CONTRACT #12
RFS # 318.65-00326
Edison # 24534

Department of Finance and Administration
Health Care Finance and Administration

VENDOR:
Health Management Systems, Inc.

STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE
310 Great Circle Road
NASHVILLE, TENNESSEE 37243

May 30, 2014

Lucian Geise, Director
Fiscal Review Committee
8th Floor, Rachel Jackson Bldg.
Nashville, TN 37243

Attention: Ms. Leni Chick

RE: Managed Care Contract Amendments (7)
Health Management Systems, Inc. – Amendment #3
Magellan Medicaid Administration, Inc. – Amendment #1

Dear Mr. Geise:

The Department of Finance and Administration, Division of Health Care Finance and Administration (HCFA), is submitting for consideration by the Fiscal Review Committee amendments to the Managed Care Organization (MCO) contracts. These contracts provide medical and behavioral health services to eligible TennCare enrollees. The proposed amendments contain language necessary for clarification regarding the Health Insurer Fee (HIF), under section 9010 of the Patient Protection and Affordable Care Act of 2010. This fee will come due in September each year for the premiums paid the previous calendar year. No additional funding is required to support the amended language. TennCare released a request for Proposal and new statewide contracts for managed care services have been identified with implementation scheduled to begin January 1, 2015.

Volunteer State Health Plan, Amendment #34 – TennCare Select
AMERIGROUP Tennessee, Inc., Amendment #17 - Middle
UnitedHealthCare Plan of the River Valley, Inc., Amendment #17– Middle
UnitedHealthCare Plan of the River Valley, Inc., Amendment #14 – West
Volunteer State Health Plan, Amendment #14 – West
UnitedHealthCare Plan of the River Valley, Inc., Amendment #14 – East
Volunteer State Health Plan, Amendment #14 – East

In addition to the MCO amendments, we are submitting amendment #1 to the contract with Magellan Medicaid Administration, Inc., HCFA's competitively procured contract for Pharmacy Benefits Management for the TennCare population. The existing Pharmacy Management contract for the CoverRx Program is ending December 31, 2014 and this amendment adds this population of approximately 63,000 eligible CoverRx participants aged 19 – 64, needing access to prescription drugs for acute care and ongoing disease management into the Magellan contract. Due to Magellan's existing capabilities to support approximately 1.2 million TennCare enrollees, it has been determined to be in the best interest and most cost effective to the State to add the CoverRx population to this existing contract.

Additionally, we are submitting amendment #3 to Health Management Systems, Inc., a competitively procured contract providing Third Party Liability Services. This amendment provides language designating the Contractor to directly pay required court filing fees incurred for the Estate Recovery project, which shall be reimbursed by the State for actual expenses incurred, resulting in a reduction in time currently necessary to file claims.

The Department of Finance and Administration, Division of Health Care Finance and Administration, respectfully submits the above referenced contract amendments for consideration and approval by the Fiscal Review Committee.

Sincerely,

Casey Dungan
Chief Financial Officer

cc: Darin J. Gordon, Deputy Commissioner
Alma Chilton, Director of Contracts

Supplemental Documentation Required for Fiscal Review Committee

*Contact Name:	Alma Chilton	*Contact Phone:	615-507-6384
*Presenter's Name	Casey Dungan, Chief Financial Officer		
*Original Contract Number:	FA1134236	*Original RFS Number:	31865-00326
Edison Contract Number: *(if applicable)*	24534	Edison RFS Number: *(if applicable)*	31865-00326
*Original Contract Begin Date:	February 1, 2011	*Current End Date:	January 31, 2015
Current Request Amendment Number: *(if applicable)*		3	
Proposed Amendment Effective Date: *(if applicable)*		August 1, 2014	
*Department Submitting:		Department of Finance and Administration,	
*Division:		Division of Health Care Finance and Administration, Bureau of TennCare	
*Date Submitted:		May 30, 2014	
*Submitted Within Sixty (60) days:		Yes	
If not, explain:		N/A	
*Contract Vendor Name:		Health Management Systems, Inc.	
*Current Maximum Liability:		$55,000,000.00	
*Estimated Total Spend for Commodities		N/A	

*Current Contract Allocation by Fiscal Year:
(as Shown on Most Current Fully Executed Contract Summary Sheet) Attached

FY: 2011	FY: 2012	FY: 2013	FY: 2014	FY: 2015	FY
$ 5,806,000	$10,000,000	$17,194,000	$17,000,000	$ 5,000,000	$

*Current Total Expenditures by Fiscal Year of Contract:
(attach backup documentation from Edison)

FY: 2011	FY: 2012	FY: 2013	FY: 2014	FY	FY
$ 5,790,338.88	$ 9,365,481.93	$ 12,826,539.29	$5,521,424.65 **(through Dec. 2013)**	$	$

IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:	The contract maximum liability and FY breakout is based solely on contracted percentage of funds that are recovered for the State. It would be challenging to accurately predict exact amounts until recoveries are submitted to TennCare, at which point appropriate recovery percentages as submitted in Contractor's competitive Cost Proposal are paid to the contractor. All funds associated with this contract are rolled forward to be available

Supplemental Documentation Required for Fiscal Review Committee

	for payments for the entire term of the contract.
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:	The contract maximum liability and FY breakout is based solely on contracted percentage of funds that are recovered for the State. It would be challenging to adequately predict exact amounts until recoveries are submitted to TennCare, at which point appropriate recovery percentages are paid to the contractor.
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:	N/A

*Contract Funding Source/Amount:	State:	$27,500,000.00	Federal:	$27,500,000.00
Interdepartmental:			*Other*:	
If "*other*" please define:				

Dates of All Previous Amendments or Revisions: *(if applicable)*	Brief Description of Actions in Previous Amendments or Revisions: *(if applicable)*
Amendment #1 – May 1, 2013	Add funding to support TennCare recovery percentage payment to the Contractor
Amendment #2 – January 31, 2014	Extend term of contract and funding to support the term, as well as delete RAC from contract language and staffing.

Method of Original Award: *(if applicable)*	Request for Proposal
*What were the projected costs of the service for the entire term of the contract prior to contract award?	The projected cost prior to contract award were unknown. The cost of the service was totally dependent upon the recoveries the Contractor made on behalf of the State. The Contract maximum liability is currently $55,000,000.00 which was a projection only. For this contract, the more the State pays the Contractor, the more funds that have been recovered on behalf of the State.
*List number of other potential vendors who could provide this good or service; efforts to identify other competitive procurement alternatives; and the	This is not a sole source contract. It was competitively procured and amounts that are paid to the contractor are based on Cost Proposal percentages submitted by the Contractor in the RFP.

Supplemental Documentation Required for Fiscal Review Committee

reason(s) a sole-source contract is in the best interest of the State.	

Health Management Systems, Inc.
Edison Contract ID: 24534
Contract #: FA1134236
Vendor #: 0000005815

CONTRACT EXPENDITURES BY FISCAL YEAR
(Payment Detail Attached)

FY 2011	$5,790,338.88	
FY 2012	$9,365,481.93	
FY 2013	$12,826,539.29	
FY 2014	$5,521,424.65	(Expenditures through December, 2013)
TOTAL	$33,503,784.75	

Health Management Systems, Inc.
Edison Contract ID: 24534
Vendor ID: 0000005815

FY 2011 Payments

Fiscal Year	Unit	Voucher ID	Invoice	Date	Sum Amount
2011	31865	00337160	35100	6/27/2011	$386,959.65
2011	31865	00337163	35552	6/27/2011	$1,073,145.04
2011	31865	00337270	36061	6/27/2011	$1,182,281.70
2011	31865	00382502	36484	9/23/2011	$816,566.15
2011	31865	00382501	36977	9/23/2011	$2,331,386.34

Total FY 2011: **$5,790,338.88**

FY 2012 Payments

Fiscal Year	Unit	Voucher ID	Invoice	Date	Sum Amount
2012	31865	00382504	37351	9/23/2011	$849,856.60
2012	31865	00416229	38114	12/8/2011	$652,900.98
2012	31865	00416225	38600	12/8/2011	$1,367,906.79
2012	31865	00485470	38962	4/11/2012	$613,187.50
2012	31865	00493151	39320	4/25/2012	$400,858.76
2012	31865	00493152	000420	4/25/2012	$890,415.58
2012	31865	00505067	000784	5/15/2012	$262,473.99
2012	31865	00505066	001142	5/15/2012	$419,701.92
2012	31865	00505071	000707	5/16/2012	$99,510.28
2012	31865	00505077	001085_RB	5/16/2012	$119,251.57
2012	31865	00512535	000362	5/23/2012	$349,709.75
2012	31865	00531171	001500	6/27/2012	$268,796.04
2012	31865	00531172	001524	6/27/2012	$975,360.05
2012	31865	00535402	002255	7/12/2012	$203,615.73
2012	31865	00535404	002332	7/12/2012	$215,037.05
2012	31865	00538780	001799	7/13/2012	$194,242.89
2012	31865	00538779	001811	7/13/2012	$226,066.79
2012	31865	00578889	002782	9/28/2012	$199,232.36
2012	31865	00578891	002815	9/28/2012	$1,057,357.30

Total FY 2012: **$9,365,481.93**

Contract Expenditures by Fiscal Year (Continued)
Health Management Systems - Edison #24534

FY 2013 Payments

Fiscal Year	Unit	Voucher ID	Invoice	Date	Sum Amount
2013	31865	00578892	003110	9/27/2012	$103,010.87
2013	31865	00578893	003236	9/27/2012	$407,863.50
2013	31865	00597213	003238_RB2	10/31/2012	$146.46
2013	31865	00597211	003238_RB1	11/2/2012	$2,427.58
2013	31865	00597243	004076	11/5/2012	$106.32
2013	31865	00606408	003507	11/20/2012	$139,761.52
2013	31865	00606415	003974	11/20/2012	$410,775.25
2013	31865	00606410	003683	11/20/2012	$473,934.36
2013	31865	00606416	004075	11/20/2012	$1,301,796.26
2013	31865	00659849	004935	3/1/2013	$1,817,004.39
2013	31865	00659853	005248	3/1/2013	$161,351.88
2013	31865	00659841	005439	3/1/2013	$1,779,563.84
2013	31865	00659886	004494	3/4/2013	$203,480.14
2013	31865	00659899	004532	3/4/2013	$208,915.43
2013	31865	00659872	004753	3/4/2013	$150,554.02
2013	31865	00691232	005440_RB	4/24/2013	$715.20
2013	31865	00691234	003237	4/25/2013	$5,443.08
2013	31865	00691289	006783	4/30/2013	$1,050.66
2013	31865	00691290	006301	4/30/2013	$2,380.44
2013	31865	00691291	006272	4/30/2013	$2,694.00
2013	31865	00707477	005816	5/22/2013	$338,859.04
2013	31865	00707478	006249	5/22/2013	$1,093,761.91
2013	31865	00707479	006649	5/23/2013	$159,320.66
2013	31865	00707480	006173	5/23/2013	$182,074.02
2013	31865	00707483	005782	5/23/2013	$268,408.00
2013	31865	00707482	006730	5/23/2013	$946,698.68
2013	31865	00722936	007084	6/21/2013	$122,419.36
2013	31865	00722937	007260	6/21/2013	$971,981.33
2013	31865	00726743	007266	6/27/2013	$20,852.50
2013	31865	00731052	007751	7/8/2013	$9,102.95
2013	31865	00738850	007606	7/19/2013	$133,373.63
2013	31865	00738851	007741	7/19/2013	$681,909.37
2013	31865	00771849	008131	9/17/2013	$8,444.34
2013	31865	00775491	007997	9/25/2013	$76,328.59
2013	31865	00775490	008130	9/25/2013	$640,029.71

Total FY 2013: **$12,826,539.29**

Contract Expenditures by Fiscal Year (Continued)
Health Management Systems - Edison #24534

FY 2014 Payments

Fiscal Year	Unit	Voucher ID	Invoice	Date	Sum Amount
2014	31865	00779404	009115	10/4/2013	$20,118.08
2014	31865	00779405	008703	10/4/2013	$34,412.72
2014	31865	00809846	008702_RB	11/27/2013	$536,420.77
2014	31865	00809848	009114	11/27/2013	$797,898.55
2014	31865	00809849	009280_RB	11/29/2013	$83,162.69
2014	31865	00809866	008639_RB	11/29/2013	$110,986.69
2014	31865	00821909	009639	12/18/2013	$4,509.47
2014	31865	00825570	010250	12/24/2013	$34,157.50
2014	31865	00828726	009426	1/6/2014	$69,079.21
2014	31865	00828728	010013	1/6/2014	$105,384.34
2014	31865	00828727	009479	1/6/2014	$530,520.93
2014	31865	00828729	010222	1/6/2014	$689,878.33
2014	31865	00844477	010758	1/30/2014	$72,312.09
2014	31865	00844455	011129_RB	2/7/2014	$32,278.77
2014	31865	00881557	011128	3/26/2014	$94,243.49
2014	31865	00881553	010601	3/26/2014	$126,896.90
2014	31865	00881555	011289	3/26/2014	$790,572.83
2014	31865	00881552	010732	3/26/2014	$1,388,591.29

Total FY 2014: **$5,521,424.65**

CONTRACT AMENDMENT

Agency Tracking #	Edison ID	Contract #	Amendment #
31865-00326	24534	FA1134236	02

Contractor Legal Entity Name	Edison Vendor ID
Health Management Systems, Inc.	0000005815

Amendment Purpose & Effect(s)

Increases maximum liability and extends term for the continued provision of Third Party Liability Recoveries. Updates Scope to delete the RAC component of the contract

Amendment Changes Contract End Date: ☒ YES ☐ NO **End Date:** **January 31, 2015**

TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A): **$ 10,000,000.00**

Funding —

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2011	$2,903,000.00	$2,903,000.00			$5,806,000.00
2012	$5,000,000.00	$5,000,000.00			$10,000,000.00
2013	$8,597,000.00	$8,597,000.00			$17,194,000.00
2014	$8,500,000.00	$8,500,000.00			$17,000,000.00
2015	$2,500,000.00	$2,500,000.00			$5,000,000.00
TOTAL:	**$27,500,000.00**	**$27,500,000.00**			**$55,000,000.00**

American Recovery and Reinvestment Act (ARRA) Funding: ☐ YES ☒ NO

Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.

Speed Chart (optional)	Account Code (optional)
TN00000177	70803000

OCR USE

Amendment Request

Route a completed request, as one file in PDF format, via e-mail attachment sent to: Agsprs.Agsprs@tn.gov

kcb

APPROVED

Michael F. Perry

5/21/14

CHIEF PROCUREMENT OFFICER — DATE

Request Tracking #	**31865-00326**
1. Procuring Agency	**Department of Finance and Administration** **Division of Health Care Finance and Administration (HCFA)**
2. Contractor	**Health Management Systems, Inc.**
3. Contract #	**FA1134236**
4. Proposed Amendment #	**3**
5. Edison ID #	**24534**

6. Contract Begin Date	**February 1, 2011**
7. Current Contract End Date *– with ALL options to extend exercised*	**January 31, 2015**
8. Proposed Contract End Date *– with ALL options to extend exercised*	**January 31, 2015**
9. Current Maximum Contract Cost *– with ALL options to extend exercised*	**$55,000,000.00**
10. Proposed Maximum Contract Cost *– with ALL options to extend exercised*	**$55,000,000.00**
11. Office for Information Resources Pre-Approval Endorsement Request *– information technology service (N/A to THDA)*	**X Not Applicable** ☐ **Attached**
12. eHealth Pre-Approval Endorsement Request *– health-related professional, pharmaceutical, laboratory, or imaging*	**X Not Applicable** ☐ **Attached**
13. Human Resources Pre-Approval Endorsement Request *– state employee training service*	**X Not Applicable** ☐ **Attached**

14. Explanation Need for the Proposed Amendment

This competitively procured contract for Third Party Liability Services is being amended to require the Contractor to pay any required court filing fees incurred for the Estate Recovery project, which shall be reimbursed by the State for actual expenses incurred. Currently, TennCare provides the checks to pay the court filing fees (warrant checks) for the Estate Recovery project, however, in an effort to reduce time to file claims, the Contract is being amended to require the Contractor to pay the court fees and be reimbursed on a monthly basis

Request Tracking #	31865-00326

per actual expenses incurred.

15. Name & Address of the Contractor's Principal Owner(s)
– NOT required for a TN state education institution

HMS Holdings Corp
401 Park Avenue South
New York, NY 10016

16. Evidence Contractor's Experience & Length Of Experience Providing the Goods or Services

Health Management Systems, Inc. (HMS) is an industry leader in designing and deploying cost containment, coordination of benefits, and improper payment audit and recovery services for government and public health programs. Since, 1985, HMS has worked with 42 state Medicaid agencies in recovery of overpayments, including the Bureau of TennCare. During the previous contract with HMS for TPL recovery services, more than $183 million in recoveries and the identification of over 264,000 commercial insurance policies resulted from the TPL and cost avoidance services provided by HMS.

17. Efforts to Identify Reasonable, Competitive, Procurement Alternatives

The Bureau of TennCare released a Request for Proposal that resulted in Health Management Systems, Inc. receiving the competitively awarded contract. This amendment only supports the optimum processes to ensure timely submission of claims.

18. Justification

This competitively procured contract with Health Management Systems, Inc. for the provision of Third Party Liability recovery services is being amended to require the Contractor to pay any required court filing fees incurred for the Estate Recovery project, which shall be reimbursed by the State for actual expenses incurred. Currently, TennCare provides the checks to pay the court filing fees (warrant checks) for the Estate Recovery project, however, in an effort to reduce time to file claims, the Contract is being amended to require the Contractor to pay the court fees and be reimbursed on a monthly basis per actual expenses incurred.

Agency Head Signature and Date *– MUST be signed by the ACTUAL agency head as detailed on the current Signature Certification. Signature by an authorized signatory is acceptable only in documented circumstances*

CONTRACT AMENDMENT

Agency Tracking #	Edison ID	Contract #	Amendment #
31865-00326	24534	FA1134236	03

Contractor Legal Entity Name	Edison Vendor ID
Health Management Systems, Inc.	0000005815

Amendment Purpose & Effect(s)
Updates Scope

Amendment Changes Contract End Date: ☐ YES ☒ NO **End Date:** **January 31, 2015**

TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A): **$ 0.00**

Funding —

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2011	$2,903,000.00	$2,903,000.00			$5,806,000.00
2012	$5,000,000.00	$5,000,000.00			$10,000,000.00
2013	$8,597,000.00	$8,597,000.00			$17,194,000.00
2014	$8,500,000.00	$8,500,000.00			$17,000,000.00
2015	$2,500,000.00	$2,500,000.00			$5,000,000.00
TOTAL:	**$27,500,000.00**	**$27,500,000.00**			**$55,000,000.00**

American Recovery and Reinvestment Act (ARRA) Funding: ☐ YES ☒ NO

Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.

Speed Chart (optional)	Account Code (optional)
TN00000177	70803000

OCR USE

AMENDMENT #3
OF CONTRACT FA1134236
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE
AND
HEALTH MANAGEMENT SYSTEMS, INC.

This Amendment is made and entered by and between the State of Tennessee, Department of Finance and Administration, Bureau of TennCare, hereinafter referred to as the "State" or "TennCare," and Health Management Systems, Inc., hereinafter referred to as the "Contractor." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

1. New Contract language is added as Section A.2.f:

   A.2.f. The Contractor shall pay any required actual court filing fees incurred for the Estate Recovery project which shall be reimbursed by the State for actual expenses incurred, per Contract Section C.3.b.

2. Contract Section C.3 b is deleted in its entirety and replaced with the following:

   C.3.b. The Contractor shall be compensated based upon the following payment rates:

Service Description	**Amount** (per compensable increment)
Contract Base Operations (A.1, A.4.b., A.6, A.16-A.19)	$0.00 per month
Third Party Liability Resource File Maintenance (A.3)	$32.00 per addition, deletion or validation
Court Filing Fees (A.2.f.	Actual Expenses Incurred

Required Approvals. The State is not bound by this Amendment 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).

Amendment Effective Date. The revisions set forth herein shall be effective August 1, 2014. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

HEALTH MANAGEMENT SYSTEMS, INC.:

SIGNATURE **DATE**

PRINTED NAME AND TITLE OF SIGNATORY (above)

DEPARTMENT OF FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE:

LARRY B. MARTIN, COMMISSIONER **DATE**

GENERAL ASSEMBLY OF THE STATE OF TENNESSEE
FISCAL REVIEW COMMITTEE

320 Sixth Avenue, North – 8th Floor
NASHVILLE, TENNESSEE 37243-0057
615-741-2564

Sen. Bill Ketron, Chairman
Senators
Douglas Henry, Reginald Tate
Brian Kelsey, Ken Yager
Steve Southerland
Randy McNally, *ex officio*
Lt. Governor Ron Ramsey, *ex officio*

Rep. Mark White, Vice-Chairman
Representatives
Jeremy Faison, Joe Pitts
Brenda Gilmore, Mark Pody
Mathew Hill, David Shepard
Pat Marsh, Tim Wirgau
Charles Sargent, *ex officio*
Speaker Beth Harwell, *ex officio*

MEMORANDUM

TO: Mike Perry, Chief Procurement Officer
Department of General Services

FROM: Senator Bill Ketron, Chairman
Representative Mark White, Vice-Chairman

DATE: January 31, 2014

SUBJECT: Contract Comments
(Fiscal Review Committee Meeting 1/27/2014)

RFS# 318.65-00326 (Edison # 24534)
Department: Finance and Administration
Division: Health Care Finance and Administration/Bureau of TennCare
Vendor: Health Management Systems, Inc.
Summary: The vendor is responsible for third party liability (TPL) recovery services in post-payment identification, audit, and recovery of improper Medicaid payments. The proposed amendment revises the scope of services; extends current contract an additional year; increases maximum liability by $10,000,000; revises payment methodology; and revises the liquidated damages attachment.
Current maximum liability: $45,000,000
Proposed maximum liability: $55,000,000

After review, the Fiscal Review Committee voted to recommend approval of the contract amendment.

cc: The Honorable Darin Gordon, Deputy Commissioner

STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE
310 Great Circle Road
NASHVILLE, TENNESSEE 37243

December 30, 2013

Lucian Geise, Director
Fiscal Review Committee
8th Floor, Rachel Jackson Bldg.
Nashville, TN 37243

Attention: Ms. Leni Chick

RE: Policy Studies, Inc. - Amendment #10 – Cover Tennessee Contract
Health Management Systems, Inc. – Amendment #2

Dear Mr. Geise:

The Department of Finance and Administration, Division of Health Care Finance and Administration (HCFA), is submitting for consideration by the Fiscal Review Committee amendment #10 to Policy Studies, Inc., the competitively procured contract for eligibility determination and application processing for the CoverKids program. This amendment requires the Contractor to build and implement a process to accept eligibility records from the State when the child has been determined eligible for CoverKids through the Federally Facilitated Marketplace (FFM). The services provided by this Contractor will be transitioning through Calendar year 2014 to the new competitively procured TennCare Eligibility Determination System (TEDS). The immediacy of this amendment required HCFA to submit a request to Fiscal Review to move forward with this amendment and then present to the full Committee at the next scheduled meeting.

Additionally, we are submitting amendment #2 to Health Management Systems, Inc., the competitively procured contract for recovery of third party liability payments. This contract is being amended to extend the term date of the Third Party Liability contract for an additional year as stipulated in the original RFP and current contract, at current established rates submitted in RFP Cost Proposal. Due to change in federal requirements regarding the Medicaid recovery audit program, this amendment also deletes the RAC component of the contract along with staffing and payment rates associated with this current function.

The Department of Finance and Administration, Division of Health Care Finance and Administration, respectfully submits the above referenced amendments for consideration and approval by the Fiscal Review Committee.

Sincerely,

Casey Dungan
Chief Financial Officer

cc: Darin J. Gordon, Deputy Commissioner
Alma Chilton, Director of Contracts

Supplemental Documentation Required for Fiscal Review Committee

*Contact Name:	Casey Dungan	*Contact Phone:	615-507-6482
*Original Contract Number:	FA1134236	*Original RFS Number:	31865-00326
Edison Contract Number: *(if applicable)*	24534	Edison RFS Number: *(if applicable)*	31865-00326
*Original Contract Begin Date:	February 1, 2011	*Current End Date:	January 31, 2014

Current Request Amendment Number: *(if applicable)*	2
Proposed Amendment Effective Date: *(if applicable)*	January 31, 2014
*Department Submitting:	Department of Finance and Administration,
*Division:	Division of Health Care Finance and Administration, Bureau of TennCare
*Date Submitted:	12/30/2013
*Submitted Within Sixty (60) days:	No
If not, explain:	This competitively procured contract is being modified to delete existing components of scope that are no longer requirements. The decisions surrounding the contract and resulting modifications to the scope between HCFA and the Contractor took longer than anticipated and delayed the submission of the document to Fiscal Review.
*Contract Vendor Name:	Health Management Systems, Inc.
*Current Maximum Liability:	$45,000,000.00

*Current Contract Allocation by Fiscal Year:
(as Shown on Most Current Fully Executed Contract Summary Sheet)

FY: 2011	**FY: 2012**	**FY: 2013**	**FY: 2014**	FY	FY
$ 5,806,000	$10,000,000	$17,194,000	$12,000,000	$	$

*Current Total Expenditures by Fiscal Year of Contract:
(attach backup documentation from STARS or FDAS report)

FY: 2011	**FY: 2012**	**FY: 2013**	**FY: 2014**	FY	FY
$ 5,790,338.88	$ 9,365,481.93	$ 12,826,539.29	**$1,587,508.97 (thru August)**	$	$

IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:	NA

Supplemental Documentation Required for Fiscal Review Committee

IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:	The contract maximum liability and FY breakout is based solely on contracted percentage of funds that are recovered for the State. There is no way to accurately predict exact amounts until recoveries are submitted to TennCare, at which point appropriate recovery percentages are paid to the contractor.
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:	NA

*Contract Funding Source/Amount:	State:	$22,500,000.00	Federal:	$22,500,000.00
Interdepartmental:			*Other*:	
If "*other*" please define:				

Dates of All Previous Amendments or Revisions: *(if applicable)*	Brief Description of Actions in Previous Amendments or Revisions: *(if applicable)*
Amendment #1 – May 1, 2013	Add funding to support TennCare recovery percentage payment to the Contractor

Method of Original Award: *(if applicable)*	Request for Proposal
*What were the projected costs of the service for the entire term of the contract prior to contract award?	The projected cost prior to contract award were unknown. The cost of the service was totally dependent upon the recoveries the Contractor made on behalf of the State. The Contract maximum liability is currently $45,000,000.00 which was a projection only. For this contract, the more the State pays the Contractor, the more funds that have been recovered on behalf of the State.

Supplemental Documentation Required for Fiscal Review Committee

For all new non-competitive contracts and any contract amendment that changes Sections A or C.3. of the original or previously amended contract document, provide estimates based on information provided the Department by the vendor for determination of contract maximum liability. Add rows as necessary to provide all information requested.

If it is determined that the question is not applicable to your contract document attach detailed explanation as to why that determination was made.

Planned expenditures by fiscal year by deliverable. Add rows as necessary to indicate all estimated contract expenditures.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.

a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.

b. The Contractor shall be compensated based upon the following payment rates:

Service Description	Amount (per compensable increment)
Contract Base Operations (A.1, A.4.b., A.6, A.16-A.19)	$0.00 per month
Third Party Liability Resource File Maintenance (A.3)	$32.00 per addition, deletion or validation

c. The Contractor shall be compensated in an amount to reflect the percentage of recoveries based upon the following percentage rates:

Service Description	Per Percentage of Recovery
Estate Recovery (A.2)	8.00 % of Collections
Subrogation (A.4.a, A.4.c)	4.00 % of Collections
Medicare Recoupments (A.5)	1.00 % of Collections
Additional Recovery Activities (A.7)	12.00 % of Collections
Credit Balance Audits (A.8)	4.00 % of Collections
Fraud and Abuse: Medicaid Recovery/Audit Activities (A.9 – A.15)	12.00% of Collections

Supplemental Documentation Required for Fiscal Review Committee

Proposed savings to be realized per fiscal year by entering into this contract. If amendment to an existing contract, please indicate the proposed savings to be realized by the amendment. Add rows as necessary to define all potential savings per deliverable. This Contractor has been in effect since February 1, 2011, and has already either recovered or saved the State millions of dollars. The purpose of this contract is to recover third party liability and improper Medicaid payment funds. Every dollar paid to the Contractor is a percentage of what the Contractor has recovered for TennCare. (refer to Section C.3.c. above)
Comparison of cost per fiscal year of obtaining this service through the proposed contract or amendment vs. other options. List other options available (including other vendors), cost of other options, and source of information for comparison of other options (e.g. catalog, Web site). Add rows as necessary to indicate price differentials between contract deliverables. This contract was procured through Request for Proposal, the State's competitive procurement process. The amendment is extending the term of the contract pursuant to the RFP and current contract and adding funds to support the recovery payments based on percentage rates submitted in Cost Proposal and reflected in Section C.3.c. (see above).

Health Management Systems, Inc.
Edison Contract ID: 24534
Contract #: FA1134236
Vendor #: 0000005815

CONTRACT EXPENDITURES BY FISCAL YEAR
(Payment Detail Attached)

FY 2011	$5,790,338.88	
FY 2012	$9,365,481.93	
FY 2013	$12,826,539.29	
FY 2014	$3,016,529.28	(Expenditures through October 31, 2013)
TOTAL	$30,998,889.38	

Health Management Systems, Inc.
Edison Contract ID: 24534
Vendor ID: 0000005815

FY 2011 Payments

Fiscal Year	Unit	Voucher ID	Invoice	Date	Sum Amount
2011	31865	00337160	35100	6/27/2011	$386,959.65
2011	31865	00337163	35552	6/27/2011	$1,073,145.04
2011	31865	00337270	36061	6/27/2011	$1,182,281.70
2011	31865	00382502	36484	9/23/2011	$816,566.15
2011	31865	00382501	36977	9/23/2011	$2,331,386.34

Total FY 2011: **$5,790,338.88**

FY 2012 Payments

Fiscal Year	Unit	Voucher ID	Invoice	Date	Sum Amount
2012	31865	00382504	37351	9/23/2011	$849,856.60
2012	31865	00416229	38114	12/8/2011	$652,900.98
2012	31865	00416225	38600	12/8/2011	$1,367,906.79
2012	31865	00485470	38962	4/11/2012	$613,187.50
2012	31865	00493151	39320	4/25/2012	$400,858.76
2012	31865	00493152	000420	4/25/2012	$890,415.58
2012	31865	00505067	000784	5/15/2012	$262,473.99
2012	31865	00505066	001142	5/15/2012	$419,701.92
2012	31865	00505071	000707	5/16/2012	$99,510.28
2012	31865	00505077	001085_RB	5/16/2012	$119,251.57
2012	31865	00512535	000362	5/23/2012	$349,709.75
2012	31865	00531171	001500	6/27/2012	$268,796.04
2012	31865	00531172	001524	6/27/2012	$975,360.05
2012	31865	00535402	002255	7/12/2012	$203,615.73
2012	31865	00535404	002332	7/12/2012	$215,037.05
2012	31865	00538780	001799	7/13/2012	$194,242.89
2012	31865	00538779	001811	7/13/2012	$226,066.79
2012	31865	00578889	002782	9/28/2012	$199,232.36
2012	31865	00578891	002815	9/28/2012	$1,057,357.30

Total FY 2012: **$9,365,481.93**

Contract Expenditures by Fiscal Year (Continued)
Health Management Systems - Edison #24534

FY 2013 Payments

Fiscal Year	Unit	Voucher ID	Invoice	Date	Sum Amount
2013	31865	00578892	003110	9/27/2012	$103,010.87
2013	31865	00578893	003236	9/27/2012	$407,863.50
2013	31865	00597213	003238_RB2	10/31/2012	$146.46
2013	31865	00597211	003238_RB1	11/2/2012	$2,427.58
2013	31865	00597243	004076	11/5/2012	$106.32
2013	31865	00606408	003507	11/20/2012	$139,761.52
2013	31865	00606415	003974	11/20/2012	$410,775.25
2013	31865	00606410	003683	11/20/2012	$473,934.36
2013	31865	00606416	004075	11/20/2012	$1,301,796.26
2013	31865	00659849	004935	3/1/2013	$1,817,004.39
2013	31865	00659853	005248	3/1/2013	$161,351.88
2013	31865	00659841	005439	3/1/2013	$1,779,563.84
2013	31865	00659886	004494	3/4/2013	$203,480.14
2013	31865	00659899	004532	3/4/2013	$208,915.43
2013	31865	00659872	004753	3/4/2013	$150,554.02
2013	31865	00691232	005440_RB	4/24/2013	$715.20
2013	31865	00691234	003237	4/25/2013	$5,443.08
2013	31865	00691289	006783	4/30/2013	$1,050.66
2013	31865	00691290	006301	4/30/2013	$2,380.44
2013	31865	00691291	006272	4/30/2013	$2,694.00
2013	31865	00707477	005816	5/22/2013	$338,859.04
2013	31865	00707478	006249	5/22/2013	$1,093,761.91
2013	31865	00707479	006649	5/23/2013	$159,320.66
2013	31865	00707480	006173	5/23/2013	$182,074.02
2013	31865	00707483	005782	5/23/2013	$268,408.00
2013	31865	00707482	006730	5/23/2013	$946,698.68
2013	31865	00722936	007084	6/21/2013	$122,419.36
2013	31865	00722937	007260	6/21/2013	$971,981.33
2013	31865	00726743	007266	6/27/2013	$20,852.50
2013	31865	00731052	007751	7/8/2013	$9,102.95
2013	31865	00738850	007606	7/19/2013	$133,373.63
2013	31865	00738851	007741	7/19/2013	$681,909.37
2013	31865	00771849	008131	9/17/2013	$8,444.34
2013	31865	00775491	007997	9/25/2013	$76,328.59
2013	31865	00775490	008130	9/25/2013	$640,029.71

Total FY 2013: **$12,826,539.29**

Contract Expenditures by Fiscal Year (Continued)
Health Management Systems - Edison #24534

FY 2014 Payments

Fiscal Year	Unit	Voucher ID	Invoice	Date	Sum Amount
2014	31865	00779404	009115	10/4/2013	$20,118.08
2014	31865	00779405	008703	10/4/2013	$34,412.72
2014	31865	00809846	008702_RB	11/27/2013	$536,420.77
2014	31865	00809848	009114	11/27/2013	$797,898.55
2014	31865	00809849	009280_RB	11/29/2013	$83,162.69
2014	31865	00809866	008639_RB	11/29/2013	$110,986.69
2014	31865	00821909	009639	12/18/2013	$4,509.47
2014	31865	00825570	010250	12/24/2013	$34,157.50
2014	31865	00828726	009426	Pending	$69,079.21
2014	31865	00828729	010222	Pending	$689,878.33
2014	31865	00828727	009479	Pending	$530,520.93
2014	31865	00828728	010013	Pending	$105,384.34

Total FY 2014: **$3,016,529.28**

cy13-2998

Non-Competitive Amendment Request

Route a completed request, as one file in PDF format, via e-mail attachment sent to: Agsprs.Agsprs@tn.gov

APPROVED

Michael F. Perry

CHIEF PROCUREMENT OFFICER

Request Tracking #	31865-00326
1. Procuring Agency	Department of Finance and Administration, Bureau of TennCare
2. Contractor	Health Management Systems, Inc.
3. Contract #	FA1134236
4. Proposed Amendment #	2
5. Edison ID #	24534
6. Contract Begin Date	February 1, 2011
7. Current Contract End Date – *with ALL options to extend exercised*	January 31, 2014
8. Proposed Contract End Date – *with ALL options to extend exercised*	January 31, 2015
9. Current Maximum Contract Cost – *with ALL options to extend exercised*	$ 45,000,000.00
10. Proposed Maximum Contract Cost – *with ALL options to extend exercised*	$ 55,000,000.00
11. Office for Information Resources Endorsement – *information technology service (N/A to THDA)*	☒ Not Applicable ☐ Attached
12. eHealth Initiative Support – *health-related professional, pharmaceutical, laboratory, or imaging*	☒ Not Applicable ☐ Attached
13. Human Resources Support – *state employee training service*	☒ Not Applicable ☐ Attached

14. Explanation Need for the Proposed Amendment

This competitively procured contract is being amended to extend the term date of the Third Party Liability contract for an additional year as stipulated in the original RFP and current contract, at current established rates submitted in RFP Cost Proposal. Due to change in federal requirements regarding the Medicaid recovery audit program, this amendment also deletes the RAC component of the contract along with staffing and payment rates associated with this current function.

15. Name & Address of the Contractor's Principal Owner(s)

Request Tracking #	31865-00326

– NOT required for a TN state education institution

HMS Holdings Corp
401 Park Avenue South
New York, NY 10016

16. Evidence Contractor's Experience & Length Of Experience Providing the Service

Health Management Systems, Inc. (HMS) is an industry leader in designing and deploying cost containment, coordination of benefits, and improper payment audit and recovery services for government and public health programs. Since, 1985, HMS has worked with 42 state Medicaid agencies in recovery of overpayments, including the Bureau of TennCare. During the previous contract with HMS for TPL recovery services, more than $183 million in recoveries and the identification of over 264,000 commercial insurance policies resulted from the TPL and cost avoidance services provided by HMS.

17. Efforts to Identify Reasonable, Competitive, Procurement Alternatives

The Bureau of TennCare released a Request for Proposal that resulted in Health Management Systems, Inc. receiving the competitively awarded contract. This term extension was included in the original Request for Proposal and resulting current contract.

18. Justification

This competitively procured contract with Health Management Systems, Inc. is for the provision of Third Party Liability recovery services. Per RFP and current contract language and associated rates, the Contractor is paid a percentage of all funds that are recovered on behalf of the state. This amendment provides continuation of services through extension of one year of two remaining years on this contract, at rates established in the RFP Cost Proposal. The Bureau of TennCare respectfully requests approval of this amendment to modify language to delete RAC requirements and extend TPL term.

Agency Head Signature and Date *– MUST be signed by the ACTUAL agency head as detailed on the current Signature Certification. Signature by an authorized signatory is acceptable only in documented exigent circumstances*

Larry B Mays

(D)

CONTRACT AMENDMENT

Agency Tracking #	Edison ID	Contract #	Amendment #
31865-00326	24534	FA1134236	02

Contractor Legal Entity Name	Edison Vendor ID
Health Management Systems, Inc.	0000005815

Amendment Purpose & Effect(s)

Increases maximum liability and extends term for the continued provision of Third Party Liability Recoveries. Updates Scope to delete the RAC component of the contract

Amendment Changes Contract End Date: ☒ YES ☐ NO **End Date:** **January 31, 2015**

TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A): **$ 10,000,000.00**

Funding —

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2011	$2,903,000.00	$2,903,000.00			$5,806,000.00
2012	$5,000,000.00	$5,000,000.00			$10,000,000.00
2013	$8,597,000.00	$8,597,000.00			$17,194,000.00
2014	$8,500,000.00	$8,500,000.00			$17,000,000.00
2015	$2,500,000.00	$2,500,000.00			$5,000,000.00
TOTAL:	**$27,500,000.00**	**$27,500,000.00**			**$55,000,000.00**

American Recovery and Reinvestment Act (ARRA) Funding: ☐ YES ☒ NO

Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.

Speed Chart (optional)	Account Code (optional)
TN00000177	70803000

OCR USE

AMENDMENT #2
OF CONTRACT FA1134236
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE
AND
HEALTH MANAGEMENT SYSTEMS, INC.

This Amendment is made and entered by and between the State of Tennessee, Department of Finance and Administration, Bureau of TennCare, hereinafter referred to as the "State" or "TennCare," and Health Management Systems, Inc., hereinafter referred to as the "Contractor." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

1. Contract Sections A.9 through A.15 are deleted in their entirety.

2. Contract Section A.16 is deleted in its entirety and replaced with the following:

   A.16. Staffing Requirements - The Contractor shall designate a minimum of one (1) full-time on-site employee to maintain permanent presence at the Bureau of TennCare office, 310 Great Circle Road, Nashville, Tennessee, for the duration of the contract. This employee's designated assignment shall be TPL Recovery Services described in Sections A.1 through A.8 above. No additional cost shall be paid to Contractor for on-site staff. All other Contractor staff required to support the contract shall be located at offices of Contractor, including at a minimum:

   a. Project Manager and designated Back-up Project Manager assigned directly to the scope of the work included in this Contract. Both persons shall possess a clear understanding of the nature and scope of work to be performed and shall be available and accessible by phone during the hours of 8:00 a.m. through 4:30 p.m. CST, Monday through Friday, excluding state-observed holidays;

   b. Key personnel, assigned to the scope of work included in this contract, with a working knowledge of the work to be performed; and

   c. Clerical and support staff with skills and appropriate training required for the successful completion of scope of work to be performed.

3. Contract Section B.1 is deleted in its entirety and replaced with the following:

   B.1. This Contract shall be effective for the period beginning February 1, 2011 and ending on January 31, 2015. The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.

4. Contract section C.1 is deleted in its entirety and replaced with the following:

   C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Fifty-Five Million Dollars ($55,000,000.00). The payment rates in section C.3 shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

   The Contractor is not entitled to be paid the maximum liability for any period under the

Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

5. Contract Section C.3 c is deleted in its entirety and replaced with the following:

   c. The Contractor shall be compensated in an amount to reflect the percentage of recoveries based upon the following percentage rates:

Service Description	Per Percentage of Recovery
Estate Recovery (A.2)	8.00 % of Collections
Subrogation (A.4.a, A.4.c)	4.00 % of Collections
Medicare Recoupments (A.5)	1.00 % of Collections
Additional Recovery Activities (A.7)	12.00 % of Collections
Credit Balance Audits (A.8)	4.00 % of Collections

6. Contract Attachment C is deleted in its entirety and replaced with Revised Attachment C.

Required Approvals. The State is not bound by this Amendment 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).

Amendment Effective Date. The revisions set forth herein shall be effective January 31, 2014. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

HEALTH MANAGEMENT SYSTEMS, INC.:

01/09/14

SIGNATURE **DATE**

Joel Portice, President, Government Division and Corporate Development and Strategy

PRINTED NAME AND TITLE OF SIGNATORY (above)

DEPARTMENT OF FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE:

Larry B. Martin/CD 1/27/2014

LARRY B. MARTIN, COMMISSIONER DATE

REVISED ATTACHMENT C

ASSESSMENT OF LIQUIDATED DAMAGES

It is acknowledged by TennCare and the Contractor that in the event of failure to meet the requirements provided in this Contract and all documents incorporated herein, TennCare will be harmed. The actual damages which TennCare will sustain in the event of and by reason of such failure is uncertain, since it is extremely difficult and impractical to ascertain and determine. The parties, therefore, acknowledge that the Contractor shall be subject to damages and/or sanctions as described below. It is further agreed that the Contractor shall pay TennCare liquidated damages as directed by TennCare and not to exceed the fixed amount as stated below; provided however, that if it is finally determined that the Contractor would have been able to meet the Contract requirements listed below but for TennCare's failure to perform as provided in this Contract, the Contractor shall not be liable for damages resulting directly therefrom.

In addition to the specific liquidated damages listed below, TennCare shall have the right to assess a general liquidated damages claim of five hundred dollars ($500) per calendar day for each day that the Contractor fails to comply with the provisions and requirements of this Contract. The damage that may be assessed shall be $500 per calendar day for each separate failure to comply with the Contract.

	PROGRAM ISSUES		**LIQUIDATED DAMAGES**
1.	Failure to provide notice of estate recovery debt obligation to the appropriate individuals, including filing such notice with the court having jurisdiction of the probate case, within thirty (30) days of receiving complete and necessary information to do so. (A.2.b)		$1000.00 per each occurrence
2.	Failure to refer court pleadings, (including exceptions to claims, notices of hearing, insolvency or proposed distribution and other documentation containing a hearing date) to the TennCare Office of General Counsel (OGC) within one (1) business day of receipt by Contractor (A.2.c)		$500 for each late delivered pleading or notice, AND $10,000 per estate when Contractor's failure results in the dismissal with prejudice of any TennCare estate recovery claim or renders TennCare's pursuit of an estate recovery claim impossible due to the running of any applicable statute of limitation.
3.	Provided Contractor has received the necessary information within nine (9) months of decedent's death, failure to refer a file to OGC within nine (9) months of the decedent's date of death when a probate case has not been opened in the county court having jurisdiction over the decedent's estate, along with all information collected by Contractor regarding deceased recipient's identified assets. If information received by Contractor after such nine (9) month period, failure to refer such file to OGC within one (1) business day of receipt by Contractor. (A.2.c)		$500 per calendar day that file is not referred to OGC beyond nine (9) months from decedent's date of death, if applicable, or, $500 per calendar day beyond one (1) business day of receipt by Contractor that such file is not referred to OGC; AND $10,000 per estate when Contractor's failure to refer a file to OGC renders TennCare's opportunity to open a probate proceeding for purposes of filing an estate recovery claim impossible due to the running of any applicable statute of limitation.

4.	Failure to submit to the Bureau of TennCare a monthly estate recovery reconciliation including monthly statistics and year-to-date statistics within fifteen (15) calendar days after the end of the month. (A.2.e)		$500.00 per each calendar day the estate recovery reconciliation is late or incomplete
5.	Failure to verify insurance coverage information by conducting data matches with insurance carriers and other entities and to develop and maintain a process to update the MMIS and validate on at least an annual basis. (A.3)		$1000 per each separate occurrence identified
6.	Failure to provide to TennCare a monthly reconciliation of the number of insurance policies added, validated, or deleted within fifteen (15) calendar days of the end of the month. (A.3)		$500 per each calendar day the reconciliation is late or incomplete.
7.	Failure to develop and maintain processes to ensure that TennCare does not pay for expenses that are obligations of the Medicare program, or recoup funds from those Medicare plans on behalf of TennCare, including prescriptions that are the obligation of a Medicare Part D plan. (A.5.)		$1000 per failure to develop or maintain a required process, AND In the event of Contractor's failure to recoup funds, TennCare may assess an LD up to the full amount the Contractor failed to recoup on TennCare's behalf
8.	Failure to provide a quarterly report of dual eligible recipients who have a paid TennCare pharmacy claim no more than ten (10) days following the end of the quarter. (A.5.a)		$500 per each calendar day the quarterly report is late or incomplete
9.	Failure to conduct an annual review of TennCare's Medicare crossover claims and submit a report that reviews a statistically valid sample of Crossover claims. This report shall be submitted to TennCare no later than December 1st of each year. (A.6)		$1000 per each calendar day the annual report is late or incomplete
	Item #10 referencing deleted Section A.13 deleted and remaining items re-numbered.		
10.	Failure to provide one (1) full-time employee located at Bureau of TennCare offices for the performance of duties associated with this contract. (A.16)		$1000 per calendar day for each day beyond the first thirty (30) business days that the required full-time employee is not present at the Bureau and performing the duties associated with this contract,
11.	Failure to develop and provide a fully operational computer system acceptable to TennCare that will meet the interface needs and requirements of the current MMIS and to provide any		$500 per calendar day until system developed and approved by TennCare $1000 per calendar day for each day computer system is not operational

	necessary interface capabilities that may be required by the current or any subsequent MMIS. (A.18)		following approval by TennCare
12.	Failure to ensure that all TennCare data containing protected health information (PHI), as defined in HIPAA, is secured through commercially reasonable methodology in compliance with HITECH, such that it is rendered unusable, unreadable and indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in the guidance issued under section 13402(h)(2) of Public Law 111-5 on the HHS Web site. (A.20)		$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 Contract, the Contractor shall be liable for all costs associated with the provision of such safeguard services.
13.	Failure to seek express written approval from TennCare, including the execution of 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 for purposes of litigation, settlement or analysis. (A.21)		$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 Contract, the Contractor shall be liable for all costs associated with the provision of such safeguard services
14.	Failure by the Contractor to prevent 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		$1000 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 Contract, the Contractor shall be liable for all costs associated with the provision of such safeguard services.

GENERAL ASSEMBLY OF THE STATE OF TENNESSEE
FISCAL REVIEW COMMITTEE

320 Sixth Avenue, North – 8th Floor
NASHVILLE, TENNESSEE 37243-0057
615-741-2564

Sen. Bill Ketron, Chairman
Senators
Douglas Henry, Reginald Tate
Brian Kelsey, Ken Yager
Steve Southerland
Randy McNally, *ex officio*
Lt. Governor Ron Ramsey, *ex officio*

Rep. Mark White, Vice-Chairman
Representatives
Charles Curtiss, Pat Marsh
Jeremy Faison, Mark Pody
Brenda Gilmore, David Shepard
Matthew Hill, Tim Wirgau
Charles Sargent, *ex officio*
Speaker Beth Harwell, *ex officio*

MEMORANDUM

TO: Jessica Robertson, Chief Procurement Officer
Department of General Services

FROM: Senator Bill Ketron, Chairman
Representative Mark White, Vice-Chairman

DATE: March 26, 2013

SUBJECT: **Contract Comments**
(Fiscal Review Committee Meeting 3/25/13)

RFS# 318.65-00326 (Edison # 24534)
Department: Finance and Administration
Division: Health Care Finance and Administration
Vendor: Health Management Systems, Inc.
Summary: The vendor currently provides third party liability recovery services and assistance to the State in post-payment identification, audit, and recovery of improper Medicaid payments. The proposed amendment increases the maximum liability by $20,000,000.
Current maximum liability: $25,000,000
Proposed maximum liability: $45,000,000

After review, the Fiscal Review Committee voted to recommend approval of the contract amendment.

cc: The Honorable Darin Gordon, Deputy Commissioner

STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE
310 Great Circle Road
NASHVILLE, TENNESSEE 37243

February 28, 2013

Lucian Geise, Director
Fiscal Review Committee
8th Floor, Rachel Jackson Bldg.
Nashville, TN 37243

Attention: Ms. Leni Chick

RE: Health Management Systems, Inc. #1
QSource – Non Competitive Contract

Dear Mr. Geise:

The Department of Finance and Administration, Division of Health Care Finance and Administration, is submitting for consideration by the Fiscal Review Committee amendment #1 to Health Management Systems, Inc. This competitively procured contract is being amended to provide additional funds sufficient to reimburse the Contractor as they carry out the obligations of this contract. Due to the higher than anticipated recovery of third party liability and Medicaid payment funds by this Contractor, the proposed amendment is needed to increase the maximum liability to provide compensation to the Contractor. Per contract Section C.3, the amount paid to this contractor is a percentage of funds recovered for the State.

Additionally, we are submitting for consideration a non competitive contract with QSource for the provision of administrative, technical assistance and training to Priority Medicaid Providers (PMPs) to implement health information technology and achieve Meaningful Use. Meaningful Use is an umbrella term for the rules and regulations that hospitals and physicians must meet in order to qualify for federal incentive funding under the American Recovery and Reinvestment Act. Qsource serves as the federally qualified quality improvement organization in Tennessee and sole provider of Regional Extension Center (REC) services assisting providers statewide with the adoption of Health Information Technology (HIT) in the State of Tennessee. Funding for this contract is 90% federally funded by the Centers for Medicare and Medicaid Services.

The Department of Finance and Administration, Division of Health Care Finance and Administration, respectfully submits the above referenced amendment and contract for consideration and approval by the Fiscal Review Committee.

Sincerely,

Casey Dungan
Chief Financial Officer

cc: Darin J. Gordon, Deputy Commissioner
Alma Chilton, Director of Contracts

Supplemental Documentation Required for Fiscal Review Committee

*Contact Name:	Casey Dungan	*Contact Phone:	615-507-6482
*Original Contract Number:	FA1134236	*Original RFS Number:	31865-00326
Edison Contract Number: *(if applicable)*	24534	Edison RFS Number: *(if applicable)*	31865-00326
*Original Contract Begin Date:	February 1, 2011	*Current End Date:	January 31, 2014
Current Request Amendment Number: *(if applicable)*		1	
Proposed Amendment Effective Date: *(if applicable)*		May 1, 2013	
*Department Submitting:		Department of Finance and Administration,	
*Division:		Division of Health Care Finance and Administration, Bureau of TennCare	
*Date Submitted:		02/28/2013	
*Submitted Within Sixty (60) days:		Yes	
If not, explain:			
*Contract Vendor Name:		Health Management Systems, Inc.	
*Current Maximum Liability:		$25,000,000.00	

*Current Contract Allocation by Fiscal Year:
(as Shown on Most Current Fully Executed Contract Summary Sheet)

FY: 2011	FY: 2012	FY: 2013	FY: 2014	FY	FY
$ 5,806,000	$10,000,000	$9,194,000	$	$	$

*Current Total Expenditures by Fiscal Year of Contract:
(attach backup documentation from STARS or FDAS report)

FY: 2011	FY: 2012	FY: 2013	FY: 2014	FY	FY
$ 5,790,338.88	$ 9,365,481.93	$ 7,160,691.82	$	$	$

IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:	NA
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:	The contract maximum liability and FY breakout is based solely on contracted percentage of funds that are recovered for the State. No way to accurately predict exact amounts until recoveries are submitted to TennCare.
IF Contract Expenditures exceeded Contract Allocation, please give the	NA

Supplemental Documentation Required for Fiscal Review Committee

reasons and explain how funding was acquired to pay the overage:				
*Contract Funding Source/Amount:	State:	$12,500,000.00	Federal:	$12,500,000.00
Interdepartmental:			*Other*:	
If "*other*" please define:				

Dates of All Previous Amendments or Revisions: (*if applicable*)	Brief Description of Actions in Previous Amendments or Revisions: (*if applicable*)
	NA

Method of Original Award: (*if applicable*)	Request for Proposal
*What were the projected costs of the service for the entire term of the contract prior to contract award?	The projected cost prior to contract award were unknown. The cost of the service was totally dependent upon the recoveries the Contractor made on behalf of the State. The Contract maximum liability is $25,000,000.00 which was a projection only. For this contract, the more the State pays the Contractor, the more funds that have been recovered on behalf of TennCare.

Supplemental Documentation Required for Fiscal Review Committee

For all new non-competitive contracts and any contract amendment that changes Sections A or C.3. of the original or previously amended contract document, provide estimates based on information provided the Department by the vendor for determination of contract maximum liability. Add rows as necessary to provide all information requested.

If it is determined that the question is not applicable to your contract document attach detailed explanation as to why that determination was made.

Planned expenditures by fiscal year by deliverable. Add rows as necessary to indicate all estimated contract expenditures.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.

a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.

b. The Contractor shall be compensated based upon the following payment rates:

Service Description	Amount (per compensable increment)
Contract Base Operations (A.1, A.4.b., A.6, A.16-A.19)	$0.00 per month
Third Party Liability Resource File Maintenance (A.3)	$32.00 per addition, deletion or validation

c. The Contractor shall be compensated in an amount to reflect the percentage of recoveries based upon the following percentage rates:

Service Description	Per Percentage of Recovery
Estate Recovery (A.2)	8.00 % of Collections
Subrogation (A.4.a, A.4.c)	4.00 % of Collections
Medicare Recoupments (A.5)	1.00 % of Collections
Additional Recovery Activities (A.7)	12.00 % of Collections
Credit Balance Audits (A.8)	4.00 % of Collections
Fraud and Abuse: Medicaid Recovery/Audit Activities (A.9 – A.15)	12.00% of Collections

Supplemental Documentation Required for Fiscal Review Committee

Proposed savings to be realized per fiscal year by entering into this contract. If amendment to an existing contract, please indicate the proposed savings to be realized by the amendment. Add rows as necessary to define all potential savings per deliverable. This Contractor has been in effect since February 1, 2011, and has already either recovered or saved the State millions of dollars. The whole purpose of this contract is to recover third party liability and improper Medicaid payment funds. Every dollar paid to the Contractor is a percentage of what the Contractor has recovered for TennCare. (refer to Section C.3.c. above)
Comparison of cost per fiscal year of obtaining this service through the proposed contract or amendment vs. other options. List other options available (including other vendors), cost of other options, and source of information for comparison of other options (e.g. catalog, Web site). Add rows as necessary to indicate price differentials between contract deliverables. This contract was procured through Request for Proposal, the State's competitive procurement process. The amendment is adding funds to support the recovery payments based on percentage rates submitted in Cost Proposal and reflected in Section C.3.c. (see above)

Payments Against a Contract

Health Management Systems, Inc.
Edison Contract ID: 24534
Contract #: FA1134236
Vendor #: 0000005815

(Payment Detail Attached)

FY 2011	$	5,790,338.88	
FY 2012	$	9,365,481.93	
FY 2013	$	7,160,691.82	(Expenditures through first 6 months of FY13)
TOTAL	$	22,316,512.63	

FY 2011 Payments

Fiscal Year	Unit	Voucher ID	Invoice	Date	Sum Amount
2011	31865	00337160	35100	6/27/2011	$386,959.65
2011	31865	00337163	35552	6/27/2011	$1,073,145.04
2011	31865	00337270	36061	6/27/2011	$1,182,281.70
2011	31865	00382502	36484	9/23/2011	$816,566.15
2011	31865	00382501	36977	9/23/2011	$2,331,386.34

Total FY 2011: **$5,790,338.88**

FY 2012 Payments

Fiscal Year	Unit	Voucher ID	Invoice	Date	Sum Amount
2012	31865	00382504	37351	9/23/2011	$849,856.60
2012	31865	00416229	38114	12/8/2011	$652,900.98
2012	31865	00416225	38600	12/8/2011	$1,367,906.79
2012	31865	00485470	38962	4/11/2012	$613,187.50
2012	31865	00493151	39320	4/25/2012	$400,858.76
2012	31865	00493152	000420	4/25/2012	$890,415.58
2012	31865	00505067	000784	5/15/2012	$262,473.99
2012	31865	00505066	001142	5/15/2012	$419,701.92
2012	31865	00505071	000707	5/16/2012	$99,510.28
2012	31865	00505077	001085_RB	5/16/2012	$119,251.57
2012	31865	00512535	000362	5/23/2012	$349,709.75
2012	31865	00531171	001500	6/27/2012	$268,796.04
2012	31865	00531172	001524	6/27/2012	$975,360.05
2012	31865	00535402	002255	7/12/2012	$203,615.73
2012	31865	00535404	002332	7/12/2012	$215,037.05
2012	31865	00538780	001799	7/13/2012	$194,242.89
2012	31865	00538779	001811	7/13/2012	$226,066.79
2012	31865	00578889	002782	9/28/2012	$199,232.36
2012	31865	00578891	002815	9/28/2012	$1,057,357.30

Total FY 2012: **$9,365,481.93**

FY 2013 Payments

Fiscal Year	Unit	Voucher ID	Invoice	Date	Sum Amount
2013	31865	00578892	003110	9/27/2012	$103,010.87
2013	31865	00578893	003236	9/27/2012	$407,863.50
2013	31865	00597213	003238_RB2	10/31/2012	$146.46
2013	31865	00597211	003238_RB1	11/2/2012	$2,427.58
2013	31865	00597243	004076	11/5/2012	$106.32
2013	31865	00606408	003507	11/20/2012	$139,761.52
2013	31865	00606415	003974	11/20/2012	$410,775.25
2013	31865	00606410	003683	11/20/2012	$473,934.36
2013	31865	00606416	004075	11/20/2012	$1,301,796.26
2013	31865	00659886	004494	Pending	$203,480.14
2013	31865	00659899	004532	Pending	$208,915.43
2013	31865	00659872	004753	Pending	$150,554.02
2013	31865	00659849	004935	Pending	$1,817,004.39
2013	31865	00659853	005248	Pending	$161,351.88
2013	31865	00659841	005439	Pending	$1,779,563.84

Total FY 2013: **$7,160,691.82**

Non-Competitive Amendment Request

NOT required for a contract with a federal, Tennessee, or Tennessee local government entity or a grant.
Route a completed request, as one file in PDF format, via e-mail attachment sent to: Agsprs.Agsprs@state.tn.us

APPROVED
CHIEF PROCUREMENT OFFICER

Request Tracking #	31865-00326
1. Procuring Agency	Department of Finance and Administration, Bureau of TennCare
2. Contractor	Health Management Systems, Inc.
3. Contract #	FA1134236
4. Proposed Amendment #	01
5. Edison ID #	24534

6. Contract Begin Date	February 1, 2011
7. Current Contract End Date *– with ALL options to extend exercised*	January 31, 2014
8. Proposed Contract End Date *– with ALL options to extend exercised*	January 31, 2014
9. Current Maximum Contract Cost *– with ALL options to extend exercised*	$ 25,000,000.00
10. Proposed Maximum Contract Cost *– with ALL options to extend exercised*	$ 45,000,000.00
11. Office for Information Resources Endorsement *– information technology service (N/A to THDA)*	☒ Not Applicable ☐ Attached
12. eHealth Initiative Support *– health-related professional, pharmaceutical, laboratory, or imaging*	☒ Not Applicable ☐ Attached
13. Human Resources Support *– state employee training service*	☒ Not Applicable ☐ Attached

14. Explanation Need for the Proposed Amendment

This competitively procured contract is being amended to provide additional funds in the amount of $20,000,000.00 in order to have sufficient funds to carry out the obligations of this contract. Due to the higher than anticipated recovery of third party liability and Medicaid payment funds by this Contractor, the proposed amendment is needed to increase the maximum liability to provide compensation to the Contractor. Per contract Section C.3, the amount paid to this contractor is a percentage of funds recovered for the State.

15. Name & Address of the Contractor's Principal Owner(s)

Request Tracking #	31865-00326

– NOT required for a TN state education institution

HMS Holdings Corp
401 Park Avenue South
New York, NY 10016

16. Evidence Contractor's Experience & Length Of Experience Providing the Service

Health Management Systems, Inc. (HMS) is an industry leader in designing and deploying cost containment, coordination of benefits, and improper payment audit and recovery services for government and public health programs. Since, 1985, HMS has worked with 42 state Medicaid agencies in recovery of overpayments, including the Bureau of TennCare. During the previous contract with HMS for TPL recovery services, more than $183 million in recoveries and the identification of over 264,000 commercial insurance policies resulted from the TPL and cost avoidance services provided by HMS. In addition, HMS has met all requirements of this current contract for Medicaid Recovery Audit Contractors (RAC) set forth in The Patient Protection and Affordable Care Act.

17. Efforts to Identify Reasonable, Competitive, Procurement Alternatives

The Bureau of TennCare released a Request for Proposal that resulted in Health Management Systems, Inc. receiving the competitively awarded contract. This contract has had no changes to the scope of service. TennCare is proposing an amendment to provide necessary funding to support the services of the contractor as dictated by language in the original Request for Proposal and resulting contract.

18. Justification *– specifically explain why non-competitive negotiation is in the best interest of the state*

This competitively procured contract with Health Management Systems, Inc. is for the provision of Third Party Liability recovery services and assistance to the State in post-payment identification, audit, and recovery of improper Medicaid payment through reviewing MMIS claims and encounters. The Contractor is paid a percentage of funds that are recovered. Based on recoveries and payments made to the Contractor, the contract is projected to be without sufficient funds before the end of the contract term. Therefore, an amendment to this competitively procured contract is needed to add necessary funds to support the services of the contractor. The Bureau of TennCare respectively requests approval of this amendment request.

Agency Head Signature and Date *– MUST be signed by the ACTUAL agency head as detailed on the current Signature Certification. Signature by an authorized signatory is acceptable only in documented exigent circumstances*

Mark C. Emler 2/27/13

CD

CONTRACT AMENDMENT

Agency Tracking #	Edison ID	Contract #	Amendment #
31865-00326	24534	FA1134236	01

Contractor Legal Entity Name	Edison Vendor ID
Health Management Systems, Inc.	0000005815

Amendment Purpose & Effect(s)

Increases maximum liability for the continued provision of Third Party Liability Recoveries and Improper Medicaid Payment Audit and Recovery

Amendment Changes Contract End Date: ☐ YES ☒ NO **End Date:** **January 31, 2014**

TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A): **$ 20,000,000.00**

Funding —

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2011	$2,903,000.00	$2,903,000.00			$5,806,000.00
2012	$5,000,000.00	$5,000,000.00			$10,000,000.00
2013	$8,597,000.00	$8,597,000.00			$17,194,000.00
2014	$6,000,000.00	$6,000,000.00			$12,000,000.00
TOTAL:	**$22,500,000.00**	**$22,500,000.00**			**$45,000,000.00**

American Recovery and Reinvestment Act (ARRA) Funding: ☐ YES ☒ NO

Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.

OCR USE

Speed Chart (optional)	Account Code (optional)
TN00000177	70803000

AMENDMENT #1
OF CONTRACT FA1134236
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE
AND
HEALTH MANAGEMENT SYSTEMS, INC.

This Amendment is made and entered by and between the State of Tennessee, Department of Finance and Administration, Bureau of TennCare, hereinafter referred to as the "State" or "TennCare," and Health Management Systems, Inc., hereinafter referred to as the "Contractor." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

1. Contract section C.1 is deleted in its entirety and replaced with the following:

   C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Forty-Five Million Dollars ($45,000,000.00). The payment rates in section C.3 shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

   The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

Required Approvals. The State is not bound by this Amendment 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).

Amendment Effective Date. The revisions set forth herein shall be effective May 1, 2013. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

HEALTH MANAGEMENT SYSTEMS, INC.:

Maria Perrin 4/8/13

SIGNATURE **DATE**

Maria Perrin

PRINTED NAME AND TITLE OF SIGNATORY (above)

DEPARTMENT OF FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE:

Mark A. Emkes 4/8/2013

MARK A. EMKES, COMMISSIONER DATE

FUNDING REVISION

CONTRACT

(fee-for-service contract with an individual, business, non-profit, or governmental entity of another state)

Begin Date	End Date	Agency Tracking #	Edison Record ID
February 1, 2011	January 31, 2014	31865-00326	24534

Contractor Legal Entity Name	Edison Vendor ID
Health Management Systems, Inc.	0000005815

Service Caption (one line only)

Funding Revision: Moving $2,860,000.00 from FY '14 FY '13

Subrecipient or Vendor	CFDA #
☐ Subrecipient ☒ Vendor	

Funding —

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2011	$2,903,000.00	$2,903,000.00			$5,806,000.00
2012	$5,000,000.00	$5,000,000.00			$10,000,000.00
2013	$4,597,000.00	$4,597,000.00			$9,194,000.00
2014	$0.00	$0.00			$0.00
TOTAL:	**$12,500,000.00**	**$12,500,000.00**			**$25,000,000.00**

American Recovery and Reinvestment Act (ARRA) Funding: ☐ **YES** ☒ **NO**

Ownership/Control

☐ African American ☐ Asian ☐ Hispanic ☐ Native American ☐ Female
☐ Person w/Disability ☐ Small Business ☐ Government ☒ NOT Minority/Disadvantaged
☐ Other:

Selection Method & Process Summary (mark the correct response to confirm the associated summary)

☒ RFP	The procurement process was completed in accordance with the approved RFP document and associated regulations.
☐ Competitive Negotiation	The predefined, competitive, impartial, negotiation process was completed in accordance with the associated, approved procedures and evaluation criteria.
☐ Alternative Competitive Method	The predefined, competitive, impartial, procurement process was completed in accordance with the associated, approved procedures and evaluation criteria.
☐ Non-Competitive Negotiation	The non-competitive contractor selection was completed as approved, and the procurement process included a negotiation of best possible terms & price.
☐ Other	The contractor selection was directed by law, court order, settlement agreement, or resulted from the state making the same agreement with all interested parties or all parties in a predetermined "class."

Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.

Speed Chart (optional)	Account Code (optional)
TN00000177	70803000

OCR USE - FA

FA1134236

FUNDING REVISION

CONTRACT
(fee-for-service contract with an individual, business, non-profit, or governmental entity of another state)

Begin Date	End Date	Agency Tracking #	Edison Record ID
February 1, 2011	January 31, 2014	31865-00326	24534

Contractor Legal Entity Name	Edison Vendor ID
Health Management Systems, Inc.	0000005815

Subrecipient or Vendor	CFDA #	FEIN or SSN (optional)
☐ Subrecipient ☒ Vendor	93.778 Dept of Health & Human Services/Title XIX	132770433

Service Caption (one line only)

Funding Revision: Moving $1,000,000.00 from FY '13 and $2,000,000.00 from FY '14 to FY '12

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2011	$2,903,000.00	$2,903,000.00			$5,806,000.00
2012	$5,000,000.00	$5,000,000.00			$10,000,000.00
2013	$3,167,000.00	$3,167,000.00			$6,334,000.00
2014	$1,430,000.00	$1,430,000.00			$2,860,000.00
TOTAL:	**$12,500,000.00**	**$12,500,000.00**			**$25,000,000.00**

American Recovery and Reinvestment Act (ARRA) Funding: ☐ YES ☒ NO

Ownership/Control

☐ African American ☐ Asian ☐ Hispanic ☐ Native American ☐ Female
☐ Person w/Disability ☐ Small Business ☐ Government ☒ NOT Minority/Disadvantaged
☐ Other:

Selection Method & Process Summary (mark the correct response to confirm the associated summary)

☒ RFP	The procurement process was completed in accordance with the approved RFP document and associated regulations.
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☐ Other	The contractor selection was directed by law, court order, settlement agreement, or resulted from the state making the same agreement with all interested parties or all parties in a predetermined "class."

Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.

Speed Code	Account Code
TN00000177	70803000

OCR USE – FA

FA1134236

FUNDING REVISION

CONTRACT

(fee-for-service contract with an individual, business, non-profit, or governmental entity of another state)

Begin Date	End Date	Agency Tracking #	Edison Record ID
February 1, 2011	January 31, 2014	31865-00326	24534

Contractor Legal Entity Name	Edison Vendor ID
Health Management Systems, Inc.	0000005815

Subrecipient or Vendor	CFDA #	FEIN or SSN (optional)
☐ Subrecipient ☒ Vendor	93.778 Dept of Health & Human Services/Title XIX	132770433

Service Caption (one line only)

Funding Revision: $1,334,000.00 moved from FY '12 and $1,000,000.00 from FY '13 to FY '11

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2011	$2,903,000.00	$2,903,000.00			$5,806,000.00
2012	$3,500,000.00	$3,500,000.00			$7,000,000.00
2013	$3,667,000.00	$3,667,000.00			$7,334,000.00
2014	$2,430,000.00	$2,430,000.00			$4,860,000.00
TOTAL:	**$12,500,000.00**	**$12,500,000.00**			**$25,000,000.00**

American Recovery and Reinvestment Act (ARRA) Funding: ☐ YES ☒ NO

Ownership/Control

☐ African American ☐ Asian ☐ Hispanic ☐ Native American ☐ Female

☐ Person w/Disability ☐ Small Business ☐ Government ☒ NOT Minority/Disadvantaged

☐ Other:

Selection Method & Process Summary (mark the correct response to confirm the associated summary)

☒ RFP	The procurement process was completed in accordance with the approved RFP document and associated regulations.
☐ Competitive Negotiation	The predefined, competitive, impartial, negotiation process was completed in accordance with the associated, approved procedures and evaluation criteria.
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☐ Non-Competitive Negotiation	The non-competitive contractor selection was completed as approved, and the procurement process included a negotiation of best possible terms & price.
☐ Other	The contractor selection was directed by law, court order, settlement agreement, or resulted from the state making the same agreement with all interested parties or all parties in a predetermined "class."

Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.

Speed Code	Account Code
TN00000177	70803000

OCR USE – FA

FA1134236

CONTRACT

(fee-for-service contract with an individual, business, non-profit, or governmental entity of another state)

Begin Date	End Date	Agency Tracking #	Edison Record ID
February 1, 2011	January 31, 2014	31865-00326	24534

Contractor Legal Entity Name	Edison Vendor ID
Health Management Systems, Inc.	0000005815

Subrecipient or Vendor	CFDA #	FEIN or SSN (optional)
☐ Subrecipient ☒ Vendor	93.778 Dept of Health & Human Services/Title XIX	132770433

Service Caption (one line only)

Third Party Liability Recoveries and Improper Medicaid Payment Audit and Recovery

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2011	$1,736,000.00	$1,736,000.00			$3,472,000.00
2012	$4,167,000.00	$4,167,000.00			$8,334,000.00
2013	$4,167,000.00	$4,167,000.00			$8,334,000.00
2014	$2,430,000.00	$2,430,000.00			$4,860,000.00
TOTAL:	**$12,500,000.00**	**$12,500,000.00**			**$25,000,000.00**

American Recovery and Reinvestment Act (ARRA) Funding: ☐ YES ☒ NO

Ownership/Control

☐ African American ☐ Asian ☐ Hispanic ☐ Native American ☐ Female

☐ Person w/Disability ☐ Small Business ☐ Government ☒ NOT Minority/Disadvantaged

☐ Other:

Selection Method & Process Summary (mark the correct response to confirm the associated summary)

☒ RFP	The procurement process was completed in accordance with the approved RFP document and associated regulations.
☐ Competitive Negotiation	The predefined, competitive, impartial, negotiation process was completed in accordance with the associated, approved procedures and evaluation criteria.
☐ Alternative Competitive Method	The predefined, competitive, impartial, procurement process was completed in accordance with the associated, approved procedures and evaluation criteria.
☐ Non-Competitive Negotiation	The non-competitive contractor selection was completed as approved, and the procurement process included a negotiation of best possible terms & price.
☐ Other	The contractor selection was directed by law, court order, settlement agreement, or resulted from the state making the same agreement with all interested parties or all parties in a predetermined "class."

Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.

Speed Code	Account Code
TN00000177	70803000

Secured Document

FA1134236

CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION,
BUREAU OF TENNCARE
AND
HEALTH MANAGEMENT SYSTEMS, INC.

This Contract, by and between the State of Tennessee, Department of Finance and Administration, Bureau of TennCare, hereinafter referred to as the "State" or "TennCare" and Health Management Systems, Inc., hereinafter referred to as the "Contractor," is for the provision of Third Party Liability Recoveries (TPL Recoveries) and Improper Medicaid Payment Audit and Recovery of Medicaid Management Information Systems (MMIS) as further defined in the "SCOPE OF SERVICES."

The Contractor is a for-profit corporation.
Contractor Federal Employer Identification, Social Security, or Edison Registration ID # : 132770433
Contractor Place of Incorporation or Organization: New York

A. SCOPE OF SERVICES

A.1. The Contractor shall provide all service and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Contract. (Applicable Definitions of this Contract located in Attachment A).

THIRD PARTY LIABILITY RECOVERY SERVICES

A.2. Estate Recovery - The State of Tennessee is required by federal and state law to seek recovery for any funds expended by TennCare (Medicaid), up to the total amount paid by TennCare (Medicaid), on behalf of individuals age 55 and older who have received Long Term Care Services provided by the State, as well as individuals of any age who have been determined "permanently institutionalized". The Contractor shall:

a) Identify deceased recipients who died owning assets and meet estate recovery requirements;

b) Operate an Estate Recovery Service Center. The Contractor shall operate a toll-free phone number and provide forms on the Bureau's website to assist individuals in determining whether there is an estate recovery obligation. A release form shall be granted by the Contractor to individuals who do not have an estate recovery obligation. A statement of exemption shall be granted to individuals who meet the Bureau's exemption requirements. A notice of obligation shall be issued to individuals who have an estate recovery debt. The notice of obligation shall include a summary accounting of the services and dates of service which constitute the obligation. All releases, exemptions, or notices of obligations shall be issued within thirty (30) days of receiving complete and necessary information.The Contractor shall not issue a release for any amount less than the full estate recovery obligation;

c) Calculate and collect estate recovery obligations. The Contractor shall perform estate recovery services under guidelines established by TennCare. This Contract does not authorize the Contractor to perform any legal services on behalf of the State, and the Contractor is hereby specifically prohibited from doing so. For any estate recovery cases the Contractor is not permitted to handle pursuant to TennCare's guidelines because legal representation is required to protect TennCare's interests, the Contractor shall provide to the TennCare Office of General Counsel (OGC) its complete estate recovery file for such case, along with all pleadings, notices of hearing, insolvency or distribution, and other related court papers within one (1) business day of receipt by Contractor, In cases where assets are identified and the Contractor has determined that the decedent's family or other interested parties have not opened a probate estate, the Contractor shall refer such cases to TennCare for further action within nine (9) months of the decedent's date of death, or if not received by

Contractor by this deadline, the Contractor shall refer such cases to OGC within one (1) business day of receipt by the Contractor. Time is of the essence in Contractor's delivery of all cases required to be referred to OGC under this Contract or the separate guidelines established by TennCare. Contractor acknowledges this and understands this is necessary to provide OGC with adequate advance notice of court hearings, to prevent the dismissal with prejudice of TennCare estate recovery claims, and to facilitate the Bureau's pursuit of estate recovery claims prior to the running of any applicable statute of limitation.

d) Deposit all Estate recovery collections into an approved lockbox at an approved banking institution, and

e) Submit to the Bureau of TennCare a monthly reconciliation within ten (10) calendar days after the end of a month. The reconciliation shall include monthly statistics and year-to-date statistics for the following items:

(1) Number of Requests for Release;
(2) Number of Releases granted;
(3) Number of Exemption requests;
(4) Number of Exemption requests granted;
(5) Number of Notices of Obligation generated;
(6) Total dollar amount of Notices of Obligation generated;
(7) Collections deposited to the lockbox;
(8) Average processing time to generate response;
(9) Number of requests that exceed thirty (30) day processing time, and
(10) A reconciliation of the daily lockbox deposits.

A.3. Third Party Liability (TPL) Insurance Resource File Maintenance - Cost avoidance and "pay and chase" activities for medical services are the contractual responsibility of TennCare's Managed Care Organizations (MCOs); however, TennCare works to provide the MCOs with assistance in verifying TPL. The Contractor shall verify insurance coverage information for the Bureau of TennCare-eligible recipient population by conducting data matches with insurance carriers and other entities and develop and maintain a process to update the Medicaid Management Information System (MMIS). Each record on the TPL resource file shall be validated on at least an annual basis. Insurance policies that are considered void or suspect shall be removed from the TPL resource file. A monthly reconciliation of the number of policies added, validated, or deleted shall be submitted to the Bureau within ten (10) calendar days of the end of the month.

A.4. Subrogation - The Contractor shall develop a plan to identify subrogation recovery claims and establish a process to:

a) Pursue recovery of identified pharmacy and dental claims;

b) Notify TennCare managed care organizations of possible subrogation claims based upon data mining activities, and

c) Provide the Bureau of TennCare with a toll free number and website information to assist with the subrogation process.

d) Develop a plan to identify and recover claims paid by TennCare (Medicaid) that were the result of an injury caused by the negligence of a third party where an insurance company or any other responsible party has paid damages to the enrollee.

A.5. Medicare Coordination of Benefits - The Contractor shall develop and maintain processes to ensure that the TennCare program does not pay for expenses that are obligations of the Medicare program. The Contractor shall recoup funds from Medicare and associated Medicare plans on behalf of TennCare and notify TennCare of Medicare recovery activities including:

a) Reviewing TennCare pharmacy data to determine whether TennCare paid for prescriptions that are the obligation of a Medicare Part D drug plan. The Contractor shall recoup funds from Medicare Part D plans on behalf of TennCare. A quarterly report of dual eligible recipients who have a paid TennCare pharmacy claim shall be remitted to TennCare no more than 10 (ten) days following the end of a quarter.

b) Reviewing TennCare eligibility data to identify TennCare enrollees who are over age 65, end-stage renal disease, or otherwise eligible but are not enrolled in Medicare. The Contractor shall develop an annual Outreach program to contact and assist members in gaining Medicare enrollment when possible. An annual report of the number of members contacted and the number of members who have gained Medicare enrollment through the annual Outreach effort shall be submitted to TennCare.

A.6. The Contractor shall conduct an annual review of TennCare's Medicare crossover claims and shall produce a report that reviews a statistically valid sample of Crossover claims. The annual review shall examine compliance with established Crossover claims policies, procedures, and rates and shall focus on a state fiscal year (July through June). The review shall result in a compliance report to be issued no later than December 1st of each year.

A.7. The Contractor shall perform additional recovery projects as requested and approved by TennCare to recover funds where other insurance coverage is available, including but not limited to hospitalization, major medical, or incidental policies as determined and requested by TennCare.

A.8. Credit Balance Audits - The Contractor shall have the capability of identifying and recovering overpayments from providers via on-site audits and desk reviews. Credit Balance audits shall be conducted only on providers that have been approved by TennCare.

IMPROPER MEDICAID PAYMENT AUDIT AND RECOVERY MMIS SERVICES

A.9. The Contractor shall assist the State in post-payment identification, audit, and recovery of improper Medicaid payment through reviewing MMIS claims and encounters, The Contractor shall maintain up-to-date knowledge of Federal and State laws as well as TennCare policy related to the scope of improper Medicaid payment. Further, the Contractor shall assist the State with the mandate to implement the Medicaid Recovery Audit Contractor (RAC) program as required by the Patient Protection and Affordable Care Act. The Contractor shall be required to conform to federal requirements of the RAC program once issued by CMS.

A.10. The Contractor's operation in improper Medicaid payment audit and recovery shall not in any way impact the State's normal business operations. The Contractor shall not contact TennCare recipients for improper payment review-related matters without the State's approval. Further, the State reserves the right to direct the Contractor to cease pursuit of an audit or recovery at any time. Although the Contractor may target high dollar improper payments to maximize its contingency fee, the Contractor is also expected to review all vulnerable areas of improper Medicaid payment and take directions from the State to pursue other improper payment areas where the recovery potentials may be limited.

A.11. The Contractor will be provided with MMIS data incurred three (3) years prior to the contract date as well as MMIS data incurred during the contracting period. The State will reserve the right to direct the Contractor to use other data sources to aid improper payment identifications.

A.12. The Contractor shall have a reporting plan which details the Contractor's processes and procedures to ensure the deliveries of routine weekly, monthly, quarterly, and annual activity reports related to Improper Medicaid Payment Audit and Recovery.

A.13. Assist in Identification of Improper Medicaid Payment – The Contractor shall assist the State in post-payment identification through reviewing MMIS data. The State shall have all rights to use, disclose, or duplicate, for any purpose whatsoever, all data mining criteria, algorithms, computer routines, reports, and analyses developed, derived, documented, or furnished by the Contractor as the result of this contract. In assisting in improper Medicaid payment identification, at minimum, the Contractor shall deliver:

a. A quarterly assessment meeting with the State to evaluate the effectiveness and deficiencies of the Identification Work Plan and a formulation of any revisions and amendments to the plan as necessary to ensure the delivery of the scope of identification services of improper Medicaid payment. The work plan shall describe the Contractor's approaches on effectively generating identifications of suspected improper payment and the Contractor's strategies to address the thoroughness and accuracy of identifications. The work plan shall demonstrate the Contractor's general and specialized understanding to MMIS data and TennCare's services delivery mechanism. In particular, the work plan shall include specific timelines and measurable deliverables related to A.13;

b. An inventory of data mining criteria and computer algorithms, statistical instruments, and automated computer routines to add post-payment reviews of MMIS data. The Contractor is expected to deliver, at minimum, two (2) new data mining routines each quarter, with the initial delivery two (2) months after the contract start date;

c. Routine activities of random or targeted desk reviews on MMIS claims and encounters in vulnerable billing and servicing areas;

d. Generalized and targeted identifications in terms of questionable billings based on billing policies and medical guidelines as well as questionable billing patterns based on risk-adjusted peer analyses. The initial delivery of identifications is expected three (3) months after the contract is signed. The Contractor shall maintain a monthly Suspect Improper Payment Identification report that summarizes the activities of improper payment identification, including area of identifications, method of identification, period and volume of MMIS data reviewed, numbers of questionable claims identified, total payment in question, and suggestions on follow-up actions;

e. As directed by the State and on as-needed basis, targeted data reviews and identifications that are not in the Contractor's work plan; and

f. Recommendations to the State on potential reporting and data quality issues that reduce the effectiveness of improper payment identifications.

A.14. Assist in Audit of Improper Medicaid Payment – The Contractor shall assist the State in post-payment audit of suspected improper payment. In assisting in improper Medicaid payment audit, at minimum, the Contractor shall deliver:

a. A quarterly assessment meeting with the State to evaluate the effectiveness and deficiencies of the Audit Work Plan and A formulation of any revisions and amendments to the Plan as necessary to ensure the delivery of the scope of audit services of improper Medicaid payment. The plan shall describe audit standards to be used, desk and field auditing approaches, peer or professional review approaches, capacity of audits typically handled by the Contractor during a specific time frame, and templates of typical audit reports. The audit plan shall include operating procedures on conducting provider audit entrance and exit conferences, and procedures related to case tracking, reporting, and record retention. The audit plan shall also address the Contractor's commitment to complete all audits that may be ongoing and extend past the Contract's expiration and/or termination date;

b. Routine activities of desk and/or field audits of providers upon the approval of the State;

c. Routine recommendations and justifications of providers to be audited; detailed audit plans on each provider to be audited;

d. A routine audit tracking instrument to track and report volume, category, reason, potential exposure of improper payment, status, finding, and disposition of new, open, and closed audits, and audit documents monthly, quarterly, and annually;

e. Routine entrance and exit conferences with providers for each approved audit; minutes or summary reports of these conferences;

f. Communications of audit finding and reports both to providers and the State; recommendations on resolutions of audit disputes;

g. As directed by the State and on as-needed basis, targeted provider reviews that are not in the Contractor's audit plan; and

h. Recommendations to the State on potential reporting and data quality issues that affect the outcomes of the audits.

A.15. Assist in Recovery of Improper Medicaid Payment -- The Contractor shall assist the State in post-payment recovery of suspected improper payment. In assisting in recovery of improper Medicaid payment, at minimum, the Contractor shall deliver:

a. A quarterly assessment meeting with the State to evaluate the effectiveness and deficiencies of the Recovery Work Plan and a formulation of any revisions and amendments to the plan as necessary to ensure the delivery of the scope of recovery services of improper Medicaid payment. The plan shall describe the Contractor's approaches and guidelines in assisting the State with its recovery of improper Medicaid payments. The Contractor must use accepted and valid accounting, analytical, statistical, or peer-review methods, or combinations thereof to make the determination of improper payment. Therefore, the plan shall describe the contractor's principle and methodologies to be considered in making determinations of magnitude of improper payment. The plan shall also include specifics to address the Contractor's ability and approaches to provide expert witness supports at the State's administrative hearing and/or in court;

b. Routine recommendations of improper payment recoveries along with improper payment recovery plans and communication packages to providers;

c. Routine recovery tracking instrument to track and report volume, category, status, ongoing activities and documentations, and outcome of each recovery case monthly, quarterly, and annually;

d. Affirmative support to the State on recovery, adjudication, and appeals that are related to the Contractor's audit findings, such as providing written or expert testimonies at administrative hearing or in court;

e. Monthly legal status reports on all recovery cases with appeal or legal proceedings that are related to the Contractor's audit findings; and

f. Recommendations to the State on process improvement opportunities where recoveries are frequently uncollectable, appealed, and/or overturned.

A.16. Staffing Requirements - The Contractor shall designate a minimum of three (3) full-time on-site employees to maintain permanent presence at the Bureau of TennCare office, 310 Great Circle Road, Nashville, Tennessee, for the duration of the contract. These employees' designated assignment shall be TPL Recovery Services described in Sections A.1 through A.7 above (one employee), Improper Medicaid Payment Identification (Data Analyst) and Improper Payment

Audit (an auditor with medical, billing coding expertise). No additional cost shall be paid to Contractor for on-site staff. All other Contractor staff required to support the contract shall be located at offices of Contractor, including at a minimum:

a. Project Manager and designated Back-up Project Manager assigned directly to the scope of the work included in this Contract. Both persons shall possess a clear understanding of the nature and scope of work to be performed and shall be available and accessible by phone during the hours of 8:00 a.m. through 4:30 p.m. CST, Monday through Friday, excluding state-observed holidays;

b. Key personnel, assigned to the scope of work included in this contract, with a working knowledge of the work to be performed; and

c. Clerical and support staff with skills and appropriate training required for the successful completion of scope of work to be performed.

A.17. The Contractor shall be responsible for any expenses incurred pursuant to implementation activities associated with the Contract and shall be responsible for any expenses incurred for changes to the MMIS required by the Contractor including, but not limited to, file layout changes and/or data upload interfaces.

A.18. Computer Equipment and Systems - The Contractor shall develop and install all computer software, hardware and data access lines necessary to conduct the activities an/or perform the services within the scope of the Contract. The Contractor shall be responsible for all costs incurred for obtaining any necessary data access, software and hardware to perform the scope of work under this Contract. The Contractor shall provide a system that will meet the interface needs and requirements of the current MMIS. The Contractor must anticipate and be prepared to provide any necessary interface capabilities that may be required by the current or any subsequent MMIS.

A.19. The Contractor shall provide, at Contractor's expense, instructional guidelines as well as instruction to State staff that details each recovery process for those areas/proposed projects the Bureau of TennCare deems appropriate, and instructional guidelines to the State for the performance of any project that the Bureau of TennCare determines should be performed by State staff that may have been previously performed by the contractor.

A.20. The Contractor shall ensure that all TennCare data containing protected health information (PHI), as defined in HIPAA, is secured through commercially reasonable methodology in compliance with HITECH, such that it is rendered unusable, unreadable and indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in the guidance issued under section 13402(h)(2) of Public Law 111-5 on the HHS Web site. Should the State deem it advisable for the Contractor to provide credit monitoring and/or identity theft safeguards to TennCare enrollees as a result of Contractor's failure to protect such PHI, the Contractor shall be liable for all costs associated with the provision of such safeguard services and cooperate fully with TennCare's Privacy Office in furtherance of same.

B. CONTRACT TERM:

B.1. This Contract shall be effective for the period beginning February 1, 2011 and ending on January 31, 2014. The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.

B.2. Term Extension. The State reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than five (5) years, provided that such an extension of the contract term is effected prior to the current, contract expiration date by means of a contract amendment. If a term extension

necessitates additional funding beyond that which was included in the original Contract, an increase of the State's maximum liability will also be effected through contract amendment, and shall be based upon payment rates provided in the original Contract.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Twenty-five Million Dollars ($25,000,000.00). The payment rates in section C.3 shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.

a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.

b. The Contractor shall be compensated based upon the following payment rates:

Service Description	**Amount** (per compensable increment)
Contract Base Operations (A.1, A.4.b., A.6, A.16-A.19)	$0.00 per month
Third Party Liability Resource File Maintenance (A.3)	$32.00 per addition, deletion or validation

c. The Contractor shall be compensated in an amount to reflect the percentage of recoveries based upon the following percentage rates:

Service Description	**Per Percentage of Recovery**
Estate Recovery (A.2)	8.00 % of Collections
Subrogation (A.4.a, A.4.c)	4.00 % of Collections
Medicare Recoupments (A.5)	1.00 % of Collections

Additional Recovery Activities (A.7)	12.00 % of Collections
Credit Balance Audits (A.8)	4.00 % of Collections
Fraud and Abuse: Medicaid Recovery/Audit Activities (A.9 – A.15)	12.00% of Collections

d. The Contractor shall not be compensated for travel time to the primary location of service provision.

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in Section C.3, above, and as required below prior to any payment.

a. The Contractor shall submit invoices no more often than monthly, with all necessary supporting documentation, to:

Bureau of TennCare
310 Great Circle Road
Nashville, Tennessee 37243

b. The Contractor agrees that each invoice submitted shall clearly and accurately (all calculations must be extended and totaled correctly) detail the following required information.

(1) Invoice/Reference Number (assigned by the Contractor);
(2) Invoice Date;
(3) Invoice Period (period to which all invoiced charges are applicable);
(4) Contract Number (assigned by the State to this Contract);
(5) Account Name: Department of Finance and Administration, Bureau of TennCare
(6) Account/Customer Number (uniquely assigned by the Contractor to the above-referenced Account Name);
(7) Contractor Name;
(8) Contractor Federal Employer Identification Number or Social Security Number (as referenced in this Contract);
(9) Contractor Contact (name, phone, and/or fax for the individual to contact with billing questions);
(10) Contractor Remittance Address;
(11) Complete Itemization of Charges, which shall detail the following:

i. Service or Milestone Description (including name /title as applicable) of each service invoiced;
ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced;
iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced;
iv. Amount Due by Service; and
v. Total Amount Due for the invoice period.

c. The Contractor understands and agrees that an invoice to the State under this Contract shall:

(1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
(2) not include any future work but will only be submitted for completed service; and
(3) not include sales tax or shipping charges.

d. The Contractor agrees that timeframe for payment (and any discounts) begins when the State is in receipt of each invoice meeting the minimum requirements above.

e. The Contractor shall complete and sign a "Substitute W-9 Form" provided to the Contractor by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Contract for the Contractor. The Contractor shall not invoice the State for services until the State has received this completed form.

C.6. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.

C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.

C.8. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any Contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.

C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following documentation properly completed.

a. The Contractor shall complete, sign, and present to the State an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once said form is received by the State, all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH).

b. The Contractor shall complete, sign, and present to the State a "Substitute W-9 Form" provided by the State. The taxpayer identification number detailed by said form must agree with the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID referenced in this Contract.

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 Personnel, 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 Personnel, and the Comptroller of the Treasury).

D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least sixty (60) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. 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 the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.

D.5. Subcontracting. The Contractor shall not 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 State. If such subcontracts are approved by the State, 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). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.

D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract 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.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six months has been, an employee of the State of Tennessee.

D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures 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 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. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and

signed copy of the document at Attachment B, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.

b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.

c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.

d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.

e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.

D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

D.10. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.

D.11. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.

D.12. 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.13. 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.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

D.14. State Liability. The State shall have no liability except as specifically provided in this Contract.

D.15. 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.16. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.

D.17. 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.18. 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.19. 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.20. 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:

Deputy Commissioner
Department of Finance and Administration

Bureau of TennCare
310 Great Circle Road
Nashville TN 37243
(615) 507-6443 (Phone)
(615) 253-5607 (FAX)

The Contractor:

Health Management Systems
Ron D. Singh, Vice President
5660 New Northside Drive, Suite 750
Atlanta, GA 30328
rsingh@hmsy.com
(770) 980-9777 ext. 108 (phone)
(770) 937-0180 (fax)

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

E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

E.4. Breach. A party shall be deemed to have breached the Contract if any of the following occurs:

— failure to perform in accordance with any term or provision of the Contract;
— partial performance of any term or provision of the Contract;
— any act prohibited or restricted by the Contract, or
— violation of any warranty.

For purposes of this Contract, these items shall hereinafter be referred to as a "Breach."

a. Contractor Breach— The State shall notify Contractor in writing of a Breach.

(1) In event of a Breach by Contractor, the State shall have available the remedy of Actual Damages and any other remedy available at law or equity.

(2) Liquidated Damages— In the event of a Breach, the State may assess Liquidated Damages. The State shall notify the Contractor of amounts to be assessed as Liquidated Damages. 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 Breach by Contractor as said amounts are likely to be uncertain and not easily proven. Contractor hereby represents and covenants it has carefully reviewed the Liquidated Damages contained in Attachment C, and agree that said amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of Breach, and are a reasonable estimate of the damages that would occur from a Breach. It is hereby agreed between the parties that the Liquidated Damages represent solely the damages and injuries sustained by the State in losing the benefit of the bargain with Contractor and do not include any injury or damage sustained by a third party. The Contractor agrees that the liquidated damage amount is in addition to any amounts Contractor may owe the State

pursuant to the indemnity provision or other section of this Contract.

The State may continue to withhold the Liquidated Damages or a portion thereof until the Contractor cures the Breach, the State exercises its option to declare a Partial Default, or the State terminates the Contract. The State is not obligated to assess Liquidated Damages before availing itself of any other remedy. The State may choose to discontinue Liquidated Damages and avail itself of any other remedy available under this Contract or at law or equity; provided, however, Contractor shall receive a credit for said Liquidated Damages previously withheld except in the event of a Partial Default.

(3) Partial Default— In the event of a Breach, the State may declare a Partial Default. In which case, the State shall provide the Contractor written notice of: (1) the date which Contractor shall terminate providing the service associated with the Breach; and (2) the date the State will begin to provide the service associated with the Breach. Notwithstanding the foregoing, the State may revise the time periods contained in the notice written to the Contractor.

In the event the State declares a Partial Default, the State may withhold, together with any other damages associated with the Breach, from the amounts due the Contractor the greater of: (1) amounts which would be paid the Contractor to provide the defaulted service; or (2) the cost to the State of providing the defaulted service, whether said service is provided by the State or a third party. To determine the amount the Contractor is being paid for any particular service, the Department shall be entitled to receive within five (5) days any requested material from Contractor. The State shall make the final and binding determination of said amount.

The State may assess Liquidated Damages against the Contractor for any failure to perform which ultimately results in a Partial Default with said Liquidated Damages to cease when said Partial Default is effective. Upon Partial Default, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount. Contractor agrees to cooperate fully with the State in the event a Partial Default is taken.

(4) Contract Termination— In the event of a Breach, the State may terminate the Contract immediately or in stages. The Contractor shall be notified of the termination in writing by the State. Said notice shall hereinafter be referred to as Termination Notice. The Termination Notice may specify either that the termination is to be effective immediately, on a date certain in the future, or that the Contractor shall cease operations under this Contract in stages. In the event of a termination, the State may withhold any amounts which may be due Contractor without waiver of any other remedy or damages available to the State at law or at equity. The Contractor shall be liable to the State for any and all damages incurred by the State and any and all expenses incurred by the State which exceed the amount the State would have paid Contractor under this Contract. Contractor agrees to cooperate with the State in the event of a Contract Termination or Partial Takeover.

b. State Breach— In the event of a Breach of Contract by the State, the Contractor shall notify the State in writing within 30 days of any Breach of Contract by the State. Said notice shall contain a description of the Breach. Failure by the Contractor to provide said written notice shall operate as an absolute waiver by the Contractor of the State's Breach. In no event shall any Breach on the part of the State excuse the Contractor from full performance under this Contract. In the event of Breach by the State, the Contractor may avail itself of any remedy at law in the forum with appropriate jurisdiction; provided, however, failure by the Contractor to give the State written notice and

opportunity to cure as described herein operates as a waiver of the State's Breach. Failure by the Contractor to file a claim before the appropriate forum in Tennessee with jurisdiction to hear such claim within one (1) year of the written notice of Breach shall operate as a waiver of said claim in its entirety. It is agreed by the parties this provision establishes a contractual period of limitations for any claim brought by the Contractor.

E.5. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.

E.6 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.7. HIPAA and HITECH Compliance. The State and 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.

a. Contractor warrants to the State 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:

1. Compliance with the Privacy Rule, Security Rule, Notification Rule;
2. The creation of and adherence to sufficient Privacy and Security Safeguards and Policies;
3. Timely Reporting of Violations in Use and Disclosure of PHI; and
4. Timely Reporting of Security Incidents.

Failure to comply may result in actual damages that the State incurs as a result of the breach and liquidated damages as listed in Attachment A.

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 HITECH and their regulations, in the course of performance of the Contract so that both parties will be in compliance with HIPAA and HITECH.

c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by HIPAA and HITECH and that are reasonably necessary to keep the State and Contractor in compliance with HIPAA and HITECH.

E.8. State and Federal Compliance. The Contractor agrees to comply with all applicable federal and state laws, policies, rules and regulations, consent decrees and court orders, including Constitutional provisions regarding due process and equal protection of the laws and including but not limited to:

a. Title 42 Code of Federal Regulations (CFR) Chapter IV, Subchapter C (with the exception of those parts waived under the TennCare Section 1115(a) waiver).

b. Title 45 CFR, Part 74, General Grants Administration Requirements.

c. All applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970 as amended (42 U.S.C. 7401, et seq.).

d. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and regulations issued pursuant thereto, 45 C.F.R. Part 80.

e. Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e) in regard to employees or applicants for employment.

f. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicap in programs and activities receiving or benefiting from federal financial assistance, and regulations issued pursuant thereto, 45 C.F.R. Part 84.

g. The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 et seq., which prohibits discrimination on the basis of age in programs or activities receiving or benefiting from federal financial assistance.

h. Omnibus Budget Reconciliation Act of 1981, P.E.. 97-35, which prohibits discrimination on the basis of sex and religion in programs and activities receiving or benefiting from federal financial assistance.

i. Americans with Disabilities Act of 1990, 42 U.S.C. Section 12101 et seq., and regulations issued pursuant thereto, 28 C.F.R. Parts 35, 36.

j. Sections 1128 and 1156 of the Social Security Act relating to exclusion of providers for fraudulent or abusive activities involving the Medicare and/or Medicaid program.

k. Tennessee Consumer Protection Act, T.C.A. Section 47-18-101 et seq.

l. The CMS waiver and all Special Terms and Conditions which relate to the waiver.

m Executive Orders, including Executive Order 1 effective January 26, 1995.

n. The Clinical Laboratory Improvement Act (CLIA) of 1988.

o. Requests for approval of material modification as provided at TCA 56-32-201 etc. seq.

p. Title IX of the Education Amendments of 1972 (regarding education programs and activities)

q. The Rehabilitation Act of 1973

r. The Balanced Budget Act of 1997 Section 422.208 and 422.210

s. EEO Provisions

t. Copeland Anti-Kickback Act

u. Davis-Bacon Act

v. Contract Work Hours and Safety Standards

w. Rights to Inventions Made Under a Contract or Agreement

x. Byrd Anti-Lobbying Amendment

y. Debarment and Suspension

z. The Church Amendments, 42 U.S.C. 300a-7.

aa. Public Health Service Act (PHS Act) Section 245, 42 U.S.C. 238n.

bb. Weldon Amendment, originally adopted as section 508(d) of the Labor-HHS Division (Division F) of the 2005 Consolidated Appropriations Act, Public Law 108-447, 118 Stat. 2809, 3163 (Dec. 8, 2004), has been readopted (or incorporated by reference) in each subsequent HHS appropriations act. (Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, Public Law 110-329, Div. A, Sec. 101, 122 Stat. 3574, 3575 (Sept. 30, 2008).

cc. Section 1902(a)(68) of the Social Security Act regarding employee education about false claims recovery.

E.9. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below.

a. this Contract document with any attachments or exhibits (excluding the items listed at subsections b. through e., below);

b. any clarifications of or addenda to the Contractor's proposal seeking this Contract;

c. the State solicitation, as may be amended, requesting proposals in competition for this Contract;

d. any technical specifications provided to proposers during the procurement process to award this Contract;

e. the Contractor's proposal seeking this Contract.

E.10. Workpapers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis workpapers, notes, and other documentation available for review by the Comptroller of

the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.

E.11. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed. It is expressly understood and agreed that the obligations set forth in this section shall survive the termination of this Contract in perpetuity.

E.12. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, ``Disclosure Form to Report Lobbying," in accordance with its instructions.

c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, *U.S. Code.*

E.13. Debarment and Suspension. The Contractor 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 offence 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 Contractor 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 or disqualified.

E.14. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's proposal responding to RFP-31865-00326 (Attachment 6.2) and resulting in this Contract.

The Contractor shall assist the State in monitoring the Contractor's performance of this commitment by providing, as requested, a quarterly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, and persons with a disability. Such reports shall be provided to the state of Tennessee Governor's Office of Diversity Business Enterprise in form and substance as required by said office.

E.15. State Ownership of Work Products. The State shall have ownership, right, title, and interest, including ownership of copyright, in all work products, including computer source code, created, designed, developed, derived, documented, installed, or delivered under this Contract subject to the next subsection and full and final payment for each "Work Product." The State shall have royalty-free and unlimited rights and license to use, disclose, reproduce, publish, distribute, modify, maintain, or create derivative works from, for any purpose whatsoever, all said Work Products.

a. To the extent that the Contractor uses any of its pre-existing, proprietary or independently developed tools, materials or information ("Contractor Materials"), the Contractor shall retain all right, title and interest in and to such Contractor Materials, and the State shall acquire no right, title or interest in or to such Contractor Materials EXCEPT the Contractor grants to the State an unlimited, non-transferable license to use, copy and distribute internally, solely for the State's internal purposes, any Contractor Materials reasonably associated with any Work Product provided under the Contract.

b. The Contractor shall furnish such information and data as the State may request, including but not limited to computer code, that is applicable, essential, fundamental, or intrinsic to any Work Product and Contractor Materials reasonably associated with any Work Product, in accordance with this Contract and applicable state law.

c. Nothing in this Contract shall prohibit the Contractor's use for its own purposes of the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of providing the services requested under this Contract.

d. Nothing in the Contract shall prohibit the Contractor from developing for itself, or for others, materials which are similar to and/or competitive with those that are produced under this Contract.

E.16. Public Accountability. If the Contractor is subject to *Tennessee Code Annotated*, Title 8, Chapter 4, Part 4 or if this Contract involves the provision of services to citizens by the Contractor on behalf of the State, the Contractor agrees to establish a system through which recipients of services may present grievances about the operation of the service program, and the Contractor shall display in a prominent place, located near the passageway through which the public enters in order to receive services pursuant to this Contract, a sign at least twelve inches (12") in height and eighteen inches (18") in width stating:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454

E.17. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by *Tennessee Code Annotated*, Section 8-6-106.

E.18. Partial Takeover. The State may, at its convenience and without cause, exercise a partial takeover of any service which the Contractor is obligated to perform under this Contract, including but not limited to any service which is the subject of a subcontract between Contractor and a third party, although the Contractor is not in Breach (hereinafter referred to as "Partial Takeover"). Said Partial Takeover shall not be deemed a Breach of Contract by the State. Contractor shall be given at least 30 days prior written notice of said Partial Takeover with said notice to specify the area(s) of service the State will assume and the date of said assumption. Any Partial Takeover by the State shall not alter in any way Contractor's other obligations under this Contract. The State may withhold from amounts due the Contractor the amount the Contractor would have been paid to deliver the service as determined by the State. The amounts shall be withheld effective as of the date the State assumes the service. Upon Partial Takeover, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

E.19. Offer of Gratuities. By signing this contract, the Contractor signifies that no member of or a delegate of Congress, nor any elected or appointed official or employee of the State of Tennessee, the federal General Accounting Office, federal Department of Health and Human Services, the Center for Medicare and Medicaid Services, or any other state or federal agency has or will benefit financially or materially from this Contract. This Contract may be terminated by TennCare as provided in Section D.4, if it is determined that gratuities of any kind were offered to or received by any of the aforementioned officials or employees from the Contractor, its agent, or employees.

E.20. TBI MFCU Access to Contractor and Provider Records
Program Integrity Access to Contractor, Provider, and Enrollee Records

Pursuant to Executive Order 47 and 42 C.F.R. § 1007, the Tennessee Bureau of Investigation Medicaid Fraud Control Unit (TBI MFCU) is the state agency responsible for the investigation of provider fraud, abuse, and neglect in the State Medicaid program (TennCare).

The Office of Inspector General assists TBI MFCU with provider cases and has the primary responsibility to investigate TennCare enrollee fraud and abuse.

The Contractor shall immediately report to the TBI MFCU any known or suspected fraud, abuse, waste and/or neglect, including, but not limited to, the false or fraudulent filings of claims and/or the acceptance or failure to return monies allowed or paid on claims known to be false or fraudulent. The Contractor shall also inform the State of the reportable activities. The Contractor shall not investigate or resolve the suspicion, knowledge or action without informing the TBI MFCU and the State, and must cooperate fully in any investigation by the TBI MFCU or subsequent legal action that may result from such an investigation.

The Contractor and all its health care providers, whether participating or non participating providers, shall, upon request, make available to the TBI MFCU any and all administrative, financial and medical records relating to the delivery of items or services for which TennCare monies are expended. In addition, the TBI MFCU must be allowed access to the place of business and to all TennCare records of any Contractor or health care provider, whether participating or non-participating, during normal business hours, except under special circumstances when after hour admission shall be allowed. The TBI MFCU shall determine any and all special circumstances.

Pursuant to the Health Insurance Portability and Accountability Act (HIPAA) privacy regulations, TBI MFCU is a health oversight agency. See 45 C.F.R. §§ 164.501 and 164.512(d) and 65 F.R. § 82462. In its capacity as a health oversight agency, TBI MFCU does not need authorization in order to obtain enrollee protected health information (PHI). PHI is defined at 45 C.F.R. § 164.501. Because MFCU will request the information mentioned above for health oversight activities, "minimum necessary" standards do not apply to those disclosures to TBI MFCU that are required by law. See 45 C.F.R. §§ 164.502(b)(2)(iv), 164.502(b)(2)(v), and 164.512(d) and 65 F.R. §§ 82462 and 82673.

The Contractor shall inform its participating and non-participating providers that as a condition of receiving any amount of TennCare payment, the provider must comply with this Section of this Contract regarding fraud, abuse, waste and neglect.

The Contractor and its participating and non-participating providers shall report TennCare enrollee fraud and abuse to the Office of Inspector General Integrity. The Contractor and/or provider may be asked to help and assist in investigations by providing requested information and access to records. The Contractor and its health care providers, whether participating or non-participating providers, shall, upon request, make available any and all supporting documentation/records relating to delivery of items or services for which TennCare monies are expended. Shall the need arise, the Office of Inspector General must be allowed access to the place of business and to all TennCare records of any TennCare Contractor or health care provider, whether participating or non-participating, during normal business hours.

E.21. Disclosure of Ownership, Control, or Relationship Information: In the time and manner set forth in 42 CFR § 455.104, TennCare's Managed Care Contractors and/or TennCare's Benefit Administrators must disclose to the State agency the name and address of each person with an ownership or controlling interest in any Provider, fiscal agent, disclosing entity (collectively, "the aforementioned") who are authorized to provide and receive payment for any covered service furnished to TennCare enrollees. In addition, the State must be provided the name and address of any subcontractor in which the aforementioned have a direct or indirect ownership interest of 5 percent or more. TennCare's Managed Care Contractors and/or TennCare's Benefit Administrators must disclose whether any of the aforementioned is related to him/her as spouse, parent, child, or sibling. Moreover, the aforementioned must disclose the name of any other Provider, fiscal agent, disclosing entity or subcontractor in which a person with an ownership or controlling interest in the aforementioned also has an ownership or controlling interest. The Contractor must complete a Disclosure of Ownership and Control Interest State form located at http://www.tn.gov/tenncare/forms/disclosureownership.pdf once the contract is signed and update such disclosure information annually and on an as needed basis when changes occur. Additionally, a contractor is required to check the non-providers listed on the disclosure form, such as owners and agents, against the LEIE database located at http://oig.hhs.gov/fraud/exclusions/exclusions_list.asp and report to the state if there are any positive matches along with the submission of the Disclosure form. The State shall not contract with a managed care contractor or a benefit administrator who has not disclosed ownership or control information required under the federal regulations.

E.22. Disclosure of Business Transactions Upon Request: Regulation 42 CFR § 455.105 (requires that, upon request, Providers furnish to the State or the U.S. Department of Health and Human Services (HHS) information about certain business transactions with wholly owned suppliers or any subcontractors. In addition, the Provider must disclose the ownership of any subcontractor with whom the Provider has had business transactions totaling more than $25,000 during the 12-month period ending on the date of the request. Therefore, as a condition of contracting with the State, TennCare's Managed Care Contractors and/or TennCare's Benefit administrators must agree to disclosure of the business transaction information upon request specified in the regulation.

E.23 Health Care-Related Criminal Conviction Disclosures and Timely Reporting: Regulation 42 CFR § 455.106 stipulates that Providers must disclose to Federal and State Medicaid agencies any criminal convictions related to Medicare, Medicaid, or Title XX programs at the time they apply or renew their applications for Medicaid participation or at any time on request. The regulation further requires that the State Medicaid agency notify the HHS Office of Inspector General (HHS-OIG) whenever such disclosures are made. Hence, as a condition of contracting with the State, TennCare's Managed Care Contractors and/or TennCare's Benefit Administrators must agree to collect the disclosure of health care-related criminal conviction information as required by 42 CFR § 455.106 and establish policies and procedures to ensure that applicable criminal convictions are reported timely to the State.

E.24. The Contractor shall not use or disclose TennCare enrollee PHI except to the extent it is authorized under this Contract. In addition, prior to the use or disclosure of PHI to a third party for purposes of litigation, settlement or analysis, Contractor shall seek express written approval from TennCare, including the execution of the appropriate agreements to effectuate transfer and exchange of TennCare enrollee PHI or TennCare confidential information in keeping with federal and State laws and regulations, including, but not limited to, a data use agreement, trading partner agreement, business associate agreement or qualified protective order. Should the State deem it advisable for the Contractor to provide credit monitoring and/or identity theft safeguards to TennCare enrollees as a result of Contractor's failure to properly use, disclose or protect such PHI, the Contractor shall be liable for all costs associated with the provision of such safeguard services and cooperate fully with TennCare's Privacy Office in furtherance of same.

E.25. The Contractor shall not permit 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 (Off Shore Disclosure). Should the State deem it advisable for the Contractor to provide credit monitoring and/or identity theft safeguards to TennCare enrollees as a result of Contractor's failure to protect such TennCare enrollee data or TennCare confidential information from Off Shore Disclosure or its use thereafter by any persons or entities, the Contractor shall be liable for all costs associated with the provision of such safeguard services and cooperate fully with TennCare's Privacy Office in furtherance of same.

E.26. Federal Funding Accountability and Transparency Act (FFATA). This Contract requires the Contractor to provide supplies and/or services that are funded in whole or in part by federal funds that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Contractor provides information to the State as required.

The Contractor shall comply with the following:

a. Reporting of Total Compensation of the Contractor's Executives.

(1) The Contractor shall report the names and total compensation of each of its five most highly compensated executives for the Contractor's preceding completed fiscal year, if in the Contractor's preceding fiscal year it received:

i. 80 percent or more of the Contractor's annual gross revenues from Federal procurement contracts and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

ii. $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.).

Executive means officers, managing partners, or any other employees in management positions.

(2) Total compensation means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

i. Salary and bonus.

ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

v. Above-market earnings on deferred compensation which is not tax qualified.

vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds $10,000.

b. The Contractor must report executive total compensation described above to the State by the end of the month during which this Contract is awarded.

c. If this Contract is amended to extend its term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the amendment to this Contract becomes effective.

d. The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at: http://fedgov.dnb.com/webform/

The Contractor's failure to comply with the above requirements is a material breach of this Contract for which the State may terminate this Contract for cause. The State will not be obligated to pay any outstanding invoice received from the Contractor unless and until the Contractor is in full compliance with the above requirements.

IN WITNESS WHEREOF,

HEALTH MANAGEMENT SYSTEMS, INC.

12/13/10

CONTRACTOR SIGNATURE **DATE**

MARIA PERRIN, EXECUTIVE VICE PRESIDENT

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE:

Mike Morrow /SK 12/22/10

MIKE MORROW, COMMISSIONER **DATE**

Attachment A

Definitions

1. Cost Avoidance – The denial of payment due to coverage through another source prior to billing the Bureau of TennCare.

2. Cost Savings – The total value to the Bureau of TennCare of cost avoided claims.

3. Data Exchange/Data Match – Conducting a match of data with the Bureau of TennCare recipient eligibility file and the file of an entity outside the Bureau of TennCare to gather, upload and use for recovery or cost avoidance the information obtained through identification of insurance coverage, employer information or any other data which may enable the Bureau of TennCare to recover expended funds or avoid inappropriate expenditure of funds.

4. Data Mining – The 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.

5. Estate Recovery – Recovery of funds expended by TennCare on behalf of individuals age 55 and older who have received Long Term Care services as well as individuals of any age who have been determined "permanently institutionalized".

6. HIPAA – The Health Insurance Portability and Accountability Act of 1996.

7. HITECH – The Health Information Technology for Economic and Clinical Health Act, The American Reinvenstment and Recovery Act of 2009.

8. MCO (Managed Care Organization) shall mean an appropriately licensed Health Maintenance Organization (HMO) approved by the Bureau of TennCare as capable of providing medical, behavioral, and long-term care services in the TennCare Program.

9. MMIS – Medicaid Management Information System.

10. RAC – Recovery Audit Contractor.

11. Subrogation – Claims pursued which are directly related and attributable to an accident where there is first-party or third-party coverage either through filing a claim with a casualty insurance carrier or recovered through a tort action.

12. Third Party Liability (TPL) Recoveries – Recoveries of properly paid Medicaid benefits obtained from any outside payment source on behalf of the Bureau of TennCare, including estate recovery, third party liability insurance recoveries, subrogation claim recovery, and Medicare coordination of benefits recoveries.

ATTACHMENT B

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	Health Management Systems, Inc.
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	132770433

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

Maria Perrin, Executive Vice President

PRINTED NAME AND TITLE OF SIGNATORY

12/13/10

DATE OF ATTESTATION

ASSESSMENT OF LIQUIDATED DAMAGES

It is acknowledged by TennCare and the Contractor that in the event of failure to meet the requirements provided in this Contract and all documents incorporated herein, TennCare will be harmed. The actual damages which TennCare will sustain in the event of and by reason of such failure is uncertain, since it is extremely difficult and impractical to ascertain and determine. The parties, therefore, acknowledge that the Contractor shall be subject to damages and/or sanctions as described below. It is further agreed that the Contractor shall pay TennCare liquidated damages as directed by TennCare and not to exceed the fixed amount as stated below; provided however, that if it is finally determined that the Contractor would have been able to meet the Contract requirements listed below but for TennCare's failure to perform as provided in this Contract, the Contractor shall not be liable for damages resulting directly therefrom.

In addition to the specific liquidated damages listed below, TennCare shall have the right to assess a general liquidated damages claim of five hundred dollars ($500) per calendar day for each day that the Contractor fails to comply with the provisions and requirements of this Contract. The damage that may be assessed shall be $500 per calendar day for each separate failure to comply with the Contract.

	PROGRAM ISSUES		LIQUIDATED DAMAGES
1.	Failure to provide notice of estate recovery debt obligation to the appropriate individuals, including filing such notice with the court having jurisdiction of the probate case, within thirty (30) days of receiving complete and necessary information to do so. (A.2.b)		$1000.00 per each occurrence
2.	Failure to refer court pleadings, (including exceptions to claims, notices of hearing, insolvency or proposed distribution and other documentation containing a hearing date) to the TennCare Office of General Counsel (OGC) within one (1) business day of receipt by Contractor (A.2.c)		$500 for each late delivered pleading or notice, AND $10,000 per estate when Contractor's failure results in the dismissal with prejudice of any TennCare estate recovery claim or renders TennCare's pursuit of an estate recovery claim impossible due to the running of any applicable statute of limitation.
3.	Provided Contractor has received the necessary information within nine (9) months of decedent's death, failure to refer a file to OGC within nine (9) months of the decedent's date of death when a probate case has not been opened in the county court having jurisdiction over the decedent's estate, along with all information collected by Contractor regarding deceased recipient's identified assets. If information received by Contrator after such nine (9) month period, failure to refer such file to OGC within one (1) business day of receipt by Contractor.		$500 per calendar day that file is not referred to OGC beyond nine (9) months from decedent's date of death, if applicable, or, $500 per calendar day beyond one (1) business day of receipt by Contractor that such file is not referred to OGC; AND $10,000 per estate when Contractor's failure to refer a file to OGC renders TennCare's opportunity to open a probate proceeding for purposes of filing an estate recovery claim impossible due to the running of any applicable statute of limitation.

	(A.2.c)		
4.	Failure to submit to the Bureau of TennCare a monthly estate recovery reconciliation including monthly statistics and year-to-date statistics within ten (10) calendar days after the end of the month. (A.2.e)		$500.00 per each calendar day the estate recovery reconciliation is late or incomplete
5.	Failure to verify insurance coverage information by conducting data matches with insurance carriers and other entities and to develop and maintain a process to update the MMIS and validate on at least an annual basis. (A.3)		$1000 per each separate occurrence identified
6.	Failure to provide to TennCare a monthly reconciliation of the number of insurance policies added, validated, or deleted within ten (10) calendar days of the end of the month. (A.3)		$500 per each calendar day the reconciliation is late or incomplete.
7.	Failure to develop and maintain processes to ensure that TennCare does not pay for expenses that are obligations of the Medicare program, or recoup funds from those Medicare plans on behalf of TennCare, including prescriptions that are the obligation of a Medicare Part D plan. (A.5.)		$1000 per failure to develop or maintain a required process, AND In the event of Contractor's failure to recoup funds, TennCare may assess an LD up to the full amount the Contractor failed to recoup on TennCare's behalf
8.	Failure to provide a quarterly report of dual eligible recipients who have a paid TennCare pharmacy claim no more than ten (10) days following the end of the quarter. (A.5.a)		$500 per each calendar day the quarterly report is late or incomplete
9.	Failure to conduct an annual review of TennCare's Medicare crossover claims and submit a report that reviews a statistically valid sample of Crossover claims. This report shall be submitted to TennCare no later than December 1st of each year. (A.6)		$1000 per each calendar day the annual report is late or incomplete
10.	Failure to provide quarterly assessment to TennCare to evaluate effectiveness and deficiencies of the Identification Work Plan no more than ten (10) days following the end of the quarter. . The plan shall describe approaches to identify improper payment and strategies to address the thoroughness and accuracy of those identified, including specific timeliness and measurable deliverables. (A.13.a)		$500 per each calendar day the quarterly assessment is late or incomplete

11.	Failure to provide three (3) full-time employees located at Bureau of TennCare offices for the performance of duties associated with this contract. (A.16)		$1000 per calendar day for each day beyond the first five (5) business days that any of the required full-time employees is not present at the Bureau and performing the duties associated with this contract,
12.	Failure to develop and provide a fully operational computer system acceptable to TennCare that will meet the interface needs and requirements of the current MMIS and to provide any necessary interface capabilities that may be required by the current or any subsequent MMIS. (A.18)		$500 per calendar day until system developed and approved by TennCare $1000 per calendar day for each day computer system is not operational following approval by TennCare
13.	Failure to ensure that all TennCare data containing protected health information (PHI), as defined in HIPAA, is secured through commercially reasonable methodology in compliance with HITECH, such that it is rendered unusable, unreadable and indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in the guidance issued under section 13402(h)(2) of Public Law 111-5 on the HHS Web site. (A.20)		$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 Contract, the Contractor shall be liable for all costs associated with the provision of such safeguard services.
14.	Failure to seek express written approval from TennCare, including the execution of 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 for purposes of litigation, settlement or analysis. (A.21)		$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 Contract, the Contractor shall be liable for all costs associated with the provision of such safeguard services
15.	Failure by the Contractor to prevent 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		$1000 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 Contract, the Contractor shall be liable for all costs associated with the provision of such safeguard services.