TennCare for review and comment, and shall participate in person-centered practices training provided or arranged by TennCare. For members receiving LTSS who are enrolled in an aligned Medicare and Medicaid D-SNP, the Contractor shall integrate its Health Risk Assessment and plan of care with its Comprehensive Needs Assessment and Person-Centered Support Plan, using a person-centered approach to needs assessment and care planning.

14. Upon approval from CMS and demonstration of readiness to TennCare, the Contractor shall, in accordance with timeframes established by CMS, operate H0251-004 as a FIDE SNP consistent with the requirements of this Contract, including Attachment F to this Contract. The Contractor shall undergo a readiness review to determine the Contractor's readiness to implement and comply with on an ongoing basis the requirements of Attachment F of this Contract, including any substantive amendments thereto as determined by TennCare. The readiness review will include desk review and systems review components and, specific to FIDE SNP readiness, will include submission of a plan by the Contractor to TennCare by October 1, 2018 concerning how the Contractor will collect baseline data on CHOICES members for purposes of determining the efficacy of integrated coordination under the Contractor's FIDE SNP. The baseline data plan shall include use of primary care and other preventative services, emergency department utilization (broadly), all inpatient admissions and discharges, including observation stays and ICF/IID services by facility type, including length of stay, and total cost of care broken down by categories which shall be approved by TennCare.
15. Upon approval from CMS and demonstration of readiness to TennCare, the Contractor shall operate H0251-005 in accordance with the requirements of this Contract, including Attachment G. The Contractor shall undergo a readiness review to determine the Contractor's readiness to implement and comply with on an ongoing basis the requirements of Attachment G of this Contract, including any substantive amendments thereto as determined by TennCare. The readiness review shall include desk review and systems review components and, specific to H0251-005 readiness, shall include submission of a plan by the Contractor to TennCare by October 1, 2018 concerning how the Contractor will collect baseline data on ECF CHOICES members for purposes of determining the efficacy of integrated coordination under H0251-005.

The measures shall include, but not be limited to: utilization of crisis services; emergency department visits for behavioral health-related needs; inpatient psychiatric admissions, including length of stay; and utilization of antipsychotic medications. The baseline data plan shall include use of primary care and other preventative services, emergency department utilization (broadly); all inpatient admissions and discharges, including observation stays and ICF/IID services by facility type, including length of stay; and total cost of care broken down by categories which shall be approved by TennCare

**c. Data.**

1. The Contractor shall submit to TennCare, in a mutually agreed upon electronic format, the following data:
  - (a) Encounter data for any and all claims, including Part D claims to the extent the Contractor has access to such information and including claims with no patient liability. Encounter data submissions shall be in accordance with the following:
    - (1) The Contractor shall collect encounter data as required by TennCare and CMS and participate in any other required surveys or studies.
    - (2) The Contractor's systems are required to conform to HIPAA-standard transaction code sets as specified in the HIPAA Implementation and TennCare Companion guides.
    - (3) The Contractor shall submit encounter data that meets established TennCare data quality standards. These standards are defined by

TennCare to ensure receipt of complete and accurate data for program administration and will be closely monitored and strictly enforced. TennCare will revise and amend these standards as necessary to ensure continuous quality improvement. The Contractor shall make changes or corrections to any systems, processes, or data transmission formats as needed to comply with TennCare data quality standards as originally defined or subsequently amended. The Contractor shall comply with industry-accepted clean claim standards for all claims and encounter data, including submission of complete and accurate data for all fields required on standard billing forms or electronic claim formats to support proper adjudication of a claim. In the event that the Contractor denies provider claims for reimbursement due to lack of sufficient or accurate data required for proper adjudication, the Contractor shall submit all available claim data to TennCare without alteration or omission. Where the Contractor has entered into capitated reimbursement arrangements with providers, the Contractor must require submission of all utilization or claims and encounter data to the same standards of completeness and accuracy as required for proper adjudication of fee-for-service claims; the Contractor shall require this submission from providers as a condition of the capitation payment and shall make every effort to enforce this contract provision to ensure timely receipt of complete and accurate data. The Contractor shall be required to submit all data relevant to the adjudication and payment of claims in sufficient detail, as defined by TennCare, in order to support comprehensive financial reporting and utilization analysis. The Contractor must submit all encounter data according to standards and formats as defined by TennCare, complying with HIPAA standard code sets and maintaining integrity with all reference data sources, including provider and member data. All encounter data submissions will be subjected to systematic data quality edits and audits on submission to verify not only the data content but also the accuracy of claims processing. Any batch submission which contains fatal errors that prevent processing or that does not satisfy defined threshold error rates shall be rejected and returned to the Contractor for correction within two (2) business days.

- (4) TennCare shall reject an entire file or an individual encounter failing certain edits, as deemed appropriate and necessary by TennCare to ensure accurate processing or encounter data quality, and shall return these transactions to the Contractor for research and resolution. TennCare shall require expeditious action on the part of the Contractor to resolve errors or problems associated with said claims or the adjudication thereof, including any necessary changes or corrections to any systems, processes or data transmission formats. The Contractor shall, unless otherwise directed by TennCare, address entire file rejects within two (2) business days of rejection and individual encounter rejects within forty-five (45) calendar days of rejection. Such errors will be considered acceptably addressed when the Contractor has either confirmed and corrected the reported issue or disputed the reported issue with supporting information or documentation that substantiates the dispute. TennCare may require resubmission of the transaction with reference to the original in order to document resolution. Failure to address the preceding file rejects within two (2) business days as stated above may result in the assessment of liquidated damages in accordance with the liquidated damages section of this Contract.
- (5) Within two (2) business days of the end of each of the Contractor's payment cycles, the Contractor shall generate claims and encounter data files for that payment cycle from its claims management system(s) and/or other sources. If the Contractor has more than one (1) payment cycle within the same calendar week, the encounter data files may be merged and submitted within two (2) business days of the end of the last payment cycle during the calendar week.
- (6) Any claims and encounter data from a subcontractor shall be included in the file from the Contractor. The Contractor shall not submit separate claims and encounter files from subcontractors.
- (7) The files shall contain settled claims and claim adjustments, including, but not limited to, adjustments necessitated by payment errors processed during that payment cycle, as well as encounters processed during that payment cycle from providers with whom the Contractor has a capitation arrangement.
- (8) The level of detail associated with encounters from providers with whom the Contractor has a capitation arrangement shall be equivalent to the level of detail associated with encounters for which the Contractor received and settled a fee-for-service claim.
- (9) The Contractor shall adhere to federal payment rules and regulations in the definition and treatment of certain data elements, e.g., units of service, that are HIPAA-standard fields in the encounter data submissions.
- (10) The Contractor shall provide claims and encounter data files electronically to TennCare in adherence to the procedure and format indicated in the HIPAA Implementation and TennCare Companion guides.

- (11) The Contractor shall institute processes to ensure the validity and completeness of the data it submits to TennCare. At its discretion, TennCare shall conduct general data validity, integrity and completeness audits using industry-accepted statistical sampling methods. Data elements that will be audited include, but are not limited to: member ID, date of service, provider ID (including NPI number and Medicare I.D. Number), category and subcategory (if applicable) of service, diagnosis codes, procedure codes and modifiers, revenue codes, adherence to benefit limits, date of claim processing and, date of claim payment. Control totals shall also be reviewed and verified.
  - (12) Claims and encounter records shall be submitted such that payment for discrete services that may have been submitted in a single claim can be ascertained in accordance with the Contractor's applicable reimbursement methodology for that service.
  - (13) The Contractor shall be able to receive, maintain and utilize data extracts from TennCare and its contractors, e.g., pharmacy data from TennCare or its pharmacy benefit manager (PBM).
2. This information shall be submitted on a schedule agreed to by both parties and will be provided at no cost to TennCare. TennCare shall use this information to fulfill its crossover claims payment function, to coordinate care for its Dual Eligible Members and for purposes of monitoring fraud and abuse as required by federal and state law. Information submitted under this provision will be considered non-public information. Failure to adhere to this agreed upon schedule may result in the assessment of liquidated damages in accordance with the liquidated damages section of this Contract. The Contractor shall have a representative dial into the weekly IT conference call. The Contractor shall have a minimum of one (1) representative attend the monthly IT on-site meeting in person.
3. The Contractor shall receive, process, update, and submit all applicable outbound and/or inbound enrollment and ancillary/supplemental files sent by TennCare in a TennCare prescribed HIPAA-compliant format and a frequency that shall be established and required by TennCare. In addition, the Contractor shall meet the following requirements:
  - (a) The Contractor shall update its enrollment databases, including, but not limited to, MCO assignment within twenty-four (24) hours of receipt of said files.
  - (b) The Contractor shall transmit to TennCare, in the formats and methods specified in the HIPAA Implementation and TennCare Companion guides, or as otherwise specified by TennCare, member address changes, telephone number changes, and primary care provider (PCP).
  - (c) The Contractor shall be capable of uniquely identifying a distinct TennCare member across multiple populations and systems within its span of control.
  - (d) The Contractor shall be able to identify potential duplicate records for a single member and, upon confirmation of said duplicate record by TennCare, and resolve the duplication such that the enrollment, service utilization, and customer interaction histories of the duplicate records are linked or merged.
  - (e) The Contractor shall be responsible for establishing connectivity to TennCare's/the state's wide area data communications network, and the

relevant information systems attached to this network, in accordance to all applicable TennCare and/or state policies, standards and guidelines.

- (f) The Contractor's systems shall be able to transmit, receive and process data in HIPAA-compliant or TennCare-specific formats and methods, including, but not limited to, Secure File Transfer Protocol (SFTP) over a secure connection such as a VPN, that are in use at the start of systems readiness review activities. These formats are detailed in the HIPAA Implementation and TennCare Companion guides.
- (g) In the event of a declared major failure or disaster, the Contractor's core eligibility/enrollment/encounter or other systems that interact with TennCare shall be back online within seventy-two (72) hours of the event.
- (h) Regardless of the architecture of its systems, the Contractor shall develop and be continually ready to invoke a BC-DR (Business Continuity/Disaster Recovery) plan that is reviewed and prior approved in writing by TennCare.
- (i) The Contractor shall cooperate in a "readiness review" conducted by TennCare to review the Contractor's IT readiness for electronic data interchange. This review may include, but is not limited to, on-site review of the Contractor's systems, a system demonstration (including systems connectivity testing), and other readiness review components as determined by TennCare.
- (j) The Contractor shall also work with TennCare pertaining to any testing initiative as required by this Contract, including providing sufficient systems access to allow testing by TennCare of the Contractor's systems during readiness review and testing with TennCare prior to the use of a new vendor if the vendor will be submitting claims to the plan related to this Contract that will then go to TennCare for processing.
- (k) In the event that reports are required, the Contractor shall comply with all the reporting requirements established by TennCare. TennCare shall provide the Contractor with the appropriate reporting formats, instructions, submission timetables, and technical assistance as required. TennCare may, at its discretion, change the content, format or frequency of reports.
- (l) TennCare may, at its discretion, require the Contractor to submit additional reports both ad hoc and recurring. If TennCare requests any revisions to the reports already submitted, the Contractor shall make the changes and re-submit the reports, according to the time period and format required by TennCare.
- (m) For any medical records or other health and enrollment information it maintains with respect to enrollees, an MA organization must establish procedures to do the following:
  - 1. Abide by all Federal and State laws regarding confidentiality and disclosure of medical records, or other health and enrollment information. The MA organization must safeguard the privacy of any information that identifies a particular enrollee and have procedures that specify--
    - a. For what purposes the information will be used within the organization; and

- b. To whom and for what purposes it will disclose the information outside the organization.
- 2. Ensure that medical information is released only in accordance with applicable Federal or State law, or pursuant to court orders or subpoenas.
- 3. Maintain the records and information in an accurate and timely manner.
- 4. Ensure timely access by enrollees to the records and information that pertain to them.
- (n) Ensure that medical information is released only in accordance with applicable Federal or State law, or under court orders or subpoenas.
- (o) Maintain the records and information in an accurate and timely manner.
- (p) Ensure timely access by enrollees to the records and information that pertain to them

**d. Eligibility.**

- 1. The following classes of members or categories of eligibility for participation in the Plan:
- 2. Medicaid Eligibility data shall be made available to the Contractor by TennCare (see A. 3) only for purposes of serving individuals who have either:
  - (a) Affirmed in writing, for example, by completion of a SNP enrollment application by letter, email or facsimile of the intention to join the Plan and whose TennCare eligibility category needs to be verified before the individual may be enrolled in the Plan; or
  - (b) Members already enrolled in the Plan whose TennCare eligibility needs to be confirmed for: 1) renewal of a contract term, 2) verification of continuing membership on a periodic basis, or 3) before the provision of a benefit.
- 3. Medicaid Eligibility data shall not be supplied for the purposes of allowing the Plan to market its services to persons who are not members or who have not agreed to become members.
- 4. Contractor shall provide its eligibility information on members of its Plan to TennCare or TennCare's designee at no charge to TennCare.

**e. Provider Network Information.**

- 1. The Contractor shall submit a quarterly Provider Enrollment File report that includes information on all providers of the Plan's covered health benefits. This includes but is not limited to, PCPs, physician specialists, hospitals, and home health agencies. The report shall include contract providers as well as all non-contract providers with whom the Contractor has a relationship. This list need not include retail pharmacies. The Contractor shall submit this report by the 15th of the following months: February, May, August and November. Each quarterly Provider Enrollment File shall include information on all providers of health benefits and shall provide a complete replacement for any previous Provider Enrollment Files submission. Any changes in the provider's contract status from the previous submission shall be indicated in the

file generated in the quarter the change became effective and shall be submitted in the next quarterly file. The provider network information shall be updated regularly as specified by TennCare. The Contractor shall contact TennCare's Office of Provider Networks for the proper format for the submission.

2. The Contractor shall develop a network of providers that specifically targets substantial overlap of providers in its network with providers that are also enrolled with its TennCare MCO in order to ensure seamless access to care for FBDE members who are seamlessly enrolled in the Contractor's D-SNP plan. The Contractor shall report, as part of the Default Enrollment Report specified in Section A.2.i, the number of members seamlessly enrolled in the Contractor's D-SNP plan that are able to keep the same 1) primary care provider; 2) specialty physicians; and 3) any other provider type(s) as specified by TennCare for the period specified by TennCare following the member's enrollment in the Contractor's D-SNP.
3. The Contractor shall not enter into contracts, agreements, arrangements—whether formal or informal—with any providers, or alternatively, issue any guidance documents, memorandums, written instructions, or verbal commands which contain clauses, provisions, expectations, payment methodologies, or any other language that has the intent or effect of: 1) limiting those providers' participation in any other integrated or coordinated program of care for FBDEs, including but not limited to, a TennCare Waiver demonstration program, any other D-SNP program, or any program connected to or administered by a TennCare MCO; or 2) limiting a FBDE beneficiary's choice of Medicare providers. If the Contractor violates the provisions of this section A.2.e, such action shall be grounds for immediate termination of this contract pursuant to section D.4 Termination for Cause.

f. Confidentiality, Use and Disclosure of Confidential Information.

The Contractor shall agree to the attached Trading Partner Agreement, Attachment B, and Business Associate Agreement, Attachment C, governing the use and handling of the data it receives from TennCare under this Contract.

- g. The Contractor shall, upon prior review and approval by the Centers for Medicare and Medicaid Services (CMS), submit to TennCare for review and prior written approval, all marketing materials, items, layouts, plans, etc. that will be distributed directly or indirectly to FBDE members or potential FBDE members for the purposes of soliciting and/or maintaining enrollment in the Contractor's plan. The Contractor shall include in its submission, documentation of CMS approval of such materials, items, layouts, plans, etc. The Contractor shall be strictly prohibited from using any eligibility or enrollment information that has been provided by TennCare for purposes of coordinating benefits for members for any marketing activities or to solicit additional members for enrollment in its D-SNP.

- h. The Contractor shall transmit crossover or claims for Medicare co-pays or deductibles electronically to TennCare in a compliant format approved by TennCare.

i. Deliverables.

1. In addition to the encounter and provider file reports required under this Contract, the Contractor shall submit to TennCare the following deliverables in a format prescribed by TennCare:

(a) A Quarterly Dual Eligible Coordination Report;

(b) A Quarterly Default Enrollment Report;

(c) A Quarterly D-SNP Appeals and Grievances Report; and

(d) Ad hoc reports as requested by TennCare.

2. The above deliverables are subject to audit upon request by TennCare either through ongoing, periodic audits in a manner prescribed by TennCare or ad hoc.
3. The Contractor is required to submit copies of provider agreement templates, unique provider agreements, provider manuals/handbooks, and amendments thereto, intended for use in the Contractor's D-SNP lines of business, to the Tennessee Department of Commerce and Insurance (TDCI) TennCare Oversight Division for review and acceptance, which may occur after an agreement has been signed by all parties, but should be within a reasonable timeframe to provide for review by TDCI to ensure that these documents align with requirements set forth by TennCare in this Contract.

j. **Coordination with TennCare Managed Care Organizations.**

The Contractor shall, upon request, coordinate with TennCare MCO(s) in the development of needs assessments and/or development of an integrated Person-Centered Support Plan (PCSP) for a TennCare CHOICES member, or PCSP for an ECF CHOICES member, encompassing Medicare and Medicaid benefits provided by the TennCare MCO. Per the requirements of the CRA, TennCare MCOs are responsible for submitting any such needs assessments and/or PCSPs to the Contractor within two (2) business days of developing or substantively updating such documents. The Contractor, upon receipt of such documentation, shall be responsible for reviewing the member's PCSP, and updating it in collaboration with the applicable TennCare MCO based on changes to the member's condition or needs of which the Contractor is aware.

k. **Staffing Requirements**

1. The Contractor's D-SNP and FIDE SNP staff, including, at minimum, the Executive Director for its D-SNP and FIDE SNP, Director of Health Services, case management staff, and at least fifty percent (50%) of its clinical staff, shall be assigned to and work in a geographic area of the State of Tennessee, but may live in a border state as long as their primary work under this Contract is performed in-state.

**A.3. TENNCARE RESPONSIBILITIES:**

- a. **TennCare's Cost Sharing Obligations.** Federal law imposes certain cost sharing responsibilities on TennCare for its Dual Eligible members. These cost sharing obligations include costs for premiums, deductibles and co-insurance or co-payment amounts. For FBDE members not enrolled in the PACE Program or an integrated dual demonstration for FBDEs, TennCare shall continue to make these payments directly to the federal government (in the case of premiums) or providers (in the case of deductibles or coinsurance) in accordance with federal law, the TennCare State Plan and TennCare Rules. No payments of these sums shall be made to the Contractor. Any of the Contractor's subcontractors or providers who attempt to file claims for co-payments or co-insurance allowed by law shall be required to become registered TennCare providers, according to the procedures developed by TennCare. These procedures may be found on the TennCare website. The Plan will notify its network providers that they shall not bill enrollees for benefits provided, unless direct billing is permitted under State and Federal law.

Additionally, the Contractor shall adhere to the following requirements regarding balance billing for enrollees under this Contract:

1. The Contractor shall educate its network providers about balance billing protections for full benefit dual eligible enrollees and for QMBs, including that such protections apply regardless of whether TennCare is liable to pay full Medicare cost sharing amounts. The Contractor shall instruct providers to either accept Contractor payment or bill the State for applicable cost sharing and accept the State's payment as payment in full;
  2. The Contractor shall specify in provider agreements a requirement that providers shall not bill FBDE members for covered Medicare benefits provided, except in accordance with State and Federal law, and
  3. The Contractor shall monitor provider compliance with balance billing rules and shall coordinate with TennCare or a FBDE member's TennCare MCO to promptly address any instance where the Contractor's provider is billing a FBDE member for covered Medicare benefits. The Contractor shall provide targeted provider outreach, including identifying problem areas received through Contractor grievance process and CMS tracking data.
- b. **Coordination of Care.** Every TennCare FBDE member is enrolled in a TennCare MCO. TennCare shall provide the Contractor with the contact information of a FBDE member's MCO as requested by the Contractor. The member's MCO is the primary source for provision of TennCare benefits. Upon implementation of the data interface as specified in Section A.2.c.3., TennCare will provide each FBDE member's TennCare MCO enrollment information via the data interface.
- c. **Eligibility Data.** TennCare shall make all reasonable efforts to supply Medicaid eligibility information upon the receipt of the request from the Contractor using a "realtime" access method chosen from the options described below. The Contractor shall pay for access and use of this data, according to the option chosen in Section C, Payment Terms and Conditions:

**TNAnytime Online:** Access to TennCare's Eligibility Information may be achieved through a user interface and socket program, and the sole charge is an annual user access fee for a premium services subscription. This method only processes a request for one (1) individual at a time.

**TNAnytime Batch:** Access to TennCare's Eligibility Information may be achieved through a batch interface and Secure Socket Layer or similar encryption method. The user is charged a setup fee (for transaction testing), a per transaction fee, and an annual user access fee for a premium services subscription. This method can process requests for many individuals at once. The State shall provide the response within twenty four (24) hours of the request.

The choice of method shall be binding for the term of this Contract from signing by both parties, unless TennCare agrees to allow a mid-term change. Such agreement shall not be unreasonably withheld. In the event of such a change, the Contractor shall agree to abide by all timelines, testing procedures and any other requirements mandated by TennCare to make the changeover.

Once data interface as specified in Section A.2.c.3. is tested and approved by TennCare for implementation, the Contractor shall no longer rely on TNAnytime for access to eligibility data. The data shall be submitted by TennCare and loaded by the Contractor.

- d. **Provider Data.** TennCare will make reasonable commercial efforts to make available its list of TennCare providers to the Contractor upon Contractor's request prior to plan start-up. TennCare will also update the Provider listing on a regular basis.
- e. TennCare shall review and approve or deny the Contractor's marketing materials within fifteen (15) calendar days of receipt.
- f. **Training.** TennCare shall provide training and technical assistance to plans upon request concerning person-centered practices, including training and technical assistance specific to the requirements of Section A.2.b.13 of this Contract.

A.4. Payments Due Upon Termination. In addition to the terms as set out in Sections C, D.3 and D.4, upon termination by either party, should there be outstanding payments due to the State as allowed under this Contract, the Contractor shall satisfy any and all payments within 30 (thirty) days after the date of the termination of the Contract. If the State is not satisfied that the Contractor has fulfilled its obligations under this Contract, the State shall follow any and all recourse available to it under state or federal law for actual monetary damages or liquidated damages.

The date of termination under D.3 and D.4 may be subject to CMS requirements on Contractor's requirements to notify its beneficiaries in advance of termination. CMS requires the SNP to give 60 days' advance notice to its enrollees if the SNP contract is going to be terminated.

A.5. Control Memorandum Process.

- a. The Control Memorandum ("CM") process shall be utilized by the State to clarify Contract requirements, issue instruction to the Contractor, document action required of the Contractor, or request information from the Contractor. In addition, the CM process shall be used by the State to impose assessments of damages, either actual or liquidated. This process will be used to address issues or matters that do not require a contract amendment. Each CM must be in writing and indicate the date on which it was issued. CMs may provide relevant history, background, and other pertinent information regarding the issue(s) being addressed in the CM. Each CM will establish a deadline or timeframe for the Contractor's reply or other action. All CMs submitted to the Contractor must be signed and approved by the State's Project Director (or his/her designee). When the CM pertains to damages, either actual or liquidated, the State may issue consecutive CMs, as may be necessary or appropriate.
- b. A CM may include one (1) or more of the five (5) components of the CM process described below:
  - 1. On Request Report – a request directing the Contractor to provide information by the time and date set out in the CM.

2. Control Directive (CD) – instructions that require the Contractor to complete, within a designated timeframe, one (1) or more deliverables or to perform any other request from the State that is within the scope of the Contract. The CD may include a Corrective Action Plan. A CD may also provide clarification of certain Contract terms. Once a CM/CD has been issued, it shall be considered to be incorporated into this Contract.
  3. Notice of Potential Damages (Actual or Liquidated) (NPD) – notification to the Contractor that the State has determined that a potential Contract performance or compliance failure exists and that the State is contemplating assessing damages. The NPD shall identify the Contract provision(s) on which the State determination rests.
  4. Notice of Calculation of Potential Damages (Actual or Liquidated) (NCPD) – notification to the Contractor that provides a calculation of the amount of potential damages that the State is contemplating assessing against the Contractor. NPDs and NCPDs may be issued consecutively or simultaneously.
  5. Notice of Intent to Assess Damages (Actual or Liquidated) (NIAD) – notification to the Contractor that the State is assessing damages and specifying whether the damages, due to a performance or compliance failure, are actual damages or Liquidated Damages and setting out the performance or compliance failure underlying each intended damage assessment. The NIAD shall identify the NPD and NCPD upon which it is based. The NIAD shall specify the total amount and type of damages, whether actual or liquidated, that the State intends to assess. The State may not issue a NIAD without first issuing a NPD and a NCPD. The State may not obtain both Liquidated Damages and Actual Damages for the same occurrence of a Contract performance or compliance failure.
- c. Damages for failure to comply with CM. The Contractor shall fully comply with all CMs. Failure to do so may result in the State pursuing recovery of damages, as defined in Section E.10, including Liquidated Damages as listed in Contract Attachment E, a corrective action plan, and/or termination of the Contract.
  - d. Appeal of Damages by Contractor. Contractor may appeal either the basis for NPD or calculation of NCPD potential damages, either actual or liquidated. To do so, the Contractor shall submit to the State's Project Director (or his/her designee) a written response to the NPD and/or NCPD within ten (10) business days of receipt of a CM which includes a NPD or a NCPD. The State's Project Director (or his/her designee) shall review the appeal and provide notice of his/her determination to the Contractor through a CM. If the Contractor disagrees with the State's Project Director's (or his/her designee) initial appeal determination or the State's Project Director (or his/her designee) is unable to resolve the appeal, the Contractor may submit a written request to the State's Project Director (or his/her designee) that the matter be escalated to senior management of the Agency. Contractor shall submit such a request for escalation within ten (10) business days of its receipt of the initial appeal determination from the State's Project Director (or his/her designee) or of notification by the State's Project Director that

he/she is unable to resolve the appeal. The State's senior management shall provide written notice of its final determination to the Contractor within (10) days of the receipt of the appeal from the Contractor. Upon appeal or escalation, the State shall not increase the amount of the potential damages.

**B. TERM OF CONTRACT:**

- B.1. This Contract shall be effective on January 1, 2019 ("Effective Date"), and extend for a period of 12 months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Procuring Party prior to the Effective Date.
- B.2. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to four (4) renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

**C. PAYMENT TERMS AND CONDITIONS:**

The Contractor shall pay the amounts specified below according to the option selected for setup fees and per transaction fees. Payment shall be made by the Contractor within thirty (30) days of receipt of an invoice from TennCare for access to eligibility data. The invoices shall be issued monthly unless the Contractor has specified a service with an annual fee. A decision as to payment methodology (i.e., check, electronic deposit, etc.) shall be made between the parties at the commencement of the Contract term. The Contractor is responsible for all invoices covering access during the term of this Contract even if they are submitted after the Contract has been terminated.

\_\_\_\_ **TennCare Online System (TCOS):** Access to TennCare's Eligibility Information may be achieved through a user interface and socket program, and the sole charge is an annual seventy-five dollar (\$75.00) user access fee for a premium services subscription.

\_\_\_\_ **Secure File Transfer Protocol (SFTP) Batch:** access to TennCare's Eligibility Information may be achieved through a Virtual Private Network (VPN) connection to TennCare's SFTP server. The user is charged a Two Thousand Five Hundred Dollar (\$2,500.00) setup fee (for transaction testing, VPN setup and directory, security, and scripting costs) and Two Cents (\$.02) per transaction. Due to the cost to the state to conduct the testing, VPN setup and directory, security, and scripting, the set-up fee is due upon receipt of executed contract. Without sufficient timely payment, no testing will begin. **(Note: Set-Up Fee is waived for any vendor already connected to server.)**

**D. STANDARD TERMS AND CONDITIONS:**

- D.1. Required Approvals. The State is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the

Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

- D.3. Termination for Convenience. The Contract may be terminated by either party by giving written notice to the other, at least thirty (30) days before the effective date of termination. Said termination shall not be deemed a breach of contract by the State. Should the State exercise this provision, the State shall have no liability to the Procuring Party. Should either the State or the Procuring Party exercise this provision, the Procuring Party shall be required to compensate the State for satisfactory, authorized services completed as of the termination date and shall have no liability to the State except for those units of service which can be effectively used by the Procuring Party. The final decision, as to what these units of service are, shall be determined by the State. In the event of disagreement, the Procuring Party may file a claim with the Tennessee Claims Commission in order to seek redress.

Upon such termination, the Procuring Party shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- D.4. Termination for Cause. If either party fails to properly perform or fulfill its obligations under this Contract in a timely or proper manner or violates any terms of this Contract, the other party shall have the right to immediately terminate the Contract. The Procuring Party shall compensate the State for completed services.
- D.5. Subcontracting. Neither the Procuring Party nor the State shall assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the other. If such subcontracts are approved, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings).
- D.6. Conflicts of Interest. The Procuring Party warrants that no amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Procuring Party in connection with any work contemplated or performed relative to this Contract other than as required by section A. of this Contract.
- D.7. Nondiscrimination. The State and the Procuring Party hereby agree, warrant, and assure that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the State or the Procuring Party on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law.
- D.8. Records. The Procuring Party shall maintain documentation for its transactions with the State under this Contract. The books, records, and documents of the Procuring Party, insofar as they relate to work performed or money paid under this Contract, shall be maintained for a period of five (5) full years from the final date of this Contract and shall be subject to audit, at any reasonable time and upon reasonable notice, by the state agency, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.9. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.

- D.10. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

Claims against the State of Tennessee, or its employees, or injury damages expenses or attorney's fees are heard and determined by the Tennessee Claims Commission or the Tennessee Board of Claims in the manner prescribed by law (*Tennessee Code Annotated*, Sections 9-8-101 *et seq.*, 9-8-301 *et seq.*, and 9-8-401 *et seq.*). Damages recoverable against the State of Tennessee shall be expressly limited to claims paid by the Board of Claims or the Claims Commission pursuant to *Tennessee Code Annotated*, Section 9-8-301 *et seq.*

- D.11. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.12. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.13. State and Federal Compliance. The Procuring Party and the State shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.14. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Procuring Party agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Procuring Party acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.15. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.16. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.17. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.18. HIPAA Compliance. The State and Procuring Party shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Health Information Technology for Economic and Clinical Health (HITECH) Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules").
- a. Procuring Party warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
  - b. Procuring Party warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the

Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.

- c. The State and the Procuring Party will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Procuring Party in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT “protected health information” as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver such information without entering into a business associate agreement or signing another such document.
- d. The Procuring Party will indemnify the State and hold it harmless for any violation by the Procuring Party or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

**E. SPECIAL TERMS AND CONDITIONS:**

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

**State Contact Name & Title**

Department of Finance and Administration  
Division of TennCare  
310 Great Circle Road  
Nashville TN 37243

**Email Address**

Telephone # **Number**

FAX # **Number**

The Procuring Party:

**Procuring Party Contact Name & Title**

**Procuring Party Name**

**Address**

**Email Address**

Telephone # **Number**

FAX # **Number**

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

E.3 Tennessee Department of Revenue Registration. The Procuring Party shall be registered with the Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material requirement of this Contract.

E.4. Debarment and Suspension. The Procuring Party certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Procuring Party shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded, disqualified, or presently fall under any of the prohibitions of sections a-d.

E.5. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Procuring Party by the State or acquired by the Procuring Party on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Procuring Party to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Procuring Party's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Procuring Party of this Contract; previously possessed by the Procuring Party without written obligations to the State to protect it; acquired by the Procuring Party without written restrictions against disclosure from a third party which, to the Procuring Party's knowledge, is free to disclose the information; independently developed by the Procuring Party without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Procuring Party to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Procuring Party due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

E.6. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For

the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify and/or procure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

The Contractor shall report to the State any instances of unauthorized access to or potential disclosure of PII in the custody or control of Contractor ("Unauthorized Disclosure") that come to the Contractor's attention. Any such report shall be made by the Contractor within forty-eight (48) hours after the Unauthorized Disclosure has come to the attention of the Contractor. Contractor shall take all necessary measures to halt any further Unauthorized Disclosures. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals whose PII was affected by the Unauthorized Disclosure. The Contractor shall bear the cost of notification to all individuals affected by the Unauthorized Disclosure, including individual letters and public notice. The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to this State under this Contract or otherwise available at law.

- E.7. Business Associate. As the Contractor will provide services to TennCare pursuant to which the Contractor will have access to, receive from, create, or receive on behalf of TennCare Protected Health Information, or Contractor will have access to, create, receive, maintain or transmit on behalf of TennCare Electronic Protected Health Information (as those terms are defined under HIPAA and HITECH), Contractor hereby acknowledges its designation as a business associate under HIPAA and agrees to comply with all applicable HIPAA regulations and the terms in the associated Business Associate Agreement.
- E.8. Notification of Breach and Notification of Suspected Breach. The Contractor shall notify TennCare's Privacy Office immediately upon becoming aware of and in no case later than forty-eight (48) hours after discovery of any incident, either confirmed or suspected, that represents or may represent unauthorized access, use or disclosure of encrypted or unencrypted computerized data that materially compromises the security, confidentiality, or integrity of enrollee PHI maintained or held by the Contractor, including any unauthorized acquisition of enrollee PHI by an employee or otherwise authorized user of the Contractor's system. This includes, but is not limited to, loss or suspected loss of remote computing or telework devices such as laptops, PDAs, Blackberrys or other Smartphones, USB drives, thumb drives, flash drives, CDs, and/or disks.

E.9. Social Security Administration (SSA) Required Provisions for Data Security. The Contractor shall comply with limitations on use, treatment, and safeguarding of data under the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, related Office of Management and Budget guidelines, the Federal Information Security Management Act of 2002 (44 U.S.C. §3541, *et seq.*), and related National Institute of Standards and Technology guidelines. In addition, the Contractor shall have in place administrative, physical, and technical safeguards for data.

- a. The Contractor shall specify in its agreements with any agent or subcontractor that will have access to data that such agent or subcontractor agrees to be bound by the same restrictions, terms and conditions that apply to the Contractor pursuant to this Section;
- b. The Contractor shall not duplicate in a separate file or disseminate, without prior written permission from TennCare, the data governed by the Contract for any purpose other than that set forth in this Contract for the administration of the TennCare program. Should the Contractor propose a redisclosure of said data, the Contractor must specify in writing to TennCare the data the Contractor proposes to redisclose, to whom, and the reasons that justify the redisclosure. TennCare will not give permission for such redisclosure unless the redisclosure is required by law or essential to the administration of the TennCare program.
- c. The Contractor agrees to abide by all relevant federal laws, restrictions on access, use, and disclosure, and security requirements in this Contract.
- d. The Contractor shall maintain a current list of the employees of such contractor with access to SSA data and provide such lists to TennCare at the start of the contract, and subsequently at any time there are changes or upon request.
- e. The Contractor shall restrict access to the data obtained from TennCare to only those authorized employees who need such data to perform their official duties in connection with purposes identified in this Contract. The Contractor shall not further duplicate, disseminate, or disclose such data without obtaining TennCare's prior written approval.
- f. The Contractor shall provide appropriate training and ensure that its employees:
  - (1) properly safeguard PHI/PII furnished by TennCare under this Contract from loss, theft or inadvertent disclosure;
  - (2) understand and acknowledge that they are responsible for safeguarding this information at all times, regardless of whether or not the Contractor employee is at his or her regular duty station;
  - (3) ensure that laptops and other electronic devices/ media containing PHI/PII are encrypted and/or password protected;
  - (4) send emails containing PHI/PII only if the information is encrypted or if the transmittal is secure; and,
  - (5) limit disclosure of the information and details relating to a PHI/PII loss only to those with a need to know.

Contractor employees who access, use, or disclose TennCare or TennCare SSA-supplied data in a manner or purpose not authorized by this Contract may be subject to civil and criminal sanctions pursuant to applicable federal statutes.

- g. Loss or Suspected Loss of Data—If an employee of the Contractor becomes aware of suspected or actual loss of PHI/PII, the Contractor must contact TennCare immediately upon becoming aware to report the actual or suspected loss. The Contractor must provide TennCare with timely updates as any additional information about the loss of PHI/PII becomes available.

If the Contractor experiences a loss or breach of said data, TennCare will determine whether or not notice to individuals whose data has been lost or breached shall be provided and the Contractor shall bear any costs associated with the notice or any mitigation.

- h. TennCare may immediately and unilaterally suspend the data flow under this Contract, or terminate this Contract, if TennCare, in its sole discretion, determines that the Contractor has: (1) made an unauthorized use or disclosure of TennCare SSA-supplied data; or (2) violated or failed to follow the terms and conditions of this Contract Section E.9.

- i. This Section further carries out Section 1106(a) of the Act (42 U.S.C. 1306), the regulations promulgated pursuant to that section (20 C.F.R. Part 401), the Privacy of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, related Office of Management and Budget ("OMB") guidelines, the Federal Information Security Management Act of 2002 ("FISMA") (44 U.S.C. 3541 et seq.), and related National Institute of Standards and Technology ("NIST") guidelines as outlined in the CMPPA and IEA governing this data,, which provide the requirements that the SSA stipulates that the Contractor must follow with regard to use, treatment, and safeguarding data in the event data is exchanged with a federal information system.

- j. Definitions

- (1) "SSA-supplied data" or "data" as used in this section – information, such as an individual's social security number or income, supplied by the Social Security Administration to TennCare to determine entitlement or eligibility for federally-funded programs. This information is subject to provisions outlined in a Computer Matching and Privacy Protection Act Agreement (CMPPA) between SSA and the State of Tennessee, and Information Exchange Agreement (IEA) between SSA and TennCare..
- (2) "Protected Health Information/Personally Identifiable Information" (PHI/PII)(45 C.F.R. 160.103; OMB Circular M-06-19) – Protected health information means individually identifiable health information that is: (i) Transmitted by electronic media; (ii) Maintained in electronic media; or (iii) Transmitted or maintained in any other form or medium.
- (3) "Individually Identifiable Health Information"— information that is a subset of health information, including demographic information collected from an individual, and: (1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) identifies the individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

- (4) "Personally Identifiable Information" – any information about an individual maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and information which can be used to distinguish or trace an individual's identity, such as their name, Social Security Number, date and place of birth, mother's maiden name, biometric records, including any other personal information which can be linked to an individual.

E.10. Liquidated Damages In the event of a Contract performance or compliance failure by the Contractor, the State may, but is not obligated to address such Contract performance or compliance failure and/or assess damages ("Liquidated Damages") in accordance with Attachment E of the Contract. The State shall notify the Contractor of any amounts to be assessed as Liquidated Damages via the Control Memorandum process specified in Contract Section A.5. The Parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for a Contractor performance or compliance failure, as these amounts are likely to be uncertain and not easily proven. Contractor has carefully reviewed the Liquidated Damages contained in Contract Attachment E and agrees that these amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of a Contract performance or compliance failure, are a reasonable estimate of the damages that would occur from a Contract performance or compliance failure, and are not punitive. The Parties agree that although the Liquidated Damages represent the reasonable estimate of the damages and injuries sustained by the State due to the Contract performance or compliance failure, they do not include any injury or damage sustained by a third party. The Contractor agrees that the Liquidated Damages are in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or any other sections of this Contract.

The State is not obligated to assess Liquidated Damages as a result of a Contract performance or compliance failure before availing itself of any other remedy. In the event of multiple Contract performance or compliance failures, the Parties recognize that the cumulative effect of these Contract performance failures may exceed the compensation provided by Liquidated Damages. The State may choose to avail itself of any other remedy available under this Contract or at law or equity. The Parties further recognize that the State may not obtain both Liquidated Damages and Actual Damages for the same occurrence of a Contract performance or compliance failure.

Without regard to whether the State has imposed Liquidated Damages or pursued any other remedy due to any action or inaction by the Contractor, the State may impose a corrective action plan or similar measure through a Control Memorandum. Such measure is neither punitive nor related to any damages the State might suffer.

**IN WITNESS WHEREOF,**

**PROCURING PARTY LEGAL ENTITY NAME:**

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**PROCURING PARTY SIGNATURE**

**DATE**

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PRINTED NAME AND TITLE OF PROCURING PARTY SIGNATORY (above)

DEPARTMENT OF FINANCE AND ADMINISTRATION  
DIVISION OF TENNCARE::

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LARRY B. MARTIN, COMMISSIONER

DATE

**ATTACHMENT A**  
**SUMMARY OF BENEFITS**

**Trading Partner Agreement**

THIS TRADING PARTNER AGREEMENT ("Agreement") is between The State of Tennessee, Department of Finance and Administration, Division of TennCare ("TennCare" or "the State"), 310 Great Circle Road, Nashville, TN 37243, and \_\_\_\_\_ ("Trading Partner") located at \_\_\_\_\_, including all office locations and other business locations at which Trading Partner data may be used or maintained. Trading Partners may be referred to herein individually as "Party" or collectively as "Parties."

**1. PURPOSE AND BACKGROUND**

- 1.1 The Division of TennCare includes TennCare, the state Medicaid agency, Cover Tennessee, the Health Insurance Exchange Planning Initiative, the Division of State Health Planning, and the Office of eHealth Initiatives.
- 1.2 This Agreement is ancillary to any State Contract ("SC"), Contractor Risk Agreement ("CRA") and Business Associate Agreement ("BAA") entered into between Trading Partner and a Division of TennCare, where applicable. The provisions of the SC, CRA and BAA are hereby incorporated by reference and shall be taken and considered as part of this Agreement the same as if fully setout herein.
- 1.3 TennCare, in its capacity as the Medicaid Agency ("TennCare") for the State of Tennessee, by law, must operate the TennCare Medicaid Management Information System ("TCMIS"). The TCMIS contains information regarding claims adjudication, eligibility verification, prior authorization and other information related to the TennCare Program and other TennCare programs.
- 1.4 The State owns the data in the TCMIS and operates the system in which the claims and eligibility data flow. Trading Partners provide the pipeline network for the transmission of electronic data; thus, are required to transport TCMIS data to and from the State and providers of TennCare services.
- 1.5 This Agreement delineates the responsibilities of the State and the Trading Partner in transporting TCMIS data in operation of the TennCare programs.

## **2. SCOPE**

- 2.1 System Access. The State agrees to provide Trading Partner with electronic access to the TCMIS and network for the purpose of exchanging transactions via Trading Partners' computer systems and network or its authorized designee's computer systems and network.
  - 2.1.1 To the extent Trading Partner executes a contract with TennCare service providers, or their authorized designee (clearinghouse, Value-Added Network (VAN), billing service, etc.), Trading Partner shall represent that it has on hand all necessary authorizations for submitting and receiving TCMIS data. Said contract must stipulate that providers use software tested and approved by Trading Partner as being in the proper format and compatible with the TCMIS.
    - 2.1.1.1 Trading Partner agrees that the TCMIS data transmitted or received by it shall be released only in support of the terms of an executed contract between Trading Partner and the authorized party requesting information to the extent authorized party's request is for the purposes of reporting eligibility for State benefits specific to individuals and dates of service and a treatment relationship exists to support and justify the authorized party's request in keeping with this Agreement.
  - 2.1.2 Prior to the submission of any transactions to the TCMIS production systems, Trading Partner agrees to submit test transactions to the State for the purpose of determining that the transactions comply with all requirements and specifications required by the State.
  - 2.1.3 Successful transaction testing must be achieved by Trading Partner for each provider number that the Trading Partner represents before any production transaction submissions are processed for that provider. No electronic transaction received by the State for providers without successful transaction testing shall be processed.
  - 2.1.4 The parties agree that the State shall make the sole determination that test data is acceptable and that transaction testing is successful. This capability to submit test transactions shall be maintained by Trading Partner throughout the term of this Agreement.
- 2.2 Transaction Types. Trading Partner agrees to submit to the TCMIS and any other TennCare systems only those individual transaction types for which specific approval from the State has been requested and received via the Electronic Data Interchange Request Form available under Electronic Data Interchange ("EDI") on the TennCare website. Prior to the submission of any transaction types to the TCMIS production system or to any other TennCare systems, or as a result of changes to an existing transaction type or system, Trading Partner agrees to submit test transactions to the State for both the additional and any previously approved transaction types.
- 2.3 Data Submission. Trading Partner shall prepare and submit or receive TCMIS and other TennCare related data using network connectivity, protocols, and media approved by the State. The addition and deletion by the State of approved submission network connectivity, protocols, and media may occur from time to time. To the extent the deletion of a network connectivity, protocol, or media is contemplated from the approved list, the State shall supply the Trading Partner with ninety (90) days' notice of the date of impending deletion.
- 2.4 Transmission Speed. For electronic transmission, such as File Transfer Protocol (FTP), that does not involve the physical exchange of storage media, the Trading Partner agrees to provide a minimum design transmission speed of 56 kilobits per second (KBS) with an effective transmission speed of at least eighty percent (80%) of the design transmission speed on a dedicated, secure channel or Virtual Private Network (VPN) from the Trading Partner data center to the State's facility. Trading Partner is free to choose type of channel and ultimate speed above 56 KBS as long as the selected transmission method is approved by TennCare. Trading Partner must coordinate any equipment selection or changes with the State to ensure compatibility with

the State's facilities. Trading Partner is responsible for all costs including installation costs, equipment, and line charges.

- 2.5 Data Encryption. Trading Partner must encrypt all data transmitted on channels not otherwise secured and maintain full compatibility with the State's facilities. The State reserves the right to determine when encrypted transmissions are necessary and what encryption technologies and implementations are considered sufficiently secure.
- 2.6 Compression/Decompression. Trading Partner must be capable of compressing and transmitting and receiving and decompressing transaction data files that are compressed and decompressed using the algorithms commercially known as "zip" or "gzip."
- 2.7 Remote Access Request. Trading Partner shall execute a Remote Access Request with the State, found on the TennCare website.

### 3. **DEFINITIONS**

- 3.1 "Confidential Information" shall mean any non-public, confidential or proprietary information, whether written, graphic, oral, electronic, visual or fixed in any tangible medium or expression, which is supplied by the State to the Trading Partner under this Agreement. Any information, whether written, graphic, oral, electronic, visual or fixed in any tangible medium or expression, relating to individuals enrolled in any TennCare program ("enrollees"), or relating to individuals who may be potentially enrolled in a TennCare program, which is provided to or obtained through the Trading Partner's performance under this Agreement, shall also be treated as "Confidential Information" to the extent that confidential status is afforded such information under state and federal laws or regulations. All confidential information shall not be subject to disclosure under the Tennessee Public Records Act, Tenn. Code. Ann. § 10-7-501 *et seq.*
- 3.2 "Covered entity" shall mean (1) A health plan (2) A health care clearinghouse (3) or a health care provider who transmits any health information in electronic form in connection with a transaction covered by 45 CFR Parts 160 & 164.
- 3.3 "*En Masse Inquiry*" shall mean data matching of less than fifty percent (50%).
- 3.4 "Health care clearinghouse" shall mean a public or private entity, including a billing service, repricing company, community health management information system or community health information system, and "value-added" networks and switches, that does either of the following functions: (1) Processes or facilitates the processing of health information received from another entity in a nonstandard format or containing nonstandard data content into standard data elements or a standard transaction. (2) Receives a standard transaction from another entity and processes or facilitates the processing of health information into nonstandard format or nonstandard data content for the receiving entity.
- 3.5 "Health care provider" shall mean a provider of services (as defined in section 1861(u) of the Act, 42 U.S.C. 1395x(u)), a provider of medical or health services (as defined in section 1861(s) of the Act, 42 U.S.C. 1395x(s)), and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business.
- 3.6 "Health plan" shall mean an individual or group plan that provides, or pays the cost of, medical care information or when requesting protected health information (PHI) from another covered entity, a covered entity must make reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request. A covered entity must limit any request for PHI to that which is reasonably necessary to accomplish the purpose for which the request is made, when requesting such information from other covered entities.

- 3.7 "Individually identifiable health information" means any information, including demographic information collected from an individual, that (a) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (b) relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, and identifies the individual; or, with respect to which there is a reasonable basis to believe that the information can be used to identify the individual.
- 3.8 "Payment" shall mean (1) The activities undertaken by: (i) A health plan to obtain premiums or to determine or fulfill its responsibility for coverage and provision of benefits under the health plan; or (ii) A health care provider or health plan to obtain or provide reimbursement for the provision of health care; and (2) The activities in paragraph (1) of this definition relate to the individual to whom health care is provided.
- 3.9 "Proprietary Information" shall mean TennCare processes, procedures, software, methods and any property of, or relating to, TennCare data.
- 3.10 "Protected Health Information" (PHI) shall mean individually identifiable health information that is transmitted by electronic media, maintained in electronic media; or transmitted or maintained in any other form or medium.
- 3.11 "Standard Eligibility Transaction" shall mean the Health Insurance Portability and Accountability Act of 1996 (HIPAA) 270/271 eligibility inquiry from a sender that is a health plan or health care provider and the designated response from the State.
- 3.12 "Treatment" shall mean the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or the referral of a patient for health care from one health care provider to another.
- 3.13 "Treatment Relationship" shall have the following meanings:
- 3.13.1 "Direct Treatment Relationship" shall mean a treatment relationship between an individual and a health care provider that is not an indirect treatment relationship.
- 3.13.2 "Indirect Treatment Relationship" shall mean a relationship between an individual and a health care provider in which (1) The health care provider delivers health care to the individual based on the orders of another health care provider; and (2) The health care provider typically provides services or products, or reports the diagnosis or results associated with the health care, directly to another health care provider, who provides the services or products or reports to the individual.

#### **4. COMPLIANCE**

- 4.1 Trading Partner agrees to comply with all State and federal laws, regulations, and policies as they exist or as amended that are or may be applicable to this Agreement, including, but not limited to, ancillary agreements such as the SC, CRA and BAA (Section 1).
- 4.1.1 Proprietary and Confidential Information [See 3.1 & 3.9]. All proprietary information, including but not limited to, provider reimbursement information provided to TennCare, shall be deemed confidential and not subject to disclosure under the Tennessee Public Records Act.
- 4.1.2 Duty to Protect. Confidential Information (i) shall be held by the Trading Partner in strictest confidence at all times; (ii) shall not be disclosed or divulged by the Trading Partner to any person or entity, except those employees and agents of the Trading Partner who require access to such information, and only after those employees and agents have been instructed that the information

is subject to the confidentiality obligations set forth herein; and (iii) shall not be used by the Trading Partner for any purpose not set forth herein or otherwise authorized in writing by the TennCare program. The Parties shall diligently exercise the highest degree of care to preserve the security and integrity of, and prevent unauthorized access to, the Confidential Information. By executing this Agreement, Trading Partner and TennCare assure that each respective organization has established written policies and procedures relating to confidentiality, including the confidentiality of protected health information and eligibility information. The Trading Partner and TennCare further assure, by executing this Agreement, that its respective organization has implemented administrative, technical and physical safeguards and mechanisms that protect against the unauthorized or inadvertent disclosure of confidential information to any person or entity outside its organization.

- 4.1.3 Any information obtained by TennCare Trading Partners, intermediaries or carriers in the course of carrying TennCare agreements shall not be disclosed and remain confidential; furthermore, such requests which have been made pursuant to the Tennessee Public Records Act shall be denied under authority of an appropriate exemption.

- 4.2 Explicit Data Sharing. TennCare contemplates data sharing within the ambit of HIPAA to include, but not be limited to; specific testing environments for the purpose of establishing a treatment relationship or to respond to Medicare Advantage plan finder file eligibility inquiries for the purpose of identifying dual-eligibles enrolled in the Medicare Advantage plan.

Such transactions shall be implemented under the health care operations exception set forth in HIPAA and for payment purposes, respectively.

- 4.2.1 Data Storage. Trading Partner, if a Health Care Clearinghouse, shall not store eligibility information received on behalf of a request by a subscriber provider except to the extent confirmation of delivery is necessary. In no event shall Trading Partner store eligibility information beyond a reasonable threshold period defined by the State as a maximum of thirty (30) days unless otherwise required by law, nor shall Trading Partner retain TennCare related data for independent third-party documentation without prior approval and written authorization from the State program.

- 4.2.2 To the extent Trading Partner is classified as a Health Care Clearinghouse, Trading Partner shall not inquire *en masse* for eligibility data for an entire subscriber provider roster where the inquiry is not in the context of immediate treatment, payment or health care operations.

To the extent Trading Partner is classified as a Health Care Clearinghouse, Trading Partner may forward requests on behalf of and on the explicit request of health care provider subscribers who in turn can request the eligibility data only to support a direct patient treatment relationship and verification of eligibility to support treatment, payment or health care operations for a patient who represents that he/she is covered by Medicaid or the applicable TennCare program or whom the health care provider reasonably believes to be covered by Medicaid or the applicable TennCare program.

- 4.2.3 Prohibition of Data Mining. Unless otherwise agreed to by the parties and in support of functions contained in the agreements listed in Section 1.2, Trading Partner is prohibited from any and all automated extraction of predictive information from data for the purpose of finding patterns of behavior and trends or anomalies that may otherwise escape detection, the advanced statistical analysis and modeling of the data to find useful patterns and relationships, and the use of computational techniques involving statistics, machine learning and pattern recognition to analyze the data.

- 4.3. Treatment Relationship. To the extent data sharing or electronic data interchange (EDI) is utilized between the Parties for the purposes of provision, coordination or management of a treatment

relationship, such use or disclosure shall be governed by strict compliance with return and destruction of protected health information (PHI) referenced in Section 9.3 of this Agreement.

4.3.2 Medicare Advantage Plan. The State may use or disclose PHI for its payment purposes, as well as for the payment purposes of another covered entity that receives the information. The State will accept and respond to Medicare Advantage plans' "finder files" to enable Medicare Advantage plans to claim the appropriate payment rate for their dual eligible enrollees pursuant to the limiting provisions within this Agreement.

4.3.2.1 Access/Usage Fee. TennCare reserves the right to amend this Agreement to institute fees predicated upon Trading Partner's access to and usage of enrollee data absent a bidirectional relationship for such data.

4.3.3 Suspension of Access. TennCare reserves the right to suspend Trading Partner's access in the event of Trading Partner's inappropriate use of access as determined by TennCare, including, but not limited to, in the event fifty percent (50%) of Trading Partner requests received are not matched. TennCare may evaluate such patterns for indications of inappropriate use, including inquiry outside of the context of immediate treatment, payment or healthcare operations, or where the Trading Partner has no reasonable cause to believe that information requested was for individuals eligible for the applicable TennCare program.

## **5. CLAIMS, CHARGES AND PAYMENT**

5.1 Consideration. The Trading Partner certifies that all services for which reimbursement will be claimed shall be provided in accordance with all federal and State laws pertaining to TennCare Programs.

5.1.1 The Trading Partner certifies that all charges submitted for services and items provided shall not exceed Trading Partner's and/or Provider's usual and customary charges for the same services and items provided to persons not entitled to receive benefits under TennCare Programs.

5.1.2 The Trading Partner understands that any payments made in satisfaction of claims submitted through Electronic Media shall be delivered from federal and State funds and that any false claims, statements or documents, or concealments of a material fact may be subject to prosecution under federal and state law.

5.2 Access. The Trading Partner and/or Provider shall allow TennCare access to claims data and assures that claims data shall be submitted by authorized personnel so as to preclude erroneous payments received by the Trading Partner and/or Provider regardless of the reason for such erroneous payments.

## **6. GUIDELINES FOR TENNCARE STANDARD ELECTRONIC TRANSACTIONS**

6.1 HIPAA Transactions. The State has adopted the HIPAA transaction standards and has created companion documentation to assist in conducting electronic transactions with the State. The ASC X12 and National Council for Prescription Drug Programs ("NCPDP") standards required by HIPAA regulation are formulated to minimize the need for users to reprogram their data processing systems for multiple formats by allowing data interchange through the use of common interchange structures.

6.2 Acknowledgement Capacity. The State shall acknowledge standard transactions from an authorized Trading Partner. No other transactions are acknowledged including proprietary formats and those from an unauthorized submitter.

6.3 HIPAA Companion Guide. All TennCare specific information can be found in the TennCare HIPAA Companion Guide, which is a de facto part of this Trading Partner Agreement. The

TennCare HIPAA Companion Guide is a multi-part document that can be accessed from the TennCare SFTP server or provided by e-mail via written request.

- 6.3.1 270/271 Healthcare Eligibility Benefit Inquiry/Response. Transaction Standard for Eligibility for a Health Plan - This transaction is used by fee-for-service ("FFS") providers to receive eligibility information about a subscriber. The State may also use this transaction set to verify eligibility for a third party health plan or Medicare Advantage plan. Data sharing or EDI utilized between the Parties shall be for the purposes of provision, coordination or management of a current treatment relationship or for an enrollee for whom an open balance exists which has been timely filed and is within the State's look-back time parameters.
- 6.3.2 276/277 Health Care Claim Status. Transaction Standard for Health Care Claim Status and Response – This transaction is used by the FFS provider to get the status of a claim.
- 6.3.3 278 Referral Certification and Authorization. Transaction Standard for Referral Certification and Authorization – This transaction is used by FFS providers to request prior authorization for clients receiving services from a FFS provider.
- 6.3.4 820 Payment Order/Remittance Advice. Transaction Standard for Health Plan Premium Payments – This transaction shall be sent to the Managed Care Contractors ("MCCs") and shall contain the capitated payment summary for the month.
- 6.3.5 834 Benefit Enrollment and Maintenance. Transaction Standard for Enrollment and Disenrollment in a Health Plan – This transaction is sent to the MCCs and shall contain enrollment information for the MCC. A 271U response transaction that primarily contains service limits information is always distributed with an 834.
- 6.3.6 835 Remittance Advice. Transaction Standard for health Care Payment and Remittance Advice - This transaction is used by FFS providers to receive an electronic remittance advice.
- 6.3.7 837 Professional. Transaction Standard for Health Care Claims or Equivalent Encounter Information: Professional – This transaction is used to submit professional claims from FFS providers and encounter data information from the MCCs.
- 6.3.8 837 Dental. Transaction Standard for Health Care Claims or Equivalent Encounter Information: Dental - This transaction is used to submit dental encounter data from the Dental MCC.
- 6.3.9 837 Institutional. Transaction Standard for Health Care Claims or Equivalent Encounter Information: Institutional - This transaction is used to submit institutional claims from FFS providers and encounter data information from the MCCs.
- 6.3.10 NCPDP 1.2 or PAS 3.0. Transaction Standard for Health Care Claims or Equivalent Encounter Information: Pharmacy -This transaction is used to submit retail pharmacy crossover claims from the Durable Medical Equipment Regional Carrier ("DMERC") and encounter data information from the Pharmacy MCC and DSNPs.
- 6.4 HL7 and Other Standard Transactions. TennCare has adopted HL7 to support its Health Information Exchange (HIE) activities and may adopt other standard transactions as needed to support its business activities. Companion Guides or usage documentation may be provided to define TennCare specific information using an appropriate format for the given transaction standard.

## **7. ELECTRONIC DATA INTERCHANGE (EDI) DOCUMENTS**

- 7.1 EDI Request Form. The EDI Request Form may be found on the TennCare website. It outlines all transactions used between applicable TennCare programs and the Trading Partner including

HIPAA transactions and proprietary formats. For most proprietary formats, the transaction name is sufficient identification information; however, a file format and/or additional clarification data for any proprietary format may be appended to the EDI Request Form, if necessary. All completed EDI Request Forms and related questions should be directed to the TennCare EDI Unit via mail or email at the address below.

- 7.1.1 Updates to the EDI Request Form may be made at any time by mutual agreement of both parties. Each update of the EDI Request Form supersedes all prior versions; therefore, each EDI Request Form must contain all transactions between both parties.
- 7.2 HIPAA Acknowledgment. All X12 transactions received by the State shall receive a 999 acknowledgement regardless of their HIPAA status.
  - 7.2.1 Each Trading Partner has the option to send back to the State 999 acknowledgement transactions on all formats, except the State outbound 834 and 271U transactions, which require acknowledgements. The Trading Partner must indicate their acknowledgement intent for every transaction on the EDI Request Form.
  - 7.2.2 Any transaction, per the Trading Partner Agreement, requiring an acknowledgement back to the State where an acknowledgement is not received, shall result in a transmission re-send before the next update cycle is processed.
- 7.3 Transaction Tables. The "Transaction Frequency" column shall contain the anticipated normal frequency of this transaction. Anticipated values are "D" for daily, "W" for weekly, "S" for semi-monthly, "M" for monthly, "Q" for quarterly, "A" for annually, "R" for on-request, "O" for other. Multiple indicators may be used for a transaction that has multiple processing cycles.
  - 7.3.1 The "Transaction Source" column shall contain the origination source for the transaction. For transactions that come from the State, this column is already filled in with "TennCare". For transactions from the Trading Partner, "TP" may be used. For transactions created by a third party for the Trading Partner, enter the third party's name.
  - 7.3.2 The "Trading partner access person" column shall contain the name(s) of all individuals listed on the Security Forms below who shall access the given transaction.
  - 7.3.3 The blank transaction rows on the request form are for proprietary file formats. Each production file sent between the State and the Trading Partner shall be represented on this form. Trading Partners that have multiple sources for a given transaction should include the file format once for each source.
- 7.4 Unique Identifier. The State shall assign a unique identification number or "Submitter ID" to every Trading Partner. For most Trading Partners, the Submitter ID shall be based upon tax ID – Employer Identification Number (EIN) or Social Security Number (SSN) – since the tax ID is already a required identifier on many HIPAA transactions. The assigned Submitter ID shall be used on all HIPAA transactions. The Submitter ID shall be used as the Receiver ID for transactions that originate from the State.
  - 7.4.1 The Trading Partner may provide a GS02 sender code on the EDI Request form. This code shall be used as the GS03 receiver code for transactions originating from the State. A default value of the Trading Partner's Submitter ID shall be used if a value is not specified.
- 8. SECURITY**
  - 8.1 Security Forms. Trading Partner shall complete an acknowledgement of the State Acceptable Use Policy for every individual that shall access the State System. The State's security standards and

the Center for Medicare and Medicaid Services (CMS) privacy and security regulations require the assignment of individual IDs.

- 8.1.1 For all forms requiring signatures, two (2) signed copies of completed forms must be mailed or a copy emailed to the TennCare EDI Unit at the address below. All forms must be completed as accurately as possible.
- 8.1.2 Upon processing of security forms, the State will countersign and return a copy of the forms for Trading Partner's files, along with Trading Partner's pertinent sign-on information.
- 8.1.3 Additional Security Forms may be submitted by the Trading Partner at any time after the execution of this Agreement to request access for additional individuals. Standard State processing shall apply to the additional requests.
- 8.2 Terminated Employees - Security. It is the responsibility of the Trading Partner to notify the State when a listed individual leaves the employment of the Trading Partner or has a legal name change. Failure to do so may result in the contract termination.
- 8.3. Access Request. Trading Partner shall submit a completed TennCare Access Request form for each type of access desired for the transmission or reception of transaction data, and for each Trading Partner workforce individual controlling such transmissions or receptions.
- 8.3.1 The Trading Partner shall submit for the State's approval a list of from one (1) to three (3) Trading Partner workforce individuals authorized to submit Access Requests on behalf of the Trading Partner.
- 8.3.2 It is the responsibility of the Trading Partner to notify the State when a Trading Partner workforce individual authorized to submit Access Request forms leaves the employment of the Trading Partner or has a legal name change.
- 8.4 Remote Access Request. The Trading Partner shall complete and provide to the State a Remote Access Request. It is the responsibility of the Trading Partner to notify the State, by providing an updated Remote Access Request, any material changes to their systems and networks that would have impact on their connectivity with the State's networks.

## **9. TERM AND TERMINATION**

- 9.1 Term. This Agreement shall be effective as of the date on which it has been signed by both parties and the term of this Agreement shall be for one year from the effective date, at which time it will automatically renew for successive periods of one (1) year unless otherwise terminated in accordance with this Agreement.
- 9.1.1 This Agreement may be terminated by either party by giving at least thirty (30) days advanced written notice to the other party. Any provisions required by State or federal statute shall survive the expiration, cancellation, or termination of this Agreement.
- 9.2 Termination for Cause. This Agreement authorizes and Trading Partner acknowledges and agrees TennCare shall have the right to immediately terminate this Agreement and suspend operations, including, but not limited to, all processing operations, or any part thereof, or payments to providers, if Trading Partner fails to comply with, or violates a material provision of this Agreement.
- 9.2.1 Upon TennCare's knowledge of a material breach by Trading Partner, TennCare shall either: (i) Provide notice of breach and an opportunity for Trading Partner to reasonably and promptly cure the breach or end the violation, and terminate this Agreement if Trading Partner does not cure the breach or end the violation within the reasonable time specified by TennCare; or (ii) Immediately

terminate this Agreement if Trading Partner has breached a material term of this Agreement and cure is not possible; or (iii) If termination, cure, or end of violation is not feasible, TennCare shall report the violation to the Secretary.

- 9.3 Effect of Termination. Upon termination of this Agreement for any reason, Trading Partner shall, at its own expense, either return and/or destroy all confidential information (including PHI) received, from the applicable TennCare program or created or received by Trading Partner on behalf of the applicable TennCare program. This provision applies to all confidential information regardless of form, including but not limited to electronic or paper format. This provision shall also apply to PHI and other confidential information in the possession of sub-contractors or agents of Trading Partner.
- 9.3.1 The Trading Partner shall consult with the State as necessary to assure an appropriate means of return and/or destruction and shall notify the State in writing when such destruction is complete. If information is to be returned, the Parties shall document when all information has been received by the State.
- 9.3.2 The State shall not prohibit the retention of a single separate, archived file of the confidential TennCare information by the Trading Partner if the method of such archiving reasonably protects the continued privacy and security of such information and the Trading Partner obtains written approval at such time from the State. Otherwise, neither Trading Partner nor its subcontractors and agents shall retain copies of the State's confidential information, including enrollee PHI, except as provided herein.
- 9.3.3 The Parties agree to anticipate the return and/or the destruction of the State's confidential information, and understand that removal of the confidential information from Trading Partner's information system(s) and premises will be expected in almost all circumstances. The Trading Partner shall notify the State whether it intends to return and/or destroy the confidential information with such additional detail as requested. In the event Trading Partner determines that returning or destroying confidential information received by or created for the State at the end or other termination of this Agreement is not feasible, Trading Partner shall provide notification to the State of the conditions that make return or destruction unfeasible.
- 9.3.4 The Parties contemplate the State's confidential information shall not be merged or aggregated with data from sources unrelated to this Agreement, or Trading Partner's other business data, including for purposes of data backup and disaster recovery, until the parties identify the means of return or destruction of State data or State confidential information at the conclusion of this Agreement, or otherwise make an express alternate agreement consistent with the provisions of this Section.
- 9.3.5 Upon written mutual agreement of the Parties that return or destruction of all State confidential information is unfeasible and upon express agreement as to the means of continued protection of the data, Trading Partner shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI or other confidential information to those purposes that make the return or destruction unfeasible, for so long as Trading Partner maintains such PHI or other confidential information.

## **10. GENERAL PROVISIONS**

- 10.1 Regulatory Reference. A reference in this Agreement to a State or federal law or regulation means the State or federal law or regulation as in effect or as amended.
- 10.2 Amendment. The Parties agree to take such action to amend this Agreement from time to time as is necessary to comply with related State and federal regulations upon the effective date of such amendment, regardless of whether this Agreement has been formally amended.

- 10.3 Assignment. Trading Partner shall not sell, transfer, assign or dispose of this Agreement, whole or in part, or any right, title or interest therein, to any other party without the express written consent of TennCare. Such consent, if granted, shall not relieve Trading Partner of its obligations under the Agreement.
- 10.4 Billing Service(s). In the event a billing service is used, the Trading Partner hereby certifies that the billing service is authorized to submit claims on the Trading Partner's behalf using Electronic Media. The Trading Partner agrees that if the billing agreement with the billing service is terminated, the Trading Partner shall immediately report the termination in writing to TennCare. The Trading Partner must complete a new security agreement and testing cycle when making a change from one billing service to another.
- 10.5 Entire Agreement. This Agreement, together with all addenda attached hereto and incorporated by reference herein, and construed in conjunction with a SC, CRA and/or BAA, contains the entire agreement of the parties and supersedes any previous understanding, commitment or agreement, oral or written, concerning the subject matter hereof, all of which are hereby incorporated. Any change to this Agreement shall be effective only when set forth in writing and executed by the parties.
- 10.6 Prohibition of Offshore Disclosure. Nothing in this Agreement shall permit the Trading Partner to view, share, and use or disclose TennCare confidential information in any form via any medium with any third party beyond the boundaries and jurisdiction of the United States without prior approval and express written authorization from TennCare.
- 10.7 Survival. The respective rights and obligations of Trading Partner under Section 9.3 of this Agreement shall survive the termination of this Agreement.
- 10.8 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Trading Partner and TennCare to comply with State and federal laws or regulations.
- 10.9 Headings. Paragraph Headings are used in this Agreement are for the convenience of the Parties and shall have no legal meaning in the interpretation of the Agreement.
- 10.10 Notices and Communications. All instructions, notices, consents, demands, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered by hand, by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below, or to such other party, facsimile number, or address as may be hereafter specified by written notice. (For purposes of this section, effective notice to "Respective Party" is not dependent on whether the person named below remains employed by such Party.) The Parties agree to use their best efforts to immediately notify the other Party of changes in address, telephone number, and fax numbers and to promptly supplement this Agreement as necessary with corrected information.

**DIVISION OF TENNCARE:**

TennCare EDI Unit  
 State of Tennessee  
 Dept. of Finance and Administration  
 Division of TennCare  
 310 Great Circle Road, Nashville, TN 37243  
 Email: EDI.TennCare@tn.gov

**TRADING PARTNER:**

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the date of hand delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile

transmission is received mechanically by the facsimile machine at the receiving location and receipt is verbally confirmed by the sender.

- 10.11 Strict Compliance. No failure by any Party to insist upon strict compliance with any term or provision of this Agreement, to exercise any option, to enforce any right, or to seek any remedy upon any default of any other Party shall affect, or constitute a waiver of, any Party's right to insist upon such strict compliance, exercise that option, enforce that right, or seek that remedy with respect to that default or any prior, contemporaneous, or subsequent default. No custom or practice of the Parties at variance with any provision of this Agreement shall affect, or constitute a waiver of, any Party's right to demand strict compliance with all provisions of this Agreement.
- 10.12 Severability. With respect to any provision of this Agreement finally determined by a -- court of competent jurisdiction to be unenforceable, such court shall have jurisdiction to reform such provision so that it is enforceable to the maximum extent permitted by applicable law, and the Parties shall abide by such court's determination. In the event that any provision of this Agreement cannot be reformed, such provision shall be deemed to be severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.
- 10.13 State Liability. The State shall have no liability except as specifically provided in this Agreement.
- 10.14 Intellectual Property. Neither party shall acquire any rights in the other party's Proprietary and/or Confidential Information under this Agreement except the limited rights necessary to perform or carry out the intended purposes set forth in this Agreement. This Agreement grants no license by either party to the other, either directly or by implication, estoppel or otherwise. All right, title and interest emanating from ownership of the Proprietary and/or Confidential Information shall remain vested in the State.
- 10.15 Injunctive Relief. The parties acknowledge that any remedy at law for the breach threatened breach of the provisions of this Agreement may be inadequate to fully and properly protect TennCare and, therefore, the parties agree that TennCare may be entitled to injunctive relief in addition to other available remedies; provided, however, that nothing contained herein shall be construed as prohibiting the State from pursuing any other remedies available in law or in equity for such breach or threatened breach.
- 10.16 Force Majeure. The obligations of the parties to this Agreement are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.
- 10.17 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee except to the extent that Tennessee law has been pre-empted by federal legislation and without giving effect to principles of conflicts of law. Jurisdiction shall be Davidson County, Nashville, Tennessee, for purposes of any litigation resulting from disagreements of the parties for purpose of this Agreement.

**IN WITNESS WHEREOF, the Parties execute this Agreement to be valid and enforceable from the last date set out below:**

By: \_\_\_\_\_  
**Wendy Long, Director**  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_  
Date: \_\_\_\_\_

State of Tennessee  
Dept. of Finance and Administration  
Division of TennCare  
310 Great Circle Road, Nashville, TN 37243

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## ATTACHMENT C

### HIPAA Business Associate Agreement

THIS HIPAA BUSINESS ASSOCIATE AGREEMENT ("Agreement") is between The State of Tennessee, Division of TennCare ("TennCare" or "Covered Entity"), located at 310 Great Circle Road, Nashville, TN 37243 and \_\_\_\_\_ ("Business Associate"), located at \_\_\_\_\_, including all office locations and other business locations at which Business Associate data may be used or maintained. Covered Entity and Business Associate may be referred to herein individually as "Party" or collectively as "Parties."

### BACKGROUND

The Parties acknowledge that they are subject to the Privacy and Security Rules (45 C.F.R. Parts 160 and 164) promulgated by the United States Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, and as amended by the final rule modifying the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules under the Health Information Technology for Economic and Clinical Health Act (HITECH). If Business Associate provides services to Covered Entity pursuant to one or more contractual relationships, said Agreements are detailed below and hereinafter referred to as "Service Agreements."

### LIST OF AGREEMENTS AFFECTED BY THIS HIPAA BUSINESS ASSOCIATE AGREEMENT:

\_\_\_\_\_  
\_\_\_\_\_

In the course of performing services under a Service Agreement, Business Associate may come into contact with, use, or disclose Protected Health Information ("PHI"). Said Service Agreements are hereby incorporated by reference and shall be taken and considered as a part of this document the same as if fully set out herein.

In accordance with the federal privacy and security rules and regulations set forth at 45 C.F.R. Part 160 and Part 164, Subparts A, C, D and E, which require Covered Entity to have a written memorandum with each of its Business Associates, the Parties wish to establish satisfactory assurances that Business Associate will appropriately safeguard PHI that Business Associate may receive (if any) from or on behalf of Covered Entity, and, therefore, execute this Agreement.

### 1. DEFINITIONS

All capitalized terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms defined in 45 C.F.R. Parts 160 through 164 or other applicable law or regulation. A reference in this Agreement to a section in the Privacy or Security Rule means the section as in effect or as amended.

1.1 "Commercial Use" means obtaining PHI with the intent to sell, transfer or use it for commercial, or personal gain, or malicious harm; sale to third party for consumption, resale, or processing for resale; application or conversion of data to make a profit or obtain a benefit contrary to the spirit of this Agreement, including but not limited to presentation of data or examples of data in a conference or meeting setting where the ultimate goal is to obtain or gain new business.

1.2 "Confidential Information" shall mean any non-public, confidential or proprietary information, whether written, graphic, oral, electronic, visual or fixed in any tangible medium or expression, which is supplied by TennCare to the Business Associate under this Agreement. Any information, whether written, graphic, oral, electronic, visual or fixed in any tangible medium or expression, relating to individuals enrolled in the TennCare program ("TennCare enrollees"), or relating to individuals who may be potentially enrolled in the

TennCare program, which is provided to or obtained through the Business Associate's performance under this Agreement, shall also be treated as "Confidential Information" to the extent that confidential status is afforded such information under state and federal laws or regulations. All confidential information shall not be subject to disclosure under the Tennessee Public Records Act.

1.3 "Electronic Signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

1.4 "Marketing" shall have the meaning under 45 C.F.R. § 164.501 and the act or process of promoting, selling, leasing or licensing any TennCare information or data for profit without the express written permission of TennCare.

## **2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE (Privacy Rule)**

2.1 Compliance with the Privacy Rule. Business Associate shall fully comply with the requirements under the Privacy Rule applicable to "business associates," as that term is defined in the Privacy Rule and not use or further disclose PHI other than as permitted or required by this Agreement, the Service Agreements, or as required by law. In case of any conflict between this Agreement and the Service Agreements, this Agreement shall govern.

2.2 HITECH Act Compliance. The Health Information Technology for Economic and Clinical Health Act (HITECH) was adopted as part of the American Recovery and Reinvestment Act of 2009. HITECH and its implementing regulations impose new requirements on Business Associates with respect to privacy, security, and Breach notification. Business Associate hereby acknowledges and agrees that to the extent it is functioning as a Business Associate of Covered Entity, Business Associate shall comply with any applicable provisions of HITECH. Business Associate and the Covered Entity further agree that the provisions of HIPAA and HITECH that apply to business associates and that are required to be incorporated by reference in a business associate agreement have been incorporated into this Agreement between Business Associate and Covered Entity. Should any provision not be set forth specifically, it is as if set forth in this Agreement in its entirety and is effective as of the Applicable Effective Date, and as amended.

2.3 Business Management. Business Associate may use and disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of Business Associate. Business Associate may provide data aggregation services relating to the Health Care Operations of TennCare, or as required by law. Business Associate is expressly prohibited from using or disclosing PHI other than as permitted by this Agreement, any associated Service Agreements, or as otherwise permitted or required by law, and is prohibited from uses or disclosures of PHI that would not be permitted if done by the Covered Entity.

2.4 Privacy Safeguards and Policies. Business Associate shall use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by the Service Agreement(s), this Agreement or as required by law. This includes the implementation of Administrative, Physical, and Technical Safeguards to reasonably and appropriately protect the Covered Entity's PHI against any reasonably anticipated threats or hazards, utilizing the technology commercially available to the Business Associate (See also Section 3.2). The Business Associate shall maintain appropriate documentation of its compliance with the Privacy Rule, including, but not limited to, its policies, procedures, records of training and sanctions of members of its Workforce.

2.5 Business Associate Contracts. Business Associate shall require any agent, including a Subcontractor, to whom it provides PHI received from, maintained, created or received by Business Associate on behalf of Covered Entity, or that carries out any duties for the Business Associate involving the use, custody, disclosure, creation of, or access to PHI or other confidential TennCare information, to agree, by written agreement with Business Associate, to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information except for the provision at section 4.6, which shall only apply to the Business Associate notwithstanding the requirements in this

section 2.5.

2.6 Mitigation of Harmful Effect of Violations. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

2.7 Reporting of Violations in Use and Disclosure of PHI. Business Associate shall require its employees, agents, and Subcontractors to promptly report to Business Associate immediately upon becoming aware of any use or disclosure of PHI in violation of this Agreement and to report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement. The Business Associate shall report such violation to Covered Entity immediately upon becoming aware of, and in no case later than 48 hours after discovery.

2.8 Breach of Unsecured Protected Health Information. As required by the Breach Notification Rule, Business Associate shall, and shall require its Subcontractor(s) to, maintain systems to monitor and detect a Breach of Unsecured PHI, whether in paper or electronic form.

2.8.1 Business Associate shall provide to Covered Entity notice of a Breach of Unsecured PHI immediately upon becoming aware of the Breach, and in no case later than 48 hours after discovery.

2.8.2 Business Associate shall cooperate with Covered Entity in timely providing the appropriate and necessary information to Covered Entity.

2.8.3 Covered Entity shall make the final determination whether the Breach requires notification to affected individuals and whether the notification shall be made by Covered Entity or Business Associate.

2.9 Access of Individual to PHI and other Requests to Business Associate. If Business Associate receives PHI from Covered Entity in a Designated Record Set, Business Associate agrees to provide access to PHI in a Designated Record Set to Covered Entity in order to meet its requirements under 45 C.F.R. § 164.524. If Business Associate receives a request from an Individual for a copy of the Individual's PHI, and the PHI is in the sole possession of the Business Associate, Business Associate will provide the requested copies to the Individual in a timely manner. If Business Associate receives a request for PHI not in its possession and in the possession of the Covered Entity, or receives a request to exercise other Individual rights as set forth in the Privacy Rule, Business Associate shall promptly forward the request to Covered Entity. Business Associate shall then assist Covered Entity as necessary in responding to the request in a timely manner. If a Business Associate provides copies of PHI to the Individual, it may charge a reasonable fee for the copies as the regulations shall permit.

2.10 Requests to Covered Entity for Access to PHI. The Covered Entity shall forward to the Business Associate in a timely manner any Individual's request for access to or a copy (in any form they choose, provided the PHI is readily producible in that format) of their PHI that shall require Business Associate's participation, after which the Business Associate shall provide access to or deliver such information as follows:

- (a) The Parties understand that if either Party receives a request for access to or copies of PHI from an Individual which the Party may complete with only its own onsite information, the time for such response shall be thirty (30) days, with notification to the Covered Entity upon completion.
- (b) If the Covered Entity receives a request and requires information from the Business Associate in addition to the Covered Entity's onsite information to fulfill the request, the Business Associate shall have fifteen (15) days from date of Covered Entity's notice to provide access or deliver such information to the Covered Entity so that the Covered Entity may timely respond to the Individual within the sixty (30) day requirement of 45 C.F.R. § 164.524.

- (c) If the Party designated above as responding to the Individual's request is unable to complete the response to the request in the time provided, that Party shall provide the Individual, or Individual's designee, with a written statement of the reasons for the delay and the date by which the Party will complete its action on the request. The Party may extend the response time once for no more than thirty (30) additional days.
- (d) Business Associate is permitted to send an Individual or Individual's designee unencrypted emails including Electronic PHI if the Individual requests it, provided the Business Associate has advised the Individual of the risk and the Individual still prefers to receive the message by unencrypted email.

2.11 Individuals' Request to Amend PHI. If Business Associate receives PHI from Covered Entity in a Designated Record Set, Business Associate agrees to make any amendments to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526, regarding an Individual's request to amend PHI. The Business Associate shall make the amendment promptly in the time and manner designated by Covered Entity, but shall have thirty (30) days' notice from Covered Entity to complete the amendment to the Individual's PHI and to notify the Covered Entity upon completion.

2.12 Recording of Designated Disclosures of PHI. Business Associate shall document any and all disclosures of PHI by Business Associate or its agents, including information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.

2.13 Accounting for Disclosures of PHI. The Business Associate agrees to provide to Covered Entity or to an Individual, or Individual's designee, in time and manner designated by Covered Entity, information collected in accordance with this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. The Covered Entity shall forward the Individual's request requiring the participation of the Business Associate to the Business Associate in a timely manner, after which the Business Associate shall provide such information as follows:

- (a) If Covered Entity directs Business Associate to provide an accounting of disclosures of the Individual's PHI directly to the Individual, the Business Associate shall have sixty (60) days from the date of the Individual's request to provide access to or deliver such information to the Individual or Individual's designee. The Covered Entity shall provide notice to the Business Associate in time to allow the Business Associate a minimum of thirty (30) days to timely complete the Individual's request.
- (b) If the Covered Entity elects to provide the accounting to the Individual, the Business Associate shall have thirty (30) days from date of Covered Entity's notice of request to provide information for the Accounting to the Covered Entity so that the Covered Entity may timely respond to the Individual within the sixty (60) day period.
- (c) If either of the Parties is unable to complete the response to the request in the times provided above, that Party shall notify the Individual with a written statement of the reasons for the delay and the date by which the Party will complete its action on the request. The Parties may extend the response time once for no more than thirty (30) additional days.
- (d) The accounting of disclosures shall include at least the following information:
  - (1) date of the disclosure;
  - (2) name of the third party to whom the PHI was disclosed,
  - (3) if known, the address of the third party;
  - (4) brief description of the disclosed information; and
  - (5) brief explanation of the purpose and basis for such disclosure.
- (e) The Parties shall provide one (1) accounting in any twelve (12) months to the Individual without charge. The Parties may charge a reasonable, cost-based fee, for each subsequent request for an accounting by the same Individual if he/she is provided notice and the opportunity to modify his/her request. Such charges shall not exceed any applicable State statutes or rules.

2.14 Minimum Necessary. Business Associate shall use reasonable efforts to limit any use, disclosure, or request for use or disclosure of PHI to the minimum amount necessary to accomplish the intended purpose of the use, disclosure, or request in accordance with the requirements of the Privacy Rule.

2.14.1 Business Associate represents to Covered Entity that all its uses and disclosures of, or requests for, PHI shall be the minimum necessary in accordance with the Privacy Rule requirements.

2.14.2 Covered Entity may, pursuant to the Privacy Rule, reasonably rely on any requested disclosure as the minimum necessary for the stated purpose when the information is requested by Business Associate.

2.14.3 Business Associate shall adequately and properly maintain all PHI received from, or created or received on behalf of, Covered Entity.

2.15 Privacy Compliance Review upon Request. Business Associate agrees to make its internal practices, books and records, including policies, procedures, and PHI, relating to the use and disclosure of PHI received from, created by or received by Business Associate on behalf of Covered Entity available to the Covered Entity or to the Secretary of the United States Department of Health in Human Services or the Secretary's designee, in a time and manner designated by the requester, for purposes of determining Covered Entity's or Business Associate's compliance with the Privacy Rule.

2.16 Cooperation in Privacy Compliance. Business Associate agrees to fully cooperate in good faith and to assist Covered Entity in complying with the requirements of the Privacy Rule.

### **3. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE (Security Rule)**

3.1 Compliance with Security Rule. Business Associate shall fully comply with the requirements under the Security Rule applicable to "Business Associates," as that term is defined in the Security Rule. In case of any conflict between this Agreement and Service Agreements, this Agreement shall govern.

3.2 Security Safeguards and Policies. Business Associate shall implement Administrative, Physical, and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity as required by the Security Rule. This includes specifically, but is not limited to, the utilization of technology commercially available at the time to the Business Associate to protect the Covered Entity's PHI against any reasonably anticipated threats or hazards. The Business Associate understands that it has an affirmative duty to perform a regular review or assessment of security risks, conduct active risk management and supply best efforts to assure that only authorized persons and devices access its computing systems and information storage, and that only authorized transactions are allowed. The Business Associate will maintain appropriate documentation of its compliance with the Security Rule.

3.3 Security Provisions in Business Associate Contracts. Business Associate shall ensure that any agent to whom it provides Electronic PHI received from, maintained, or created for Covered Entity or that carries out any duties for the Business Associate involving the use, custody, disclosure, creation of, or access to PHI supplied by Covered Entity, shall execute a bilateral contract (or the appropriate equivalent if the agent is a government entity) with Business Associate, incorporating the same restrictions and conditions in this Agreement with Business Associate regarding PHI except for the provision in Section 4.6.

3.4 Reporting of Security Incidents. The Business Associate shall track all Security Incidents as defined and as required by HIPAA and shall periodically report such Security Incidents in summary fashion as may be requested by the Covered Entity. The Covered Entity shall not consider as Security Incidents, for the purpose of reporting, external activities (port enumeration, etc.) typically associated with the "footprinting" of a computing environment as long as such activities have only identified but not compromised the logical network perimeter, including but not limited to externally facing firewalls and web servers. The Business Associate shall reasonably use its own vulnerability assessment of damage

potential and monitoring to define levels of Security Incidents and responses for Business Associate's operations. However, the Business Associate shall expediently notify the Covered Entity's Privacy Officer of any related Security Incident, immediately upon becoming aware of any unauthorized acquisition including but not limited to use, disclosure, modification, or destruction of PHI by an employee or otherwise authorized user of its system of which it becomes aware.

3.4.1 Business Associate identifies the following key contact persons for all matters relating to this Agreement:

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Business Associate shall notify Covered Entity of any change in these key contacts during the term of this Agreement in writing within ten (10) business days.

3.5 Contact for Security Incident Notice. Notification for the purposes of Sections 2.8 and 3.4 shall be in writing made by email/fax, certified mail or overnight parcel immediately upon becoming aware of the event, with supplemental notification by facsimile and/or telephone as soon as practicable, to:

TennCare Privacy Officer  
310 Great Circle Rd.  
Nashville Tennessee 37243  
Phone: (615) 507-6855  
Facsimile: (615) 734-5289  
Email: Privacy.TennCare@tn.gov

3.6 Security Compliance Review upon Request. Business Associate shall make its internal practices, books, and records, including policies and procedures relating to the security of Electronic PHI received from, created by or received by Business Associate on behalf of Covered Entity, available to the Covered Entity or to the Secretary of the United States Department of Health and Human Services or the Secretary's designee, in a time and manner designated by the requester, for purposes of determining Covered Entity's, Business Associate's compliance with the Security Rule.

3.7 Cooperation in Security Compliance. Business Associate shall fully cooperate in good faith to assist Covered Entity in complying with the requirements of the Security Rule.

3.8 Refraining from intimidation or retaliation. A Covered Entity or Business Associate may not threaten, intimidate, coerce, harass, discriminate against, or take any other retaliatory action against any Individual or other person for-- (a) Filing of a complaint under 45 C.F.R. § 160.306; (b) testifying, assisting, or participating in an investigation, compliance review, proceeding, or hearing; or (c) opposing any act or practice made unlawful, provided the Individual or person has a good faith belief that the practice opposed is unlawful, and the manner of opposition is reasonable and does not involve a disclosure of PHI in violation of HIPAA.

#### **4. USES AND DISCLOSURES BY BUSINESS ASSOCIATE**

4.1 Use and Disclosure of PHI for Operations on Behalf of Covered Entity. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform Treatment, Payment or Health Care Operations for, or on behalf of, Covered Entity as specified in Service Agreements, provided that such use or disclosure would not violate the Privacy and Security Rule, if done by Covered Entity.

4.2 Other Uses of PHI. Except as otherwise limited in this Agreement, Business Associate may use PHI within its Workforce as required for Business Associate's proper management and administration, not to include Marketing or Commercial Use, or to carry out the legal responsibilities of the Business Associate.

4.3 Third Party Disclosure Confidentiality. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are required by law, or, if permitted by law, this Agreement, and the Service Agreement, provided that, if Business Associate discloses any PHI to a third party for such a purpose, Business Associate shall enter into a written agreement with such third party requiring the third party to: (a) maintain the confidentiality, integrity, and availability of PHI and not to use or further disclose such information except as required by law or for the purpose for which it was disclosed, and (b) notify Business Associate of any instances in which it becomes aware in which the confidentiality, integrity, and/or availability of the PHI is Breached immediately upon becoming aware.

4.4 Other Uses Strictly Limited. Nothing in this Agreement shall permit the Business Associate to share PHI with Business Associate's affiliates or contractors except for the purposes of the Service Agreement(s) between the Covered Entity and Business Associate(s) identified in the "LIST OF AGREEMENTS AFFECTED BY THIS HIPAA BUSINESS ASSOCIATE AGREEMENT" on page one (1) of this Agreement.

4.5 Covered Entity Authorization for Additional Uses. Any use of PHI or other confidential TennCare information by Business Associate, its Subcontractors, its affiliate or Contractor, other than those purposes of this Agreement, shall require express written authorization by the Covered Entity, and a Business Associate agreement or amendment as necessary. Activities which are prohibited include, but not are not limited to, Marketing or the sharing for Commercial Use or any purpose construed by Covered Entity as Marketing or Commercial use of TennCare enrollee personal or financial information with affiliates, even if such sharing would be permitted by federal or state laws.

4.6 Prohibition of Offshore Disclosure. Nothing in this Agreement shall permit the Business Associate to share, use or disclose PHI in any form via any medium with any third party beyond the boundaries and jurisdiction of the United States without express written authorization from the Covered Entity.

4.7 Prohibition of Other Uses and Disclosures. Business Associate shall not use or disclose PHI that is Genetic Information for underwriting purposes. Moreover, the sale, marketing or the sharing for commercial use or any purpose construed by Covered Entity as the sale, marketing or commercial use of TennCare enrollee personal or financial information with affiliates, even if such sharing would be permitted by federal or state laws, is prohibited.

4.8 Data Use Agreement - Use and Disclosure of Limited Data Set. Business Associate may use and disclose a Limited Data Set that Business Associate creates for Research, public health activity, or Health Care Operations, provided that Business Associate complies with the obligations below. Business Associate may not make such use and disclosure of the Limited Data Set after any cancellation, termination, expiration, or other conclusion of this Agreement.

4.9 Limitation on Permitted Uses and Disclosures. Business Associate will limit the uses and disclosures it makes of the Limited Data Set to the following: Research, public health activity, or Health Care Operations, to the extent such activities are related to covered functions, including business planning and development such as conducting cost-management and planning-related analysis related to managing and operating Business Associates functions, formulary development and administration, development and improvement of methods of payment or coverage policies, customer service, including the provision of data analysis for policy holders, plan sponsors, or other customers, to the extent such activities are related to covered functions, provided that PHI is not disclosed and disclosure is not prohibited pursuant to any other provisions in this Agreement related to Marketing or Commercial use.

4.10 Business Associate shall enter into written agreements that are substantially similar to this Business Associate Agreements with any Subcontractor or agent which Business Associate provides access to Protected Health Information.

4.11 Business Associates shall implement and maintain information security policies that comply with the HIPAA Security Rule.

## **5. OBLIGATIONS OF COVERED ENTITY**

5.1 Notice of Privacy Practices. Covered Entity shall provide Business Associate with the notice of Privacy Practices produced by Covered Entity in accordance with 45 C.F.R. § 164.520, as well as any changes to such notice.

5.2 Notice of Changes in Individual's Access or PHI. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses.

5.3 Notice of Restriction in Individual's Access or PHI. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use of PHI.

5.4 Reciprocity for Requests Received by Business Associate. The Parties agree that this Section (Section 5) is reciprocal to the extent Business Associate is notified or receives an inquiry from any Individual within Covered Entity's covered population.

## **6. TERM AND TERMINATION**

6.1 Term. This Agreement shall be effective as of the date on which it has been signed by both parties and shall terminate when all PHI which has been provided, regardless of form, by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if the Parties agree that it is unfeasible to return or destroy PHI, subsection 6.3.5 below shall apply.

6.2 Termination for Cause. This Agreement authorizes and Business Associate acknowledges and agrees Covered Entity shall have the right to terminate this Agreement and Service Agreement in the event Business Associate fails to comply with, or violates a material provision of this Agreement and any provision of the Privacy and Security Rules.

6.2.1 Upon Covered Entity's knowledge of a Breach by Business Associate, Covered Entity shall either:

- (a) Provide notice of breach and an opportunity for Business Associate to reasonably and promptly cure the breach or end the violation, and terminate this BAA if Business Associate does not cure the breach or end the violation within the reasonable time specified by Covered Entity; or
- (b) Immediately terminate this BAA if Business Associate has breached a material term of this BAA and cure is not possible.

6.3 Effect of Termination. Upon termination of this Agreement for any reason, except as provided in subsections 6.3.2 and 6.3.5 below, Business Associate shall at its own expense either return and/or destroy all PHI and other confidential information received from Covered Entity or created or received by Business Associate on behalf of Covered Entity. This provision applies to all confidential information regardless of form, including but not limited to electronic or paper format. This provision shall also apply to PHI and other confidential information in the possession of sub-contractors or agents of Business Associate.

6.3.1 The Business Associate shall consult with the Covered Entity as necessary to assure an

appropriate means of return and/or destruction and shall notify the Covered Entity in writing when such destruction is complete. If information is to be returned, the Parties shall document when all information has been received by the Covered Entity.

- 6.3.2 This provision (Section 6.3 and its subsections) shall not prohibit the retention of a single separate, archived file of the PHI and other confidential TennCare information by the Business Associate if the method of such archiving reasonably protects the continued privacy and security of such information and the Business Associate obtains written approval at such time from the Covered Entity. Otherwise, neither the Business Associate nor its Subcontractors and agents shall retain copies of TennCare confidential information, including enrollee PHI, except as provided herein in subsection 6.3.5.
- 6.3.3 The Parties agree to anticipate the return and/or the destruction of PHI and other TennCare confidential information, and understand that removal of the confidential information from Business Associate's information system(s) and premises will be expected in almost all circumstances. The Business Associate shall notify the Covered Entity whether it intends to return and/or destroy the confidential with such additional detail as requested. In the event Business Associate determines that returning or destroying the PHI and other confidential information received by or created for the Covered Entity at the end or other termination of the Service Agreement is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction unfeasible.
- 6.3.4 Except for Business Associate Agreements in effect prior to April 21, 2005 when the Security Rule became effective, for the renewal or amendment of those same Agreements, or for other unavoidable circumstances, the Parties contemplate that PHI and other confidential information of the Covered Entity shall not be merged or aggregated with data from sources unrelated to that Agreement, or Business Associate's other business data, including for purposes of data backup and disaster recovery, until the parties identify the means of return or destruction of the TennCare data or other confidential information of the Covered Entity at the conclusion of the Service Agreement, or otherwise make an express alternate agreement consistent with the provisions of Section 6.3 and its subsections.
- 6.3.5 Upon written mutual agreement of the Parties that return or destruction of PHI is unfeasible and upon express agreement as to the means of continued protection of the data, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction unfeasible, for so long as Business Associate maintains such PHI.

## **7. MISCELLANEOUS**

7.1 Regulatory Reference. A reference in this Agreement to a section in the Privacy and/or Security Rule means the section as in effect or as amended.

7.2 Amendment. The Parties agree to take such action to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy and Security Rules and the Health Insurance Portability and Accountability Act, Public Law 104-191. Business Associate and Covered Entity shall comply with any amendment to the Privacy and Security Rules, the Health Insurance Portability and Accountability Act, Public Law 104-191, and related regulations upon the effective date of such amendment, regardless of whether this Agreement has been formally amended, including, but not limited to, changes required by the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

7.3 Survival. The respective rights and obligations of Business Associate under Confidentiality and Section 6.3 of this Agreement shall survive the termination or expiration of this Agreement.

7.4 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity and the Business Associate to comply with the Privacy and Security Rules.

7.5 Headings. Paragraph Headings used in this Agreement are for the convenience of the Parties and shall have no legal meaning in the interpretation of the Agreement.

7.6 Notices and Communications. All instructions, notices, consents, demands, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered by electronic mail, hand, by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below, or to such other party, facsimile number, or address as may be hereafter specified by written notice. (For purposes of this section, effective notice to "Respective Party" is not dependent on whether the person named below remains employed by such Party.) The Parties agree to use their best efforts to immediately notify the other Party of changes in address, telephone number, and fax numbers and to promptly supplement this Agreement as necessary with corrected information.

Notifications relative to Sections 2.8 and 3.4 of this Agreement must also be reported to the Privacy Officer pursuant to Section 3.5.

COVERED ENTITY:  
Wendy Long, MD, Director  
Division of TennCare  
310 Great Circle Rd.  
Nashville, TN 37243  
Fax: (615) 253-5607

BUSINESS ASSOCIATE:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the date of hand delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the facsimile machine at the receiving location and receipt is verbally confirmed by the sender.

7.7 Transmission of PHI or Other Confidential Information. Regardless of the transmittal methods permitted above, Covered Entity and Business Associate agree that all deliverables set forth in this Agreement that are required to be in the form of data transfers shall be transmitted between Covered Entity and Business Associate via the data transfer method specified in advance by Covered Entity. This may include, but shall not be limited to, transfer through Covered Entity's SFTP system. Failure by the Business Associate to transmit such deliverables in the manner specified by Covered Entity may, at the option of the Covered Entity, result in liquidated damages if and as set forth in one (1) or more of the Service Agreements between Covered Entity and Business Associate listed above. All such deliverables shall be considered effectively submitted upon receipt or recipient confirmation as may be required.

7.8 Strict Compliance. No failure by any Party to insist upon strict compliance with any term or provision of this Agreement, to exercise any option, to enforce any right, or to seek any remedy upon any default of any other Party shall affect, or constitute a waiver of, any Party's right to insist upon such strict compliance, exercise that option, enforce that right, or seek that remedy with respect to that default or any prior, contemporaneous, or subsequent default. No custom or practice of the Parties at variance with any provision of this Agreement shall affect, or constitute a waiver of, any Party's right to demand strict compliance with all provisions of this Agreement.

7.9 Severability. With respect to any provision of this Agreement finally determined by a court of competent jurisdiction to be unenforceable, such court shall have jurisdiction to reform such provision so that it is enforceable to the maximum extent permitted by applicable law, and the Parties shall abide by such court's determination. In the event that any provision of this Agreement cannot be reformed, such provision shall be deemed to be severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.

7.10 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of

the State of Tennessee except to the extent that Tennessee law has been pre-empted by HIPAA and HITECH and without giving effect to principles of conflicts of law. Jurisdiction shall be Davidson County, Nashville, Tennessee, for purposes of any litigation resulting from disagreements of the parties for purpose of this Agreement and the Service Agreement (s).

7.11 Compensation. There shall be no remuneration for performance under this Agreement except as specifically provided by, in, and through, existing administrative requirements of Tennessee State government and Services Agreement(s) referenced herein.

7.12 Validity of Execution. Unless otherwise agreed, the parties may conduct the execution of this Business Associate Agreement transaction by electronic means. The parties may agree that an electronic record of the Agreement containing an Electronic Signature is valid as an executed Agreement.

**IN WITNESS WHEREOF, the Parties execute this Agreement to be valid and enforceable from the last date set out below:**

**DIVISION OF TENNCARE**

**BUSINESS ASSOCIATE**

By: \_\_\_\_\_

By: \_\_\_\_\_

***Wendy Long, MD, Director***

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Division of TennCare  
310 Great Circle Road  
Nashville, TN 37243  
Fax: (615) 253-5607

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\_\_\_\_\_  
\_\_\_\_\_

## TENNCARE COVERED BENEFITS

The benefits available to TennCare enrollees are listed in the TennCare Rules for TennCare Medicaid and TennCare Standard and are available on TennCare's website. Definitions of specific services and services that are excluded from coverage are also listed in the rules. These rules should be consulted for information on particular limitations and coverage details.

*Reference: See TennCare Rules 1200-13-13-.04 and 1200-13-14-.04 (Covered Services) and TennCare Rules 1200-13-13-.10 and 1200-13-14-.10 (Exclusions).*

TennCare benefits include, but are not limited to, the following:

- Community health services
- Dental services (for children under age 21)
- Durable medical equipment
- Emergency air and ground transportation services
- EPSDT services for TennCare Medicaid-eligible children under age 21; preventive, diagnostic, and treatment services for TennCare Standard-eligible children under age 21
- Home health care<sup>1</sup>
- Hospice care
- Inpatient and outpatient substance abuse benefits
- Inpatient hospital services
- Lab & X-ray services
- Medical supplies
- Mental health case management
- Mental health crisis services
- Non-emergency transportation services
- Occupational therapy
- Organ and tissue transplant services and donor organ/tissue procurement services
- Outpatient hospital services
- Outpatient mental health services
- Pharmacy services
- Physical therapy services
- Physician services
- Private duty nursing services<sup>15</sup>
- Psychiatric inpatient facility services
- Psychiatric rehabilitation services
- Reconstructive breast surgery
- Renal dialysis clinic services
- Speech therapy services
- Vision services (for children under age 21)

Additional benefits are covered for children under 21 as medically necessary.

<sup>1</sup> Home health benefits are limited for adults as follows: Part-time or intermittent nursing services must be no more than 1 visit/day, lasting less than 8 hours, and no more than 27 total hours of nursing care per week. Part-time or intermittent nursing services are not covered if the only skilled nursing function is administration of medication on an as needed basis. Home health aide services must be provided at no more than 2 visits/day, with care provided less than or equal to 8 hours/day. Nursing services and home health aide services combined must total less than or equal to 8 hours/day and 35 or fewer hours per week. On a case-by-case basis, the weekly total may be increased to 40 hours for patients qualifying for Level 2 nursing care. See TennCare Medicaid rule 1200-13-13-.01 and TennCare Standard rule 1200-13-14-.01.

**LIQUIDATED DAMAGES**

Liquidated damages will apply to the Contract performance or compliance failures listed below. Contractor acknowledges that the actual damages likely to result from Contract performance or compliance failures are difficult to estimate and may be difficult for the State to prove. The parties intend that the Contractor's payment of assessed liquidated damages will compensate the State for breach of the Contractor obligations under this Contract. Liquidated damages do not serve as punishment for any breach by the Contractor.

|    | <b>PROGRAM ISSUES</b>                                                                                                                                                                                                                                                                                                                                                                                                                     | <b>DAMAGE</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | Failure by the Contractor to meet the standards for privacy, security, and confidentiality of individual data as evidenced by a breach of the security per Section E. 5. and E.8 and Contractor's failure to timely and reasonably comply with its obligation to appropriately respond to any such breach                                                                                                                                 | For any occurrence affecting less than five hundred (500) members, the damage that may be assessed shall be one thousand dollars (\$1,000.00) per affected member . For any occurrence affecting five hundred (500) members or more, the damage that may be assessed shall be up to one thousand dollars (\$1000) per affected member for the first five hundred (500) affected members and then ten dollars (\$10.00) per additional affected member thereafter |
| 2. | Failure by the Contractor to execute the appropriate agreements to effectuate transfer and exchange of enrollee PHI or TennCare confidential information including, but not limited to, a data use agreement, trading partner agreement, business associate agreement or qualified protective order prior to the use or disclosure of PHI to a third party. (See E.7. and Attachment C, Business Associate Agreement between the parties) | For any occurrence affecting less than five hundred (500) members, the damage that may be assessed shall be one thousand dollars (\$1,000.00) per affected member . For any occurrence affecting five hundred (500) members or more, the damage that may be assessed shall be up to one thousand dollars (\$1000) per affected member for the first five hundred (500) affected members and then ten dollars (\$10.00) per additional affected member thereafter |
| 3. | Failure by the Contractor to seek express written approval from TennCare prior to the use or disclosure of enrollee data or TennCare confidential information in any form via any medium with any third party beyond the boundaries and jurisdiction of the United States. (See E.6 and Attachment C, Business Associate Agreement between the parties)                                                                                   | For any occurrence affecting less than five hundred (500) members, the damage that may be assessed shall be one thousand dollars (\$1,000.00) per affected member . For any occurrence affecting five hundred (500) members or more, the damage that may be assessed shall be up to one thousand dollars (\$1000) per affected member for the first five hundred (500) affected members and then ten dollars (\$10.00) per additional affected member thereafter |

|    |                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4. | Failure by the Contractor to timely report violations in the access, use and disclosure of PHI or timely report a security incident or timely make a notification of breach or notification of suspected breach per Sections (See E.8 and Attachment C, Business Associate Agreement between the parties) | For any occurrence affecting less than five hundred (500) members, the damage that may be assessed shall be one thousand dollars (\$1,000.00) per affected member . For any occurrence affecting five hundred (500) members or more, the damage that may be assessed shall be up to one thousand dollars (\$1000) per affected member for the first five hundred (500) affected members and then ten dollars (\$10.00) per additional affected member thereafter. |
| 5. | Failure by the Contractor to submit acceptable Claims and Encounter Files pursuant to Section A.2.c.                                                                                                                                                                                                      | The damage that may be assessed shall be \$500 per day for each calendar day acceptable Claims and Encounter Files are late.                                                                                                                                                                                                                                                                                                                                      |
| 6. | Failure by the Contractor to submit an acceptable Provider Enrollment File pursuant to Section A.2.e                                                                                                                                                                                                      | The damage that may be assessed shall be \$500 per day for each calendar day an acceptable Provider Enrollment File is late.                                                                                                                                                                                                                                                                                                                                      |

**Fully-Integrated Dual Eligible Special Needs Plan**

In order to operate as a Fully-Integrated Dual Eligible Special Needs Plan (FIDE SNP), H0251-004 shall:

- (1) Enroll special needs individuals entitled to medical assistance under a Medicaid State plan, as defined in section 1859(b)(6)(B)(ii) of the Social Security Act and 42 C.F.R. § 422.2. Enrollment into the FIDE SNP shall be limited to full benefit dual eligible individuals in CHOICES Groups 1, 2, and 3 and enrolled in the Contractor's Medicaid plan .
- (2) Provide dual eligible beneficiaries access to Medicare and Medicaid benefits under a single Managed Care Organization, [Plan Name], which shall include:
  - (a) All Medicare Part C and D services;
  - (b) All Medicaid primary and acute (including physical and behavioral health) benefits and services specified in the Statewide Contract between the State of Tennessee d/b/a TennCare and [Plan Name] (CRA);
  - (c) All Long-Term Services and Supports (LTSS) benefits and services offered under the Tennessee State Plan, including Home and Community-Based Services (HCBS) and Nursing Facility Services with no day limit, as specified in the CRA;
  - (d) Coordination of health-related social supports that may impact members' health-related behaviors, outcomes and/or utilization, and/or members' ability to live in the community.
- (3) Comply with all requirements pertaining to the administration of Medicaid primary and acute (including physical and behavioral health) and LTSS benefits provided pursuant to the capitated contract with the State Medicaid agency, the CRA. Any failure to comply with the CRA shall be a failure to meet the Contractor's obligations as a FIDE SNP, and any termination of the CRA shall result in the termination of the Contractor's operations as a FIDE SNP.
- (4) Coordinate the delivery of covered Medicare and Medicaid physical and behavioral health and LTSS, including Medicaid-covered LTSS for the Contractor's dual eligible members that are provided outside of the Contractor's Medicare and/or Medicaid agreements (i.e., Section 1915(c) Waiver HCBS), and health-related social supports that may impact members' health-related behaviors, outcomes and/or utilization, and/or members' ability to live in the community, using integrated care management, enhanced (including home-based) primary care and specialty care network methods for high-risk beneficiaries, and partnerships with providers and Community-Based Organizations (CBOs) to address social support needs and improve health and quality of life outcomes, including but not limited to:
  - (a) Providing care coordination for all Medicare and Medicaid services, as specified in Contract section A.2.b.6, 6 for CHOICES Groups 1, 2, and 3 members this ATTACHMENT F, and/or TennCare LTSS protocols, as amended;
  - (b) Submitting care coordination policies and procedures for review and approval by TennCare as specified in Contract section A.2.b.9 and/or requested by TennCare;
  - (c) Utilizing the TennStar provider incentive program to close gaps in care based on a comprehensive list of Medicare and Medicaid covered service gaps;
  - (d) Operating an integrated clinical model and multiple integrated care teams consisting of nurse practitioners, social workers, registered nurses and/or licensed practical nurses, and licensed behavioral health clinicians who coordinate care across members' Medicare and Medicaid benefits, regardless of payer, as well as health-related social supports that may impact members' ability to live in the community;
  - (e) Engaging occupational and physical therapists, as needed, as a member of the care team (whether contracted or employed by the Contractor) to provide in-home assessments and

- recommendations pertaining to members' functional abilities, safety concerns, and assistive technology, Durable Medical Equipment, or other service/support needs;
  - (f) Use of technology to monitor chronic health conditions on an ongoing basis, and to alert care or support coordinators and/or primary care providers of the potential need for intervention and/or treatment;
  - (g) Partnership and engagement, which may include co-location of Contractor staff, with providers and CBOs (e.g., positioning care coordination staff within providers and/or CBOs, and/or embedding CBO staff as part of the Contractor's integrated care teams and the use of community peers and health outreach outworkers to provide in-person assistance to members in order to improve coordination of physical and behavioral health, LTSS, and social support needs; and
  - (h) Integrated Utilization Management (UM) processes for covered Medicare and Medicaid benefits.
- (5) Employ policies and procedures approved by CMS and TennCare to coordinate or integrate member materials, including enrollment communications, grievance and appeals and clinical preventive care quality assurance, including but not limited to:
  - (a) Integrated member handbooks;
  - (b) Including TennCare disclaimer language on marketing and member-facing materials and submitting such materials to TennCare for review and approval, as described in Contract section A.2.g;
  - (c) Providing a single member ID card to individuals who enroll in the Contractor's Medicare and Medicaid plans simultaneously;
  - (d) Developing and maintaining an integrated Medicare-Medicaid provider directory, which shall include primary care providers, contracted specialists, ancillary providers, and all other physical and behavioral health and LTSS providers and subcontractors. The directory must be posted online, updated at least weekly, and be searchable by provider specialty; and
  - (e) Integrating member-facing materials wherever possible.
- (6) Provide comprehensive, person-centered, aligned care coordination to each member in order to integrate the full continuum of services and supports that will maximize each member's health, personal independence, and ability to live in the community. Care coordination is a continuous process which commences upon enrollment and includes, but is not limited to:
  - (a) Assessing a member's physical, behavioral, functional, psychosocial, and social supports needs;
  - (b) Identifying the physical health, behavioral health, and LTSS that are necessary to meet identified needs;
  - (c) Identifying needs relating to housing, transportation, income assistance, food security and nutrition, employment and social support, including community integration and opportunities, and coordinating identified needs as appropriate;
  - (d) Ensuring timely access to and provision, coordination and monitoring of physical health, behavioral health, and LTSS needed to help the member maintain or improve his or her physical or behavioral health status or functional abilities and maximize independence; and
  - (e) Facilitating access to other social support services and assistance needed in order to ensure the member's health, safety and welfare, and as applicable, to delay or prevent the need for more expensive institutional placement.
- (7) Develop initial and ongoing training and education programs for all Contractor staff working with the FIDE SNP population on topics pertinent to interacting with and coordinating services for individuals transitioning to the Contractor's FIDE SNP.

- (8) Leverage the Tennessee health information exchange, as it is developed, the TennCare Care Coordination Tool, or an alternative approach approved by TennCare, to facilitate and enhance efficient care coordination processes among Medicare and Medicaid providers, including primary, specialty, behavioral health and LTSS, regardless of payer. This shall include, for members receiving LTSS, ensuring that providers are able to access the member's Person-Centered Support Plan, as appropriate, and that processes are in place for the ongoing exchange of information between LTSS (including Nursing Facility (NF) and HCBS) and primary care and behavioral health providers.
- (9) Collaborate with TennCare to implement specified TennCare payment reform initiatives with FIDE SNP providers, which may include, as directed by TennCare, Patient-Centered Medical Homes, behavioral health homes, Quality Improvement in Long-Term Services and Supports (QuiLTSS), and Enhanced Respiratory Care.
- (10) Develop integrated team-based UM and case management processes for Skilled Nursing Facility (SNF) benefits that are designed to maximize the use of HCBS and ensure that members are advised of available HCBS alternatives and affirmatively choose institutional placement over available HCBS alternatives.
- (11) Develop provider agreements and payment arrangements with dual certified SNFs/NFs that provide incentives to discharge to community, and the development of a medical home within the facility for long-stay residents, including incentives to help improve performance on specified quality measures (e.g., reduction in Emergency Department utilization and avoidable admissions/readmissions; and reductions in the inappropriate use of psychotropic medications). The Contractor may pilot such incentive payment arrangements under this subsection 11 with select providers rather than with all providers in its network. Any such pilot programs must be prior approved by TennCare. The Contractor shall report on the outcomes of pilot programs to TennCare and shall use key learnings in order to advance successful approaches within its FIDE plan.
- (12) Actively engage in hospital discharge planning for dual eligible beneficiaries, and incentives for hospitals to discharge to community when appropriate, rather than a SNF. The Contractor may pilot such incentive payment arrangements under this subsection 12 with select providers rather than with all providers in its network. Any such pilot programs must be prior approved by TennCare. The Contractor shall report on the outcomes of pilot programs to TennCare and shall use key learnings in order to advance successful approaches within its FIDE plan.
- (13) In order to continue operation as a FIDE SNP, the Contractor shall demonstrate the value of the fully-integrated care arrangement by recording and presenting to TennCare baseline measures as part of readiness review and quarterly reports thereafter on achieving specified quality outcomes. No later than February 15, 2019, the Contractor shall provide to TennCare baseline performance data in a manner specified by TennCare on all of the measures in its approved baseline data plan for all of its CHOICES FIDE SNP members for calendar year 2018 broken down by calendar quarter. Each quarter during this Contract, the Contractor shall provide TennCare with a baseline data measurement report with the first report due the 20th day of the month following the first calendar quarter.

## ATTACHMENT G

[Contract Number] shall:

- (1) Enroll special needs individuals entitled to medical assistance under a Medicaid State plan, as defined in section 1859(b)(6)(B)(ii) of the Social Security Act and 42 C.F.R. § 422.2. Enrollment [in Contract Number] shall be limited to full benefit dual eligible individuals in ECF CHOICES Groups 4, 5, 6, 7 and 8 (Groups 7 and 8 pending CMS approval) who are enrolled in the Contractor's Medicaid plan.
- (2) Provide dual eligible beneficiaries access to Medicare and Medicaid benefits under a single Managed Care Organization, [Plan Name], which shall include:
  - (a) All Medicare Part C and D services;
  - (b) All Medicaid primary and acute (including physical and behavioral health), and Long-Term Services and Supports (LTSS) benefits, including Nursing Facility and Home and Community-Based Services (HCBS), specified in the Statewide Contract between the State of Tennessee d/b/a TennCare and [Plan Name] (CRA); and
  - (c) Coordination of health-related social supports that may impact members' health-related behaviors, outcomes and/or utilization, and/or members' ability to live in the community.
- (3) Comply with all requirements pertaining to the administration of Medicaid primary and acute (including physical and behavioral health) and LTSS benefits provided pursuant to the capitated contract with the State Medicaid agency, the CRA. Any failure to comply with the CRA shall be a failure to meet the Contractor's obligations under this Contract, and any termination of the CRA shall result in the termination of the Contractor's operations as a SNP.
- (4) Coordinate the delivery of covered Medicare and Medicaid physical and behavioral health and LTSS, including Medicaid-covered LTSS for the Contractor's dual eligible members that are provided outside of the Contractor's Medicare and/or Medicaid agreements (i.e., Section 1915(c) Waiver HCBS and/or services in an ICF/IID), and health-related social supports that may impact members' health-related behaviors, outcomes and/or utilization, and/or members' ability to live in the community, using integrated care management, enhanced (including home-based) primary care and specialty care network methods for high-risk beneficiaries, and partnerships with providers and Community-Based Organizations (CBOs) to address social support needs and improve health and quality of life outcomes, including but not limited to:
  - (a) Providing care coordination for all Medicare and Medicaid services, as specified in Contract section A.2.b.6, 6 for ECF CHOICES Groups 4, 5, and 6 members only, this ATTACHMENT G, and/or TennCare LTSS protocols, as amended;
  - (b) Submitting care coordination policies and procedures for review and approval by TennCare as specified in Contract section A.2.b.9 and/or requested by TennCare;
  - (c) Utilizing the TennStar provider incentive program to close gaps in care based on a comprehensive list of Medicare and Medicaid covered service gaps;
  - (d) Operating an integrated clinical model and multiple integrated care teams consisting of nurse practitioners, social workers, registered nurses and/or licensed practical nurses, and licensed behavioral health clinicians who coordinate care across members' Medicare and Medicaid benefits, regardless of payer, as well as health-related social supports that may impact members' ability to live in the community. For individuals with Intellectual and other Developmental Disabilities (I/DD) such integrated clinical team shall include a mental health professional who is involved in all screening and assessment processes for individuals with I/DD and available to support care planning processes as needed;
  - (e) Engaging occupational and physical therapists, as needed, as a member of the care team (whether contracted or employed by the Contractor) to provide in-home assessments and recommendations pertaining to members' functional abilities, safety concerns, and assistive technology, Durable Medical Equipment, or other service/support needs;

- (f) Partnership and engagement, which may include co-location of Contractor staff, with providers and CBOs (e.g., positioning care coordination staff within providers and/or CBOs, and/or embedding CBO staff as part of the Contractor's integrated care teams and the use of community peers and health outreach outworkers to provide in-person assistance to members in order to improve coordination of physical and behavioral health, LTSS, and social support needs; and
  - (g) Integrated Utilization Management (UM) processes for covered Medicare and Medicaid benefits.
- (5) Employ policies and procedures approved by CMS and TennCare to coordinate or integrate member materials, including enrollment communications, grievance and appeals and clinical preventive care quality assurance, including but not limited to:
  - (a) Integrated member handbooks;
  - (b) Including TennCare disclaimer language on marketing and member-facing materials and submitting such materials to TennCare for review and approval, as described in Contract section A.2.g;
  - (c) Providing a single member ID card to individuals who enroll in the Contractor's Medicare and Medicaid plans simultaneously;
  - (d) Developing and maintaining an integrated Medicare-Medicaid provider directory, which shall include primary care providers, contracted specialists, ancillary providers, and all other physical and behavioral health and LTSS providers and subcontractors. The directory must be posted online, updated at least weekly, and be searchable by provider specialty; and
  - (e) Integrating member-facing materials wherever possible.
- (6) Provide comprehensive, person-centered, aligned care coordination to each member in order to integrate the full continuum of services and supports that will maximize each member's health, personal independence, and ability to live in the community. Care coordination is a continuous process which commences upon enrollment and includes, but is not limited to:
  - (a) Assessing a member's physical, behavioral, functional, psychosocial, and social supports needs, including for ECF CHOICES members, specifically identifying whether the member has a co-occurring mental health diagnosis or co-occurring behavior support needs;
  - (b) Identifying the physical health, behavioral health, and LTSS that are necessary to meet identified needs;
  - (c) Identifying needs relating to housing, transportation, income assistance, food security and nutrition, employment and social support, including community integration and opportunities, and coordinating identified needs as appropriate;
  - (d) Ensuring timely access to and provision, coordination and monitoring of physical health, behavioral health, and LTSS needed to help the member maintain or improve his or her physical or behavioral health status or functional abilities and maximize independence; and
  - (e) Facilitating access to other social support services and assistance needed in order to ensure the member's health, safety and welfare, and as applicable, to delay or prevent the need for more expensive institutional placement.
- (7) Develop initial and ongoing training and education programs for all Contractor staff working with the SNP population on topics pertinent to interacting with and coordinating services for individuals transitioning to the Contractor's SNP.
- (8) Leverage the Tennessee health information exchange, as it is developed, the TennCare Care Coordination Tool, or an alternative approach approved by TennCare, to facilitate and enhance efficient care coordination processes among Medicare and Medicaid providers, including primary, specialty, behavioral health and LTSS, regardless of payer. This shall include, for members receiving LTSS, ensuring that providers are able to access the member's Person-Centered

Support Plan, as appropriate, and that processes are in place for the ongoing exchange of information between LTSS (including Nursing Facility (NF) and HCBS) and primary care and behavioral health providers.

- (9) Collaborate with TennCare to implement specified TennCare payment reform initiatives with SNP providers, which may include, as directed by TennCare, Patient-Centered Medical Homes, behavioral health homes, Quality Improvement in Long-Term Services and Supports (QuiLTSS), and Enhanced Respiratory Care.
- (10) Develop integrated team-based UM and case management processes for Skilled Nursing Facility (SNF) benefits that are designed to maximize the use of HCBS and ensure that members are advised of available HCBS alternatives and affirmatively choose institutional placement over available HCBS alternatives.
- (11) Actively engage in hospital discharge planning for dual eligible beneficiaries, and include D-SNP members in incentive payment arrangement pilots implemented under its FIDE plan with hospitals to discharge to community when appropriate, rather than a SNF or other institutional setting. Any such pilot programs must be prior approved by TennCare. The Contractor shall report on the outcomes of pilot programs to TennCare and shall use key learnings in order to advance successful approaches within its FIDE plan.
- (12) The Contractor shall demonstrate the value of the integrated care arrangement for ECF CHOICES members by recording and presenting to TennCare baseline measures as part of readiness review and quarterly reports thereafter on achieving specified quality outcomes. No later than February 15, 2019, the Contractor shall provide to TennCare baseline performance data in a manner specified by TennCare on all of the measures in its approved baseline data plan for its ECF CHOICES members for calendar year 2018 broken down by calendar quarter. Each quarter during this Contract, the Contractor shall provide TennCare with a baseline data measurement report with the first report due the 20th day of the month following the first calendar quarter.
- (13) Develop a network of physical, behavioral, and dental providers with experience and expertise supporting people with I/DD, as well as a detailed plan for ongoing growth and development of such networks to increase expertise and capacity for serving members with I/DD as the volume of such membership grows, and for measuring the perceived ability of such providers to serve people with I/DD and respond to identified training and capacity development needs. The development plan shall be due to TennCare no later than October 1, 2018.

