

**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION,  
BUREAU OF TENNCARE  
AND  
(Contractor Name)**

This Contract, between the State of Tennessee, Department of Finance and Administration, Division of Health Care Finance and Administration, Bureau of TennCare, hereinafter referred to as the "State" or "TennCare", an administrative agency within the executive department of the State of Tennessee, and (Contractor Name) , hereinafter referred to as the "Procuring Party" or "Contractor," for the operation of a Medicare Advantage Plan, as further defined in the Scope of Services.

The Procuring Party is a for profit corporation.

Procuring Party Place of Incorporation or Organization: (\_\_\_\_\_)

WHEREAS, the Bureau 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 follow terms.

**A. SCOPE OF SERVICES:**

**A.1. DEFINITIONS:**

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 (which shall not include any additional days for the Contractor to assign to appropriate staff or to take required actions). The anchor date is not included in the calculation of days within which the Contractor is required to take action.

Business Day – Monday through Friday, except for State of Tennessee holidays.

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 enrollees"), 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.

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 coinsurance on those Medicare services that are not covered by TennCare unless the enrollee is a child under 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.

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").

Dual Eligible Member - An enrollee who is Dual-Eligible and is enrolled in a Plan.

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.

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.

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.

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.

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.

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.

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.

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.

Protected Health Information/Personally Identifiable Information (PHI/PII) (45 C.F.R. § 160.103; OMB Circular M-06-19 located at <http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2006/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.

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.

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.

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.

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).

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.

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.

Subcontractor - A third party with which the MA Health Plan has a subcontract.

TennCare - The medical assistance program administered by Tennessee Department of Finance and Administration, Bureau 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.

TennCare 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 following counties:

( fill in )

**b. Benefits.**

1. TennCare uses a modified MCO system to provider 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 member. 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, incorporated by reference.
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.
  - 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; and follow up 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.

- c. Coordinating with a FBDE member's TennCare MCO regarding 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 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 and ensuring timely access to medically necessary covered Medicare benefits needed by a FBDE member enrolled in the CHOICES program.
- e. Participating upon request in needs assessments and/or the development of an integrated person-centered plan of care for a TennCare 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 member's TennCare MCO Care Coordinator.
- h. Coordinating with each TennCare MCO operating in the Grand Region where the Contractor operates in the MCO's implementation of its 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 members and non-CHOICES members who may need NF services and qualify for 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) Benefits covered under the TennCare program, including the CHOICES program.
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 to include the disclaimer set out below either annually in a written notice or on any marketing materials concerning benefits sent to members in order to reduce any potential confusion between the scope of the Plan and the scope of the members TennCare benefits.

**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 policies and procedures must be approved and implemented prior to January 1, 2013. The Contractor's operations shall be subject to onsite 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 submit to TennCare annual HEDIS (Healthcare Effectiveness Data and Information Set), CAHPS (Consumer Assessment of Healthcare Providers and Systems) and HOS (Medicare Health Outcomes Survey) data and 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, CAHPS, and HOS data, Medicare Advantage Star Quality ratings, including poor performing icons, notices of non-compliance, audit findings and corrective action plans.
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.

**c. Data.**

1. The Contractor shall submit to TennCare, in a mutually agreed upon electronic format, the following data:
  - a. Plan eligibility information, consisting of Dual Eligible Members currently enrolled in the SNP and including any third party liability information.
  - b. 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's systems are required to conform to HIPAA-standard transaction code sets as specified in the HIPAA Implementation and TennCare Companion guides.
- (2) 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 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 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 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 immediate correction.

- (3) TennCare shall reject or report individual claims or encounters 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. Generally the Contractor shall, unless otherwise directed by TennCare, address ninety percent (90%) of reported errors within thirty (30) calendar days and address ninety-nine percent (99%) of reported errors within sixty (60) calendar days. 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.
- (4) Within two (2) business days of the end of a payment cycle, the Contractor shall generate 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.
- (5) Any encounter data from a subcontractor shall be included in the file from the Contractor. The Contractor shall not submit separate encounter files from subcontractors.
- (6) 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.
- (7) 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.
- (8) 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.
- (9) The Contractor shall provide encounter data files electronically to TennCare in adherence to the procedure and format indicated in the HIPAA Implementation and TennCare Companion guides.



- (10) 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.
  - (11) 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.
  - (12) 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 will 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.
3. The Contractor shall receive, process, update, and submit all applicable outbound and/or inbound eligibility, 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 eligibility/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.
  - (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) Compliance with Health Insurance Portability and Accountability Act (HIPAA) and Health Information Technology for Economic and Clinical Health Act (HITECH) – TennCare and the Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Health Information Technology for Economic and Clinical Health Act (HITECH) under the American Recovery and Reinvestment Act of 2009 (ARRA) and their accompanying regulations, as amended.
1. The Contractor warrants to TennCare that it is familiar with the requirements of HIPAA and HITECH and their accompanying regulations, and shall comply with all applicable HIPAA and HITECH requirements in the course of this Contract, including, but not limited to, the following:
- a. Compliance with the Privacy Rule, Security Rule, and Notification Rule;
  - b. The creation of and adherence to sufficient Privacy and Security Safeguards and Policies;
  - c. Timely Reporting of Violations in the Access, Use and Disclosure of PHI;
  - d. Timely Reporting of Privacy and/or Security Incidents; and

- e. Failure to comply may result in actual damages that TennCare incurs as a result of the breach and liquidated damages as set forth in this Contract.
2. The Contractor warrants that it shall cooperate with TennCare, including cooperation and coordination with TennCare privacy officials and other compliance officers required by HIPAA and HITECH and their accompanying regulations, in the course of performance of this Contract so that both parties shall be in compliance with HIPAA and HITECH.
  3. TennCare and the Contractor shall sign documents, including, but not limited to, business associate agreements, as required by HIPAA and HITECH, that are reasonably necessary to keep TennCare and the Contractor in compliance with HIPAA and HITECH.
  4. As a party to this Contract, the Contractor hereby acknowledges its designation as a covered entity and/or business associate under the HIPAA regulations and agrees to comply with all applicable HIPAA and HITECH (hereafter HIPAA/HITECH) regulations.
  5. In accordance with HIPAA/HITECH regulations, the Contractor shall, at a minimum:
    - a. Comply with requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH), including, but not limited to, the transactions and code sets, privacy, security, and identifier regulations, by their designated compliance dates. Compliance includes meeting all required transaction formats and code sets with the specified data sharing agreements required under the regulations;
    - b. Transmit/receive from/to its providers, subcontractors, clearinghouses and the State all transactions and code sets required by the HIPAA/HITECH regulations in the appropriate standard formats, utilizing appropriate and adequate safeguards, as specified under the law and as directed by TennCare so long as TennCare's direction does not conflict with the law;
    - c. Agree that if it is not in compliance with all applicable standards defined within the transactions and code sets, privacy, security and all subsequent HIPAA/HITECH standards, that it will be in breach of this Contract and will then take all reasonable steps to cure the breach or end the violation as applicable. Since inability to meet the transactions and code sets requirements, as well as the privacy and security requirements can bring basic business practices between TennCare and the Contractor and between the Contractor and its providers and/or subcontractors to a halt, if for any reason the Contractor cannot meet the requirements of this Section, TennCare may terminate this Contract in accordance with the Business Associate Agreement ancillary to this Contract;
    - d. Ensure that Protected Health Information (PHI) exchanged between the Contractor and TennCare is used only for the purposes of treatment, payment, or health care operations and health oversight and its related functions. All PHI not transmitted for these purposes or for

purposes allowed under the federal HIPAA/HITECH regulations shall be de-identified to secure and protect the individual enrollee's PHI;

- e. Report to TennCare's Privacy Office immediately upon becoming aware of any use or disclosure of PHI in violation of this Contract by the Contractor, its officers, directors, employees, subcontractors or agents or by a third party to which the Contractor disclosed PHI;
- f. Specify in its agreements with any agent or subcontractor that will have access to PHI 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;
- g. Make available to TennCare enrollees the right to amend their PHI in accordance with the federal HIPAA regulations. The Contractor shall also send information to enrollees educating them of their rights and necessary steps in this regard;
- h. Make an enrollee's PHI accessible to TennCare immediately upon request by TennCare;
- i. Make its internal policies and procedures, records and other documentation related to the use and disclosure of PHI available to the U.S. Secretary of Health and Human Services for the purposes of determining compliance with the HIPAA/HITECH regulations upon request;
- j. Create and adopt policies and procedures to periodically audit adherence to all HIPAA/HITECH regulations, and for which Contractor acknowledges and promises to perform, including but not limited to, the following obligations and actions:
  - 1. Agree to ensure that any agent, including a subcontractor, to whom it provides PHI that was created, received, maintained, or transmitted on behalf of TennCare agrees to use reasonable and appropriate safeguards to protect the PHI.
  - 2. If feasible, return or destroy all PHI, in whatever form or medium (including any electronic medium) and all copies of an any data or compilations derived from and allowing identification of any individual who is a subject of that PHI upon termination, cancellation, expiration or other conclusion of this Contract, and in accordance with this Section of this Contract. The Contractor shall complete such return or destruction as promptly as possible, but not later than thirty (30) days after the effective date of the termination, cancellation, expiration or other conclusion of this Contract. The Contractor shall identify any PHI that cannot feasibly be returned or destroyed. Within such thirty (30) days after the effective date of the termination, cancellation, expiration or other conclusion of this Contract, the Contractor shall: (1) certify on oath in writing that such return or destruction has been completed; (2) identify any PHI which cannot feasibly be returned or destroyed; and (3) certify that it will only use or disclose such PHI for those purposes that make its return or destruction infeasible;
  - 3. Implement all appropriate administrative, physical and technical safeguards to prevent the use or disclosure of PHI other than

pursuant to the terms and conditions of this Contract and, including, but not limited to, privacy, security and confidentiality requirements in 45 CFR Parts 160 and 164;

4. Set up appropriate mechanisms to limit use or disclosure of PHI to the minimum necessary to accomplish the intended purpose of the use or disclosure;
  5. Create and implement policies and procedures to address present and future HIPAA/HITECH regulatory requirements as needed, including, but not limited to: use and disclosure of data; de-identification of data; minimum necessary access; accounting of disclosures; enrollee's right to amend, access, request restrictions; notice of privacy practices and right to file a complaint;
  6. Provide an appropriate level of training to its staff and employees regarding HIPAA/HITECH-related policies, procedures, enrollee rights and penalties prior to the HIPAA/HITECH implementation deadlines and at appropriate intervals thereafter;
  7. Track training of Contractor's staff and employees and maintain signed acknowledgements by staff and employees of the Contractor's HIPAA/HITECH policies;
  8. Be allowed to use and receive information from TennCare where necessary for the management and administration of this Contract and to carry out business operations where permitted under the regulations;
  9. Be permitted to use and disclose PHI for the Contractor's own legal responsibilities;
  10. Adopt the appropriate procedures and access safeguards to restrict and regulate access to and use by Contractor's employees and other persons performing work for the Contractor to have only minimum necessary access to PHI and personally identifiable data within their organization;
  11. Continue to protect and secure PHI AND personally identifiable information relating to enrollees who are deceased;
  12. Be responsible for informing its enrollees of their privacy rights in the manner specified under the regulations;
  13. Make available PHI in accordance with 45 CFR 164.524;
  14. Make available PHI for amendment and incorporate any amendments to PHI in accordance with 45 CFR 164.526; and
  15. Obtain a third (3rd) party certification of their HIPAA transaction compliance ninety (90) calendar days before the start date of operations.
- k. The Contractor shall track all security incidents as defined by HIPAA/HITECH, and, as required by the HIPAA/HITECH Reports. The Contractor shall report security incidents as defined in the Business Associate Agreement that is ancillary to this agreement, except to the extent that the reporting time shall be

“immediately upon becoming aware” in all instances. The Parties acknowledge that the State contemplates an amendment to the BAA Section 3.5 requiring forty-eight (48) hours to read “immediately upon becoming aware” in order to maintain consistency throughout the contractual documents.

l. TennCare and the Contractor are “information holders” as defined in TCA 47-18-2107. In the event of a breach of the security of Contractor’s information system, as defined by TCA 47-18-2107, the Contractor shall indemnify and hold TennCare harmless for expenses and/or damages related to the breach. Such obligations shall include, but not be limited to, mailing notifications to affected enrollees. Substitute notice to written notice, as defined by TCA 47-18-2107(e)(2)and(3), shall only be permitted with TennCare’s express written approval. The Contractor shall notify TennCare’s Privacy Office immediately upon becoming aware of any security incident that would constitute a “breach of the security of the system” as defined in TCA 47-18-2107.

m. NOTIFICATION OF BREACH & NOTIFICATION OF PROVISIONAL BREACH. The Contractor shall notify TennCare’s Privacy Office immediately upon becoming aware of any incident, either confirmed or provisional, 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.

(n) Social Security Administration (SSA) Required Provisions for Data Security:

1. In order to meet certain requirements set forth in the State’s Computer Matching and Privacy Protection Act Agreement (CMPPA) with the SSA, the Parties acknowledge that this Section shall be included in all agreements executed by or on behalf of the State. The Parties further agree that FISMA and NIST do not apply in the context of data use and disclosure under this Agreement as the Parties shall neither use nor operate a federal information system on behalf of a federal executive agency. Further, NIST is applicable to federal information systems; therefore, although encouraged to do so, the State, its contractors, agents and providers are not required to abide by the NIST guidelines.
2. 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.
3. The Contractor shall not duplicate in a separate file or disseminate, without prior written permission from TennCare the data governed by this 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.

4. The Contractor agrees to abide by all relevant federal laws, restrictions on access, use, and disclosure, and security requirements in this Contract.
5. The Contractor shall provide a current list of the employees of such Contractor with access to SSA data and provide such lists to TennCare.
6. 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.
7. The Contractor shall ensure that its employees:
  - i. Properly safeguard PHI/PII furnished by TennCare under this Contract from loss, theft or inadvertent disclosure;
  - ii. Understand that they are responsible for safeguarding this information at all times, regardless of whether or not the Contractor's employee is at his or her regular duty station;
  - iii. Ensure that laptops and other electronic devices/ media containing PHI/PII are encrypted and/or password protected;
  - iv. Send emails containing PHI/PII only if encrypted or if to and from addresses that are secure; and
  - v. Limit disclosure of the information and details relating to a PHI/PII loss only to those with a need to know.
  - vi. Contractor's employees who access, use, or disclose 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.
  - vii. Loss or Suspected Loss of Data – If an employee of the Contractor becomes aware of suspected or actual loss of PHI/PII, he or she must immediately contact TennCare's Privacy Office **within one (1) hour** to report the actual or suspected loss. The Contractor will use the Loss Worksheet located at [http://www.tn.gov/tenncare/forms/phi\\_piiworksheet.pdf](http://www.tn.gov/tenncare/forms/phi_piiworksheet.pdf) to quickly gather and organize information about the incident. The Contractor must provide TennCare's Privacy Office with timely updates as any additional information about the loss of PHI/PII becomes available.
  - viii. If the Contractor experiences a loss or breach of said data, TennCare's Privacy Office, in its sole discretion, 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.
8. TennCare may immediately and unilaterally suspend the data flow under this Contract, or terminate this Contract, if TennCare 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.

9. Legal Authority - Federal laws and regulations giving SSA the authority to disclose data to TennCare and TennCare's authority to collect, maintain, use and share data with Contractor is protected under federal law for specified purposes:

- Sections 1137, 453, and 1106(b) of the Social Security Act (the Act) (42 U.S.C. §§ 1320b-7, 653 and 1306(b)) (income and eligibility verification data);
- 26 U.S.C. § 6103(l)(7) and (8) (tax return data);
- Section 202(x)(3)(B)(iv) of the Act (42 U.S.C. § 401(x)(3)(B)(iv)) (prisoner data);
- Section 205(r)(3) of the Act (42 U.S.C. § 405(r)(3)) and Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108-458, 7213(a)(2) (death data);
- Sections 402, 412, 421, and 435 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104-193) (8 U.S.C. §§ 1612, 1622, 1631, and 1645) (August 22, 1996) (quarters of coverage data);
- Children's Health Insurance Program Reauthorization Act of 2009, (Pub. L. 111-3) (February 4, 2009) (citizenship data); and
- Routine use exception to the Privacy Act, 5 U.S.C. § 552a(b)(3) (data necessary to administer other programs compatible with SSA programs).
- This Section further carries out Section 1106(a) of the Act (42 U.S.C. § 1306), the regulation 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, which provide the requirements that the CONTRACTOR must follow with regard to use, treatment, and safeguarding data.

(o) 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.
- (p) Ensure that medical information is released only in accordance with applicable Federal or State law, or under court orders or subpoenas.
  - (q) Maintain the records and information in an accurate and timely manner.
  - (r) 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:
  - \_\_\_\_\_ QMB-Only
  - \_\_\_\_\_ QMB- Plus
  - \_\_\_\_\_ SLMB-Plus
  - \_\_\_\_\_ Full Benefit Dual Eligibles
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:
  - 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
  - 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. Contractor will provide its eligibility information on members of its Plan to TennCare or TennCare's designee at no charge to TennCare.

**e. Provider Network Information.**

The Contractor shall submit a quarterly Provider Enrollment File report that includes information on all providers of the SNP 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 15<sup>th</sup> 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. Contractor will contact TennCare's Office of Provider Networks for the proper format for the submission.

The Contractor shall develop a network of providers that specifically targets overlap of providers in its network with providers that are also enrolled with one or more TennCare MCOs in order to ensure seamless access to care for FBDE members across the Medicare and Medicaid programs.

The Contractor shall not enter into contracts with any providers which contain clauses or payment methodologies that have 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 care coordination 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 by January 1, 2013 in a compliant format approved by TennCare.

**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 enrollee's for benefits provided, unless direct billing is permitted under State and Federal law. The Contractor shall notify its network providers and 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. The Contractor 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.

- 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.

## **B. CONTRACT TERM.**

This Contract shall be effective for the period commencing January 1, 2011 and ending on December 31, 2015.

**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.

     **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 seventy-five dollar (\$75.00) user access fee for a premium services subscription.

     **X 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. **(Note: Connection Fee is waived for any agency already connected to Server.)**

**D. STANDARD TERMS AND CONDITIONS.**

D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.

D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.

D.3. Termination for Convenience. The Contract may be terminated by either party by giving written notice to the other, at least sixty (60) 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 Contractor. Should either the State or the Contractor exercise this provision, the Contractor 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 Contractor. The final decision, as to what these units of service are, shall be determined by the State. In the event of disagreement, the Contractor may file a claim with the Tennessee Claims Commission in order to seek redress.

Upon such termination, the Contractor 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 Contractor shall compensate the State for completed services.

D.5. Subcontracting. Neither the Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor on the grounds of 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 Contractor shall maintain documentation for its transactions with the State under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money paid under this Contract, shall be maintained for a period of three (3) 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 Contractor 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 Contractor 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 Contractor 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.

**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:

Darin Gordon  
Bureau of TennCare  
310 Great Circle Road  
Nashville, Tennessee 37242  
615-507-6443 (phone)  
615-741-0882 (fax)  
[Darin.j.gordon@tn.gov](mailto:Darin.j.gordon@tn.gov)

Procuring Party:  
(Name and Address)

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

- E.3 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 Contractor by the State or acquired by the Contractor 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 Contractor 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 Contractor'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 Contractor of this Contract; previously

possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor 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 Contractor 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 Contractor 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.4 HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.
- a. Contractor warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this Contract.
  - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations, in the course of performance of the Contract so that both parties will be in compliance with HIPAA.
  - c. The State and the Contractor will sign documents, including, but not limited to, business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and Contractor in compliance with HIPAA. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by HIPAA, or if HIPAA permits the State to receive such information without entering into a business associate agreement or signing another such document.
- E.5 The Contractor will carry adequate liability or other insurance as needed to cover any actual damages incurred by the State as a result of a breach by Contractor of the HIPAA or confidentiality provisions.
- E.6 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.
- E.7 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.

**IN WITNESS WHEREOF,**

**NAME OF COMPANY**

---

**CONTRACTOR SIGNATURE**

**DATE**

---

**Name of signature (above)**

**TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION  
BUREAU OF TENNCARE:**

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**Mark A. Emkes, Commissioner**

**DATE**



**ATTACHMENT A  
SUMMARY OF BENEFITS**

**ATTACHMENT B  
TRADING PARTNER AGREEMENT**

**ATTACHMENT C**  
**BUSINESS ASSOCIATE AGREEMENT**

## ATTACHMENT D

### 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 the Bureau'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.

**ATTACHMENT E**

**LIQUIDATED DAMAGES**

Liquidated damages for Contractor’s failure, or Contractor's subcontractors or providers failure, to perform the specific responsibilities and requirements described in Contract sections A.2.c.1(b) and A.2.c.3 relating to HIPAA, HITECH and the security of SSA data are set forth below. These liquidated damages may be assessed in TennCare’s sole discretion, in addition to, or in lieu of, any or all actual damages permitted under State or Federal law.

<b>1</b>	Failure by the Contractor to ensure that all TennCare data containing protected health information (PHI), as defined by HIPAA, is secured through commercially reasonable methodology in compliance with HITECH, such that it is rendered unusable, unreadable and indecipherable to unauthorized individuals through encryption or destruction, that compromises the security or privacy of TennCare enrollee PHI (See also ancillary Business Associate Agreement between the parties)	\$500 per enrollee per occurrence, AND If the State deems credit monitoring and/or identity theft safeguards are needed to protect those TennCare enrollees whose PHI was placed at risk by Contractor’s failure to comply with the terms of this Agreement, the Contractor shall be liable for all costs associated with the provision of such monitoring and/or safeguard services
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2	Failure by the Contractor to execute the appropriate agreements to effectuate transfer and exchange of TennCare 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 ancillary Business Associate Agreement between the parties)	\$500 per enrollee per occurrence
3	Failure by the Contractor to seek express written approval from TENNCARE prior to the use or disclosure of TennCare 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 ancillary Business Associate Agreement between the parties)	\$1,000 per enrollee per occurrence
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 provisional breach (See also ancillary Business Associate Agreement between the parties)	\$500 per enrollee per occurrence, not to exceed \$10,000,000

