TN Division of
Health Care Finance & Administration

June 24, 2016

Mark White, Chairman
Fiscal Review Committee
8th Floor, Rachel Jackson Bldg.
Nashville, TN 37243

Attention: Ms. Leni Chick

Dear Chairman White:

The Department of Finance and Administration, Division of Health Care Finance and Administration (HCFA), is submitting for consideration by the Fiscal Review Committee two (2) amendments to competitively procured contracts.

We are submitting amendment #1 to XEROX State Healthcare, LLC (previously doing business as ACS State Healthcare, LLC) Edison # 27833. This amendment extends the term of the contract for an additional year beyond the original five (5) year term, for which we have received an Approved Rule Exception Request from Central Procurement and the Comptroller's Office. The TennCare Medical Appeals process (including the contractor's responsibilities in operating the Medical Appeals call center) is governed by a federal court Consent Decree commonly referred to as the *Grier* Consent Decree or *Binta B.* Consent Decree. After more than two decades of being required to operate under this Consent Decree, a federal court ruled in the summer of 2015 that the Consent Decree will be vacated as of December 31, 2016, so long as the State is not held in contempt for violating the Consent Decree between the date of the federal court order and December 31, 2016. Given the importance to the State, in general, and to HCFA, in particular, of having this Consent Decree vacated in full on December 31, 2016, HCFA believes that it would be wise to allow this long-standing contractor to continue performing the vital role they are performing through December 31, 2016 in order to avoid any confusion or disruption to our enrollees when calling in medical appeals.

Additionally, we are submitting for Committee review amendment #1 to the contract with Truven Health Analytics, Inc. (Edison # 39377), currently providing operations and maintenance to the All Payers Claims Database (APCD). This amendment exercises the State's option for a one (1) year term extension and funding to support this extension.

HCFA 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

Supplemental Documentation Required for Fiscal Review Committee

*Contact Name:	Alma Chilton	*Contact Phone:	615-507-6384
*Presenter's name(s):	William Aaron		
Edison Contract Number: *(if applicable)*	#39377	RFS Number: *(if applicable)*	31865-00360
*Original or Proposed Contract Begin Date:	November 1, 2013	*Current or Proposed End Date:	October 31, 2016
Current Request Amendment Number: *(if applicable)*		1	
Proposed Amendment Effective Date: *(if applicable)*		October 31, 2016	
*Department Submitting:		Department of Finance and Administration	
*Division:		Division of Health Care Finance & Administration	
*Date Submitted:		June 24, 2016	
*Submitted Within Sixty (60) days:		Yes	
If not, explain:		N/A	
*Contract Vendor Name:		Truven Health Analytics Inc.	
*Current or Proposed Maximum Liability:		$2,942,499.90	
*Estimated Total Spend for Commodities:		N/A	

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

FY: 2014	FY: 2015	FY: 2016	FY: 2017	FY	FY
$ 919,166.66	$ 839,999.96	$ 839,999.96	$ 343,333.32		$

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

FY: 2014	FY: 2015	FY: 2016	FY: 2017	FY	FY
$ 222,800.00	$ 940,824.98	$ 744,999.96	$	$	$

IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:	N/A
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:	Unused funds that rolled forward were due to 10% of evaluated amount allocated for change order requests to be paid at hourly rate submitted in Cost Proposal. There were no change order requests during the initial term of the contract but

Supplemental Documentation Required for Fiscal Review Committee

	anticipated change order requests could occur in third year up to 1000 hours.
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:	2,942,499.90	Federal:	
Interdepartmental:		*Other*:	
If "*other*" please define:			
If "*interdepartmental*" please define:			

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

Method of Original Award: *(if applicable)*	Request for Proposal (RFP)
*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?	$2,942,499.90 for the first three years and $64,000 per month per final two years plus any support changes to be paid at hourly rate. Cost Determined by Cost Proposal
*List number of other potential vendors who could provide this good or service; efforts to identify other competitive procurement alternatives; and the reason(s) a sole-source contract is in the best interest of the State.	This contract was competitively procured, not a sole source.
Provide information on the circumstances and status of any disciplinary action taken or pending against the vendor during the past 5 years with state agencies/ departments, professional organizations, or through any legal action.	No disciplinary actions identified.
In addition, please provide any information regarding the due diligence that the Department has taken to ensure that the vendor is not or has not been involved in any circumstances related to illegal	HCFA googled this contractor and did not identify any illegal activity. Language in the contract requires immediate notification to the state regarding illegal activity or fraud if

activity, including but not limited to fraud.	discovered during the term of this Contract.

Truven Health Analytics, Inc.
Edison Contract ID: 39377
Vendor #: 0000004354

CONTRACT EXPENDITURES BY FISCAL YEAR
(Payment Detail Attached)

FY 2014	**$224,800.00**	
FY 2015	**$940,824.98**	
FY 2016	**$744,999.96**	(Expenditures through June 2016)
TOTAL	**$1,910,624.94**	

Truven Health Analytics, Inc.
Edison Contract ID: 39377
Vendor ID: 0000004354

FY 2014 Payments

Fiscal Year	Unit	Voucher ID	Invoice	Payment Date	Sum Amount
2014	31865	00886257	752940	4/8/2014	$224,800.00

Total FY 2014: **$224,800.00**

FY 2015 Payments

Fiscal Year	Unit	Voucher ID	Invoice	Payment Date	Sum Amount
2015	31865	01036347	757436	12/12/2014	$475,200.00
2015	31865	01047429	758214	1/7/2015	$93,125.00
2015	31865	01058584	758429	1/27/2015	$62,083.33
2015	31865	01071425	759046	2/23/2015	$62,083.33
2015	31865	01103792	759492	4/7/2015	$62,083.33
2015	31865	01126581	760618	5/21/2015	$62,083.33
2015	31865	01126584	760058	5/21/2015	$62,083.33
2015	31865	01148748	761123	7/7/2015	$62,083.33

Total FY 2015: **$940,824.98**

FY 2016 Payments

Fiscal Year	Unit	Voucher ID	Invoice	Payment Date	Sum Amount
2016	31865	01169296	761684	8/18/2015	$62,083.33
2016	31865	01173697	762266	8/21/2015	$62,083.33
2016	31865	01192530	763241	9/23/2015	$62,083.33
2016	31865	01204054	763709	10/16/2015	$62,083.33
2016	31865	01222336	764478	11/24/2015	$62,083.33
2016	31865	01239986	765157	12/22/2015	$62,083.33
2016	31865	01264731	766089	2/11/2016	$62,083.33
2016	31865	01269470	766745	2/23/2016	$62,083.33
2016	31865	01311425	767274	4/22/2016	$62,083.33
2016	31865	01311433	767892	4/22/2016	$62,083.33
2016	31865	01327302	768531	5/20/2016	$62,083.33
2016	31865	Pending	769163	Pending	$62,083.33

Total FY 2016: **$744,999.96**

Amendment Request

This request form is not required for amendments to grant contracts. Route a completed request, as one file in PDF format, via e-mail attachment sent to: Agsprs.Agsprs@tn.gov

APPROVED	
CHIEF PROCUREMENT OFFICER	DATE

Agency request tracking #	31865-00360
1. Procuring Agency	Department of Finance and Administration Division of Health Care Finance and Administration Bureau of TennCare
2. Contractor	Truven Health Analytics, Inc.
3. Edison contract ID #	39377
4. Proposed amendment #	1
5. Contract's Effective Date	November 1, 2013
6. Current end date	October 31, 2016
7. Proposed end date	October 31, 2017
8. Current Maximum Liability or Estimated Liability	$2,942,499.90
9. Proposed Maximum Liability or Estimated Liability	$3,117,500.00
10. Office for Information Resources Pre-Approval Endorsement Request *– information technology service (N/A to THDA)*	x Not Applicable ☐ Attached
11. eHealth Pre-Approval Endorsement Request *– health-related professional, pharmaceutical, laboratory, or imaging*	x Not Applicable ☐ Attached
12. Human Resources Pre-Approval Endorsement Request *– state employee training service*	x Not Applicable ☐ Attached

13. Explain why the proposed amendment is needed

This competitively procured contract is for provision of application design, development, testing and project management for the purpose of implementing systems to collect, test, processing and loading the All Payers Claims Database (APCD). The Contractor is currently in the Post-Implementation Operational Support phase of APCD. Pursuant to language both in the RFP and in Contract Section B.2 (Edison # 39377), the purpose of this amendment is to exercise the State's option to extend the contract for a one year increment, not to exceed five (5) years. Sufficient funding is available to for the monthly operational amount as submitted in the vendors Cost

Agency request tracking #	31865-00360
Proposal, however, funding is added as may be necessary due to processes relative to the hourly payment associated with change order requests, should any occur during this one year extension period.	
14. If the amendment involves a change in Scope, describe efforts to identify reasonable, competitive, procurement alternatives to amending the contract. **N/A**	
Signature of Agency head or authorized designee, title of signatory, and date (the authorized designee may sign his or her own name if indicated on the Signature Certification and Authorization document) Larry B. Martin/CD 6/20/16	

CONTRACT AMENDMENT COVER SHEET

Agency Tracking #	Edison ID	Contract #	Amendment #
31865-00360	39377		01

Contractor Legal Entity Name	Edison Vendor ID
Truven Health Analytics, Inc.	0000004354

Amendment Purpose & Effect(s)
Extends Term for One Year

Amendment Changes Contract End Date: ☒ YES ☐ NO **End Date:** October 31, 2017

TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A): **$ 175,000.10**

Funding —

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2014	$919,166.66				$919,166.66
2015	$839,999.96				$839,999.96
2016	$839,999.96				$839,999.96
2017	$518,333.42				$518,333.42
2018	$0.00				$0.00
TOTAL:	**$3,117,500.00**				**$3,117,500.00**

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)
TN00000300	70803000

CPO USE

AMENDMENT #1 TO 39377
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF HEATLH CARE FINANCE AND ADMINISTRATION
TRUVEN HEALTH ANALYTICS INC.

This Amendment is made and entered by and between the State of Tennessee, Department of Finance and Administration, Division of Health Care Finance and Administration, hereinafter referred to as the "State" or "TennCare" and Truven Health Analytics Inc., hereinafter referred to as the "Contractor." For good and valuable consideration, the sufficiency of which is hereby acknowledged, 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 B.1 is deleted in its entirety and replaced with the following:

   B.1. This Contract shall be effective for the period beginning November 1, 2013 and ending on October 31, 2017. 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.

2. 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 Three Million One Hundred Seventeen Thousand Five Hundred Dollars ($3,117,500.00) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

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

   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 with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address 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
   Division of Health Care Finance and Administration
   310 Great Circle Road
   Nashville TN 37243
   (615) 507-6444 (Phone)
   (615) 253-5607 (FAX)
   Wendy.long@tn.gov

   The Contractor:

   Truven Health Analytics Inc.

Attn: Legal Department
100 Phoenix Drive
Ann Arbor Drive
Ann Arbor, Michigan 48108
410-476-1229 (phone)
Helen.orme@truvenhealth.com

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

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 October 31, 2016. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

TRUVEN HEALTH ANALYTICS INC.:

CONTRACTOR SIGNATURE **DATE**

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE:

LARRY B. MARTIN, COMMISSIONER **DATE**

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
November 1, 2013	October 31, 2016	31865-00360	39377

Contractor Legal Entity Name	Edison Vendor ID
Truven Health Analytics, Inc.	0000004354

Service Caption (one line only)

All Payers Claims Database (APCD)

Subrecipient or Vendor	CFDA #
☐ Subrecipient ☒ Vendor	93.778 Dept of Health & Human Services/Title XIX

Funding —

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2014	$919,166.66				$919,166.66
2015	$839,999.96				$839,999.96
2016	$839,999.96				$839,999.96
2017	$343,333.32				$343,333.32
TOTAL:	**$2,942,499.90**				**$2,942,499.90**

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)
TN00000300	70803000

OCR USE - FA

CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION,
DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE
AND
TRUVEN HEALTH ANALYTICS, INC.

This Contract, by and between the State of Tennessee, Department of Finance and Administration, Division of Health Care Finance and Administration, Bureau of TennCare, hereinafter referred to as the "State" or "TennCare" and Truven Health Analytics, Inc., hereinafter referred to as the "Contractor", is for the application design, development, testing and project management for the purpose of implementing systems to collect, test, process and load the All Payers Claims Database (APCD), and as further defined in the "SCOPE OF SERVICES."

The Contractor is a for profit corporation.
Contractor Edison Registration: ID # 00004354
Contractor Place of Incorporation or Organization: Delaware

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.

A.2. The services described in this contract will be conducted by the Contractor in accordance with the TennCare approved Implementation Project Plan and Plan of Operations, which must be kept current and inclusive of policies and procedures used by Contractor in providing the required services through the course of the contract. Throughout this contract, the term "Carrier" means "carrier or health care claims processor". The Contractor shall perform all activities under this Contract at no cost to the carriers. The Contractor will be responsible for all aspects of the project, including, but not limited to the following activities or tasks:

a. On an ongoing basis, interact with health insurance carriers, third party administrators, pharmacy benefit managers, and other entities managing medical, behavioral health, and pharmacy claims, on regulations and submittal process (communications materials, website, FAQs, annual meetings, semi-annual newsletter, etc);
b. Perform annual and update registration of Carriers;
c. Ensure consistent de-identification and encryption of protected health information and personally identifiable information (PHI/PII) by the Carriers by supplying de-identification software or appliance (for such time as law and rules require de-identification);
d. Collect and process data from Carriers;
   i. According to specifics of Tennessee Code Annotated 56-2-125 , with an on-line tool, securely collect, quality assurance test, accept or reject, ensure compliance with reporting specifications, and give feedback on required data submissions;
   ii. Identify the need for, accept, and process replacement submissions;
   iii. Maintain a system to allow test submissions from Carriers;
   iv. Maintain and update, as needed, Carrier/data element specific quality assurance thresholds;
e. Track and communicate to TennCare overdue and otherwise non-compliant Carriers, provide recommendations to TennCare on whether enforcement actions are warranted;
f. Follow up with Carriers on data issues and respond to questions and comments from Carriers;
g. Maintain on-line quality assurance reports for use by TennCare;
h. Consolidate and enhance data for analytic use;
i. Link providers and members across Carriers;

j. Supply dimension tables to allow for labeling of coded data elements, and
k. Quarterly and as requested by TennCare, provide data sets to TennCare in agreed upo format, including replacements of any prior time periods for data that has changed.

A.3. Implementation – The Contractor shall perform all necessary activities to implement systems, services and processes required to commence operations and perform APCD data collection and processing as required by this Contract. The Contractor shall perform implementation activities including but not limited to the following:

a. Implementation Project Plan – The Contractor shall be responsible for developing an implementation project plan detailing the tasks required to implement the services under this Contract. The Contractor will be responsible for implementation tasks, activities and deliverables as detailed in the implementation project plan, as approved by TennCare. The project plan shall comply with requirements in Section A.15. and the State's project management methodology. The Contractor shall submit a finalized Implementation Project Plan within twenty (20) business days after the contract start date. Prior to submission, the Contractor shall hold strategy meetings with key participants to solicit feedback on the proposed Implementation Project Plan. Time is of the essence in this project. In the event of conflict in required completion dates, the terms of this contract will prevail and the contract will be interpreted to require the earliest documented completion date for such activities or milestones, unless otherwise approved by the State.

b. Requirements Definition – The Contractor shall be responsible for identifying and documenting requirements for systems, interfaces and business process flows required to support and administer APCD data collection and processing. The Contractor shall be responsible for reviewing pertinent documentation and information, including but not limited to enabling legislation, rules, procedures, file formats, and any other relevant material.

c. Provision and Configure Environments – The Contractor shall be responsible for provisioning and configuration of any systems or services required to launch and operate APCD data collection and processing.

d. Data Conversion – The Contractor is responsible for conversion of any existing program data as required to perform optional and value-added services.

e. Testing – The Contractor shall be responsible for implementing and testing data collection and processing prior to launch of operations. Specifically, the Contractor is responsible for:
   i. Test Plan and Test Cases – Unless otherwise approved by the State, the Contractor must define, develop, document and submit test plans and test cases. Test plan and test cases shall be submitted and maintained in form, format and location proposed by Contractor and approved by the State. The Contractor shall document and maintain test cases in a form, format and location that allows for traceability from requirements to test cases, to test case execution and test case results. Additionally, the Contractor shall document test cases, manage and track test execution in a manner that supports detailed reporting of testing status.
   ii. Test Execution – The Contractor must successfully execute testing prior to implementation, demonstrating that APCD data collection and processing will operate as expected.
   iii. State Testing Support – The Contractor is responsible for supporting State staff in user acceptance testing and review of test results.

f. The State, in its sole discretion, shall determine whether the APCD data collecting and processing services developed and tested by Contractor are acceptable. The State shall provide written notice of approval of testing to Contactor, which shall also serve as authorization for Contractor to begin operations as set forth in Section A.4 below. Contractor shall not commence operations without the written approval of the State.

A.4. Operations – The Contractor shall be responsible for operating systems, services and processe required to perform APCD data collection and processing as required by this Contract.

a. Plan of Operations – The Contractor shall be responsible for developing and maintaining a plan of operations for APCD data collection and processing services under this Contract. The Contractor shall submit a finalized Plan of Operations within one (1) month of contract start date and prior to start of operations, as determined pursuant to Section A.3.e.iv above. The Contractor shall hold strategy meetings with key participants to solicit feedback on the proposed Plan of Operations. The plan shall be updated no less than monthly. The Contractor shall be responsible for performing ongoing services according to the plan of operations, as approved by TennCare.

b. Documentation and Training – The Contractor shall develop and maintain user documentation and provide user training. Further, the Contractor shall provide post-implementation support and must track and correct all reported issues and defects, to the State's satisfaction.

c. Change Management – The Contractor must propose change control processes and procedures for State review and approval. The Contractor is responsible for release management and shall implement changes and releases, as appropriate, according to approved change control processes.

A.5. Data Standards and Requirements – The Contractor shall ensure that carrier data submission and Contractor data collection complies with State standards and requirements.

a. Standards – The Contractor shall collect, validate, and consolidate data files from all Carriers required to submit data under Tennessee Code Annotated 56-2-125 and the resulting Rule Chapter 0780-01-79. The rules outline submission requirements including timeframes, data files, data elements, element types, values, etc. The implementation project plan shall require a thorough review and assessment of the rules and established formats and standards for submission of data. The Contractor is responsible for amending their collection and consolidation system to keep current with any changes made to the statutes or rules and any changes made to industry standard coding systems for the life of the Contract, including the adoption of National Council for Prescription Drug Programs (NCPDP) and ASC X12N standards, at no additional cost. The Contractor shall have three (3) months from the adoption of any statute or rule change to incorporate needed modifications in their system. Changes to industry standard coding systems must be accommodated for in accordance with their national implementation date. The Contractor shall extensively test any such changes with the current submitters prior to implementation.

b. Additional Data Elements – In addition to collecting the data elements required under the rules, at the direction of TennCare, the Contractor shall collect up to ten (10) data elements per file structure at no additional cost. These data elements will be voluntarily submitted by Carriers, may change throughout the life of the Contract and may not all be utilized. The Contractor shall also define format and establish mechanism for submission of control totals to be used in validation, including control totals for claim line volume, membership volume, dollar totals and other relevant attributes.

c. Medicaid Data – In addition to the data that Carriers must submit to the APCD, the Contractor shall collect, validate, and consolidate Tennessee Medicaid member and claims data in the same format as the Carrier submitted data as directed by TennCare. Medicaid managed care organizations will submit data as licensed Carriers in the state. In addition to Medicaid data, Medicare claims and member data on Tennessee residents shall also be incorporated into the system, as directed by TennCare. Medicare data will be supplied to the Contractor in the standard formats provided by the Centers for Medicaid and Medicare Services (CMS) and its contractors.

A.6. Communication and Coordination – The Contractor shall communicate and coordinate with carriers and TennCare throughout the term of this contract to facilitate data collection and processing.

a. TennCare Communication – The Contractor shall provide clear and consistent communication with TennCare throughout the project, including the implementation and operations phases. The Contractor shall provide regular status reports to TennCare including measures of data submission timeliness, completeness, and error rate. The Contractor shall provide TennCare with any information, data, or technical assistance as might be requested by TennCare in order to improve current or future program operation. The Contractor shall provide consultation to TennCare on proposed changes to rules, processes or standards. The Contractor shall propose solutions to address or resolve issues in the program.

b. Stakeholder Teams – The Contractor shall establish two primary stakeholder teams, one comprised of representatives from the Carriers and the other representing the State data users for the purpose of facilitating communication and collaboration throughout the implementation process and with the goal of sharing best practices and for addressing any issues or concerns that may arise. The data user team feedback to the Contractor implementation team is intended to increase the Contractor consultants' understanding of client data needs so the data warehouse and related analytics and methodologies shall meet and exceed the data analysis needs of the users. TennCare shall be part of both teams, and will have input on team membership and meeting requirements.

c. Communication Plan – The Contractor shall develop a communication plan and materials to introduce Carriers to the reporting law and its requirements and the Contractor's role. Materials shall include: a letter of introduction from TennCare on departmental letterhead citeing the law and the Contractor's role in carrying the requirements out; a clearly presented copy of the complete law and rules regarding data submission; a guide to requirements and methods for submission of the data; and other materials deemed helpful by the Contractor and TennCare. The information packet shall be approved by TennCare prior to sending to Carriers. The Contractor shall provide the packet to existing submitting Carriers within twenty-one (21) calendar days of Contract start date. The Contractor shall provide the information to any new Carriers that enter the Tennessee market or increase their business above the submittal thresholds.

d. Data Dictionary – The Contractor shall maintain the Data Dictionary throughout the term of this contract. The Contractor shall produce and keep current on the website a Data Dictionary containing detailed specifications and documentation for the consolidated data sets, including description of files, tables, data elements, codes, and completeness of elements. Entity relationship diagrams shall also be included with the Data Dictionary. The Data Dictionary shall include version control information to allow for tracking of all changes made over time.

e. Data Submission Manual – The Contractor shall produce, and provide to Carriers, a data submission manual that will supplement the rules, as needed, to ensure the correct submission of the data. The data submission manual shall be approved by TennCare and provided on the Contractor hosted project website. The data submission manual shall be updated and redistributed to reflect changes in statutes, rules or other changes to submission methods, as needed. The data submission manual shall include, but not be limited to:

i. Data file layout and data dictionary
ii. Reference data standards and values.
iii. Control totals layout and dictionary
iv. Data file naming conventions
v. File encryption, compression and secured submission protocols
vi. Overview of any changes or updates from prior versions
vii. Technical support contact information
viii. Frequently asked questions

f. Secure Website – The Contractor shall host a secure project website for use by the Contractor, Carriers, and TennCare. The website shall contain all relevant informational materials regarding APCD requirements, submission and validation, and quality of data, transformation of data, data dictionary, and other information as required by TennCare. The website landing page shall clearly indicate that the APCD is a State of Tennessee program and shall display logos, title, text and banner. regarding unauthorized use. The website content shall only be accessible to authorized users. The Contractor shall create user accounts and manage access in accordance with the requirements of this contract. In no event may data be downloaded, uploaded, stored, submitted or received by or through personally owned data devices. This secure website may be co-located with the website used for carrier submissions. The website shall be updated as warranted by changes or developments in the APCD program and upon request by TennCare. The secure website for the Tennessee APCD program shall be available twenty-four (24) hours a day, seven (7) days a week except for scheduled maintenance. The Contractor shall guarantee 99.9% uptime, exclusive of the regularly scheduled maintenance window. If The Contractor is unable to meet the 99.9% uptime requirement, the Contractor shall credit the State based upon the following formula: (Total Contract Item Price/365) x Number of Days Contract Item Not Provided)

g. Carrier Communication – The Contractor shall communicate and coordinate with carriers, including, but not limited to:
   i. Providing routine education of carriers about the role of the Contractor, with the approval and, as needed, participation of TennCare;
   ii. Distributing a semi-annual newsletter, approved in advance by TennCare, to carriers describing project activities, areas of success and need for improvement, impending regulatory or systems changes, and other information deemed important by the Contractor or TennCare;
   iii. Holding annual meetings as directed by TennCare, the first of which to be held within six (6) weeks of the Contract start date;
   iv. Assisting TennCare, as necessary, with communicating to Carriers regarding the requirements of state statutes and administrative rules;
   v. Working with Carriers' information management and other staff to ensure timely compliance and submission of data;
   vi. Providing data content and submission training and support to Carriers;
   vii. Providing notification to TennCare and Carriers of all changes/updates; and
   viii. Identifying problems and working with carriers to develop remedies.

h. Support Center – The Contractor shall establish a support center and dedicated point(s) of contract to provide communication and technical assistance to TennCare and Carriers.
   i. The Contractor shall provide support Monday through Friday, from 7:00 a.m. to 5:00 p.m. Central Time, with the exception of designated State holidays.
   ii. The Contractor shall establish an email address dedicated to this initiative to facilitate communication and provide access to technical support.
   iii. The Contractor shall establish a toll-free phone number dedicated to this initiative to facilitate communication and provide access to technical support.
   iv. The Contractor may establish additional points or modes of contact (e.g., chat or messaging through secure website) to expand or enhance access to service or support.
   v. The Contractor shall respond to any calls or messages within two (2) hours of receipt.
   vi. The support center shall act as the single point of contact and coordination for issues requiring involvement of multiple staff or functional areas. Support center staff shall serve as liaison between other Contractor staff and the Carriers.

i. Communication Tracking – The Contractor shall maintain record of all communication with carriers in their Customer Relationship Management (CRM) application, including all activities described in Sections A.10.f and A.10.g. The Contractor shall maintain documentation of telephone, email, mail or other exchange, including all incoming and outgoing communication. The Contractor shall:
   i. Maintain record of Carrier and TennCare representatives engaging in each communication.

ii. Maintain record of contact, including the person the communication was sent to or received from, the initiator or responder, date and content of communication
iii. Maintain any documents or electronic communications (e.g., email, chat), linked or attached to the content record, and/or summary of telephone conversation or other verbal communication.
iv. Maintain record of all carrier contact, including outbound communication
v. Maintain record of carrier meetings and training
vi. Maintain record of carrier registration and updates
vii. Maintain record of contact regarding late or missing submission
viii. Maintain record of contact regarding data or validation issues
ix. Maintain record of request for resubmissions of data
x. Maintain record of both client-specific and global issues and resolution
xi. Track contact or issues to resolution and notify stakeholder(s) of change in status
xii. Generate and review a list of all outstanding contacts or issues daily to ensure timely resolution and identify patterns or problems.
xiii. Generate and review a list of all contacts and issues weekly, or as directed by TennCare, to confirm timely and satisfactory resolution and identify patterns or problems.

j. Carrier Status and Reports – On the secure website, the Contractor shall make available to Carriers secure Carrier-specific web content that shows the status of submissions from that Carrier and copies of Quality Assurance (QA) reports submitted to Carriers. The Contractor shall provide similar access to TennCare, and their designees, which contains information on the status of all Carrier submissions as well as resulting Carrier specific QA reports and CRM records.

A.7. Carrier Registration – The Contractor shall perform initial carrier registration and annual review of carrier registration (T.C.A. 56-2-125, and the Commerce and Insurance rules).

a. Registration Application – The Contractor shall provide a secure Carrier registration application, as required by the Administrative Rule (T.C.A. 56-2-125, and the Commerce and Insurance rules) , via the project website that allows for the collection of registration information as specified in the regulations. Upon approval of TennCare, the application may be updated to facilitate the collection of additional information from Carriers deemed useful by the Contractor for the project or later interpretation of the data. This information shall include, but not be limited to: the method used by the Carrier to perform claim adjustments and how that method is reflected in the submitted data; whether the Carrier has any service carve outs, the nature of those carve outs, and how they are reflected in the data; and the extent to which required data elements are not captured in the Carriers' systems. This collected information shall be available on the APCD website.

b. Required Registration Information – The Contractor shall consult with TennCare to establish the required registration information and shall annually, or upon legislative or TennCare initiated changes, review the requirements for relevance and completeness.
i. When legislative or TennCare initiated changes require the collection of additional registration information from the Carriers, the Contractor shall update the Carrier registration form on the project website and shall inform the Carriers of the new requirements via email no later than one (1) week after the change occurs.
ii. Carriers who have not provided the additional information within two (2) weeks shall be sent a reminder email, and then again one (1) week later, as necessary.
iii. All correspondence shall be tracked, and updates shall be provided to the State regarding which Carriers have, or have not provided the additional information.
iv. A similar process shall be followed annually requesting Carriers to review their registration information for currency and accuracy.
v. In addition to email communication, the Contractor shall use the Carrier newsletter as a vehicle to inform Carriers of the need to update and/or review their registration information.

c. Collection of Additional Registration Information – Upon any addition to the content of the registration form the Contractor shall collect the newly required information from Carriers

within one (1) month or if specified by TennCare, retroactively to a date specified by TennCare. Otherwise, the Contractor shall coordinate with Carriers to perform an annua review of the registration information in order to maintain current and accurate registration data.

d. Registration Database – The Contractor shall maintain, in a database table or tables, a historical record of the information collected through registration for each Carrier and provide access to the information for the life of the Contract.
   i. All registration data gathered, including changes made, shall be maintained in database table(s) and available for access.
   ii. When a Carrier's information is updated, the updated information shall be captured in the Carrier's file, along with a new record time stamp indicating when the change was made.
   iii. Carriers shall be able to access and update their registration information at any time via the project website.

e. Registration Updates – Upon notification of any changes by Carriers, the Contractor shall update the information in the registration database and alert TennCare to changes via e-mail.

f. Registration Reporting – The Contractor shall provide all collected registration information, including revision history, to TennCare via reports developed by the Contractor and approved by TennCare. Upon request of TennCare, the Contractor shall provide the full contents of the database tables.
   i. Carrier registration reports shall be available on the project website covering most current information, as well as revision history.
   ii. The Contractor shall generate regular reports of any changes made and provide to TennCare. The frequency of the report is at the discretion TennCare.

A.8. Data De-Identification – The Contractor shall perform data element de-identification as required by applicable federal and state law and regulations.

a. De-Identification Software – The Contractor shall supply data element level de-identification software, or other methodology as required by State or federal law or regulations, to allow each Carrier to de-identify individual data elements, as specified in federal and state law and regulations, within the Carrier prepared data files prior to submission. De-identification method must encrypt identical strings the same way each time to allow for consistent tracking of the de-identified elements over time and across Carriers when appropriate. De-identification software shall be reviewed and approved for use by TennCare prior to implementation. De-identification service is part of the system and shall be provided to carriers at no charge.

b. De-Identification Method – The Contractor shall work with TennCare to ensure that the method is compatible with previously collected data and shall ensure that at the end of the Contract they transition the method to any new Contract.

c. Linking De-Identified Data – The Contractor shall make recommendations for improving the linking of de-identified data, including proposals for changes to data collection requirements and enabling legislation.

d. Training and Testing – The Contractor shall ensure proper use of the de-identification method by the Carriers through training of Carrier staff and shall test data file submission prior to acceptance of actual submissions containing protected data elements.

e. Monitoring – The Contractor shall continually monitor use of the de-identification method and ensure Carriers are applying it correctly to their data files by ensuring the submission process incorporates the data element de-identification.

f. Issue Notification – The Contractor shall notify TennCare of any issues related to de-identification with individual Carriers or the de-identification method used, when those issues are identified.

g. Prohibition on Collection of Direct Identifiers – Until such time as the federal and state l or regulations change, the Contractor shall be strictly prohibited from collecting or storing any direct identifiers obtained from the Carriers.

h. De-Identification Changes – If at such time, laws and regulations change to require Carrier submittal of identified versions of elements previously de-identified, the Contractor shall make the necessary software and system modifications to allow for the submission of data files adhering to the new regulations. If at such time, a statewide or national system of de-identification for the purpose of linkage between related healthcare data sets is established, the Contractor shall make the necessary software and system modifications to allow for the resubmission and submission of data files to adhere to the new standard. Such changes shall be made at no additional cost to the State. The Contractor shall extensively test any such changes with current submitters prior to implementation.

i. Field Encryption – After receipt of carrier-submitted data, the Contractor shall perform an additional encryption of the individual de-identified data elements. The Contractor's de-identification method must encrypt identical strings the same way each time to allow for consistent tracking of the identified elements over time and across Carriers when appropriate.

A.9. Data Collection, Validation and Aggregation – The Contractor must perform data collection, validation and aggregation services throughout the term of this contract.

a. Data Collection and Validation Process – The Contractor shall collect and process data as follows.
   i. Following de-identification and encryption, data files are transmitted and received from the Carriers;
   ii. Data validation processes are performed on each data file and results are generated within five (5) days;
   iii. Each Carrier is sent an email notification informing them that they can access the results of the validation results on the files they submitted;
   iv. The email notification shall include instructions on how to access the results of the validation results on-line;
   v. If a Carrier needs to address issues with the data file(s) they submitted, these issues are expected to be resolved within two (2) weeks' time;
   vi. The Contractor's support center and technical staff shall be available to assist each Carrier in complying with the data validation requirements; and
   vii. If the issues with the data files are not remediated with two (2) weeks, the Contractor shall notify TennCare.

b. Data Submission – The Contractor shall ensure acceptance and processing of data files from Carriers that may be submitted to the Contractor utilizing secure FTP or SSL web upload interface through the secure website or submission using alternative methods or new standards available to Carriers if approved in advance by TennCare. For Carrier convenience, a solution that combines the de-identification process mentioned above with data file submission is preferred.
   i. The Contractor shall provide a consistent file encryption methodology to all Carriers submitting data to the APCD so that they may encrypt their entire data file prior to submitting to the Contractor.
   ii. Once the Contractor receives the encrypted data, the Contractor shall de-encrypt all data, with the exception of encrypted, de-identified fields.

c. Test Submissions – The Contractor's system shall be capable of receiving and distinguishing test submissions from Carriers and must supply a standard test file for use by Carriers to assist them with developing their submissions. Test files shall be subjected to the same validation process as production files. The Contractor shall review and validate initial data submissions from new submitters before approving a carrier for production operations. The Contractor shall accept iterative rounds of testing until submissions conform to the intended format and content. The Contractor shall perform

an extensive data testing process during the initial rounds of data submissions utilizing tightly prescribed format, but shall also be open to the refining of processes and edits tc address inevitable issues and ambiguities.

d. Production Submissions – The Contractor shall accept submission of data from all carriers pursuant to a schedule of deliverable due dates established by the State. The Contractor shall notify the Carriers of the initial data submission deliverable schedule and update the Carriers if the deliverable due dates are revised by the State. The Contractor shall accept submission of replacement files or records, as necessary.

e. Late Submissions – The Contractor shall contact Carriers who have not submitted their data files by the required submittal date at thirty (30) and sixty (60) days past the required date, with copy notification to TennCare. At seventy-five (75) days past the required date, the Contractor shall notify and coordinate with TennCare to provide a letter from the State to request compliance by the Carrier The State may assess Liquidated Damages against Carriers for late submission of data file deliverable, as set forth in Attachment B Liquidated Damages. The Contractor shall provide consultation to TennCare regarding the appropriateness of sanctioning the overdue Carriers.

f. Data Validation Rules – The Contractor shall define data validation rules, as approved by the State. The Contractor shall define data validation rules to ensure that defined and undefined errors are identified. The Contractor shall use a series of data edits and audits to ensure the quality and integrity of the data. The Contractor shall propose and use actuarial methods and standards, as approved by the State, to confirm that the data submissions reasonably represent expected utilization for each carrier's member population. The Contractor shall define data validation rules including, but not limited to:
   i. Verification of data element formats and lengths;
   ii. Verification of the population of required elements;
   iii. Verification of element values against allowed values or thresholds;
   iv. Verification of referential integrity and cross-element validation;
   v. Verification of submitted and calculated file control totals;
   vi. Verification of file content and volume, including analysis of utilization and field value frequency and comparison to carrier history;
   vii. Verification of expected and reasonable utilization and cost against actuarial expectations and industry standards;
   viii. Verification of proper de-identification;
   ix. Identification of duplicate or conflicting records;
   x. Carrier specific validation rules, as approved by the State; and
   xi. Conformance with any other rules not specifically stated.

g. Data Validation Process – The Contractor shall implement approved data validation rules and perform detailed validation of all submitted data files. The Contractor shall employ an automated validation process and shall utilize automated data content and quality analysis tools to validate data submissions. Any exceptions shall be automatically captured and stored in detail and summary tables. The data validation process shall include review of validation results by staff, with final review by a Contractor senior manager not involved in processing or compiling the information. The Contractor shall produce cost and utilization measures upon completion of the data validation process. The Contractor shall publish and maintain current, approved validation rules on the program website for Carrier access.

h. Data Acceptance or Rejection – Following data validation and review, the Contractor shall accept or reject files or records in accordance with rules and thresholds for rejection established in accordance with the rules and thresholds for rejection approved by TennCare.
   i. The Contractor shall have the ability to accept or reject entire files or individual records.
   ii. The Contractor shall provide each Carrier with a notification and report detailing the results of the validation process against their submitted data files within five (5) days of submittal through the secure project website. The notification shall indicate the validation status, including reconciliation of control totals, and

acceptance or rejection of submitted file or records. The report shall indicate validation failures and rejection reason(s) when appropriate. Information provided shall be sufficient and clear enough for Carriers to easily reconcile their submitted data to the data processed by the Contractor and identify remedies for failures, when appropriate.

i. Inventory and Issue Management – The Contractor shall manage the inventory of rejected files and records and communicate with carriers regarding data submission and validation issues.
   i. The Contractor shall contact all Carriers with data files or records that failed validation at thirty (30) and sixty (60) days past the date of the original notification where a replacement file or Carrier response to the original notification has not been received. For each such notification, provide a copy of the original notification and validation report to TennCare. At seventy five (75) days past the date of the original notification, notify and coordinate with TennCare to provide a letter from TennCare to request compliance by the Carrier. The State may assess Liquidated Damages against Carriers for late submission of replacement data file deliverable or Carrier responses, as set forth in Attachment B Liquidated Damages..
   ii. The Contractor shall meet with each Carrier to discuss data collection and validation issues. The Contractor shall work with the Carriers to remediate data deficiencies or gaps when they are found.
   iii. The Contractor shall accept data re-submission from the Carriers as necessary to address issues.

A.10. Data Aggregation and Consolidation – The Contractor shall aggregate and consolidate data as required. Following validation, the Contractor shall load and aggregate all accepted files and records into a common database.

a. Common Database – The Contractor shall store aggregated data in a relational database in a star schema or similar format approved by the State that is designed for efficient and effective storage and retrieval. The Contractor shall define and implement a record key approach, as approved by the State, to uniquely associate all related records. The Contractor shall maintain record timestamps in order to properly identify sequential record updates. The Contractor shall support up to seven (7) years of aggregated data. Available data sets will include, but not be limited to:
   i. All versions of each claim;
   ii. Last adjusted version (i.e. final state) of each claim;
   iii. All activity within a date range.

b. Data Conversion – Within three (3) months of contract start date, the Contractor shall acquire from the State, if needed, all data previously submitted by Carriers to support any optional or value-added services. The Contractor shall process the historical data and maintain the data in the same databases as Contractor collected data.

c. Record Changes – The Contractor shall coordinate with each Carrier to identify the appropriate methods for determining the current adjudication status of all service records contained in the Carriers claims data file submissions.
   i. The Contractor shall on a quarterly basis review the deployed methods with each Carrier to determine if any changes are required.
   ii. The Contractor shall maintain documentation detailing the consolidation methods by Carrier and how the method shall be deployed in the system by Carrier. The documentation shall be provided to TennCare at least two (2) weeks prior to the initial execution of the consolidation process and then routinely whenever new Carriers are added and/or new methods are deployed.
   iii. The Contractor shall make any system modifications required to accommodate changes to Carrier methods

d. Record Replacement – The Contractor shall coordinate with each Carrier to define appropriate methods to identify resubmitted or replacement records contained in the Carriers claims data file submissions.

e. Common Encrypted Person Identifier – The Contractor shall execute and include in the consolidated data a process that assigns a common person identifier across all instances of a single person, regardless of Carrier, business line or relationship to the contract holder (subscriber). The Contractor shall develop a patient crosswalk and single patient identifiers to track patient-carrier relationships over time and between carriers. This crosswalk shall take into account prior identities at carriers and membership in multiple carriers to allow the Contractor to unify claims and enrollment history. The Contractor shall unify the patient history and determine the most current information, including unifying persons with name changes, variants, and differences in spelling, where possible. The process for creating a common person identifier shall be approved by TennCare prior to final implementation.

f. Common Provider Identifier - The Contractor shall execute and include in the consolidated data a process that assigns a common provider identifier across all instances of a single provider entity, regardless of Carrier or practice affiliation, while also maintaining the data as submitted by the Carrier. The Contractor shall develop a provider crosswalk and single provider identifiers to track provider-patient relationships over time and between carriers. This crosswalk shall take into account National Practitioner Identifier (NPI), health plan provider identifier, provider name, provider address and other identifiers and demographics to allow the Contractor to unify claims history. The Contractor shall unify the provider history and determine the most current information, including unifying providers with name changes, variants, and differences in spelling, where possible. The process for creating a common provider identifier shall be approved by TennCare prior to final implementation.

g. Common Provider Practice Identifier -: The Contractor shall execute and include in the consolidated data a process that assigns a common provider (group) practice identifier across all instances of a single provider practice entity, regardless of Carrier. The process for creating a common provider practice identifier shall be approved by TennCare prior to final implementation.

h. Value Added Data Elements – The Contractor shall create and add calculated data elements or indicators to the aggregated, consolidated data, including, but not limited to:
   i. Inpatient hospital service indicator;
   ii. Emergency Department (ED) service indicator, for ED visits not resulting in a subsequent hospital admission;
   iii. Standard Type of Service (TOS) assignment to be developed in conjunction with TENNCARE;
   iv. Standard Therapeutic Class assignment for Pharmacy services, to be developed in conjunction with TennCare;
   v. Standard Provider Type/Specialty assignment for providers, to be developed in conjunction with TennCare;
   vi. Calculated patient age, facility length of stay, and total allowed amount (sum of payment data elements), and other data elements developed in conjunction with TennCare; and
   vii. Other indicators for selecting claims and/or eligibility records that meet criteria for common use based on rules developed in conjunction with TennCare.

i. Consolidation Process – The Contractor shall develop and execute a data consolidation process to identify, modify or generate, if necessary, a single record that accurately reflects the patient, provider, diagnoses, services, service dates and other related information and designates the latest disposition and costs associated with rendered services. Consolidation shall be performed in accordance the data consolidation method or methods specific to each Carrier. The Contractor shall adjust the consolidation process and reconsolidate data submitted by Carriers to address concerns of the Carrier, Contractor, or TennCare.

j. Additional Review – The Contractor shall perform additional testing on the aggregated data, assessing data consistency and trends over time. The Contractor shall also perform semi-annual, independent review of aggregate, consolidated data. Such

independent review shall be performed by senior consulting or actuarial staff not involv in processing or compiling the information. The Contractor shall propose and use actuarial methods and standards, as approved by the State, to confirm that the aggregate, consolidated data reasonably represents expected utilization for each carrier's member population. Annually the Contractor shall provide an overview report that summarizes and assesses the quality and completeness of the data in regards to its use for analytic tasks. The report shall include assessment of completeness and quality of the data and potential solutions to improve the data.

A.11. Data Extracts – The Contractor shall provide TennCare, or its designee, data extract files and related support throughout the term of this contract.

a. Provision of Data Extracts – The Contractor shall provide data extract files as follows:
   i. No less frequently than quarterly, or upon request, the Contractor shall provide updates to the consolidated data files in a compressed and encrypted format (passwords for encryption must contain no fewer than ten (10) characters and shall contain a mix of upper and lower case letters, numbers, and special characters and must not be reused). Files shall be supplied in format specified by TennCare. Export shall be accompanied by the load script necessary for import into the TennCare database environment. Data files shall be transmitted to TennCare SFTP or SFT server. At the option of TennCare, the file format or method of transmittal of the datasets can be changed;
   ii. Along with extracts, the Contractor shall supply, in addition to the Data Dictionary, the necessary technical documentation to allow for TennCare staff or designees to successfully load and use the data;
   iii. Each data submission shall be accompanied by a transmittal report that specifies the content of the data, the record counts of each data table, Carrier specific frequency counts of submitted data, and the data and any issues with the data, including missing Carrier information;
   iv. If after submission of consolidated data sets, TennCare identifies errors that have not been identified by the Contractor that are within the scope of the required QA testing, the files shall be rejected and must be corrected by the Contactor. If errors are discovered outside the bounds of the required QA testing, the Contractor shall make a reasonable effort with Carriers to address errors and shall incorporate additional QA testing into the required procedures to account for any new type of error discovered;
   v. Upon request in writing, the Contractor shall supply files covering custom periods and contents;
   vi. If requested, the Contractor shall provide a refresh of all historical data collected by the State's prior contractor, as processed through the Contractor's new system, within six (6) months of Contract start date.

b. Assistance to TennCare – The Contractor shall provide assistance to TennCare in use of data sets as follows:
   i. The Contractor shall provide data tables to allow for labeling of coded data elements.
   ii. The Contractor shall provide updated specific definitions and logic of all value added data elements and include them in the file specifications;
   iii. The Contractor shall provide ad hoc assistance on interpretation of all tables and data elements supplied within one (1) week of request; and
   iv. The Contractor shall supply five (5) sets of commercially available comprehensive manuals to TennCare for ICD and HCPCS I (i.e., CPT, ICD and HPCS) for each release or update of the coding systems, including electronic reference books and reference data tables. The Contractor shall provide such materials when releases or updates are made to the relevant coding systems by the publisher or standards body.

c. Quality Assurance – For all data extracts the Contractor shall have in place a written quality assurance process to verify that the data extracted conforms to the extract specifications. The written process shall be made available to TennCare upon request. Any issues with the quality of data extracts discovered by extract recipients that the

Contractor or TennCare is made aware of shall be addressed in updates to the quality assurance process documentation.

d. Prohibition on Release of Data – The Contractor shall be strictly prohibited from releasing or granting access to any data, unless expressly authorized by TennCare in writing, for any purposes other than those specifically authorized by the Contract. Unless otherwise directed in writing by an officer of TennCare, only TennCare shall receive data extracts.

A.12. Privacy and Security – The Contractor shall manage and monitor privacy and security in conformance with established state standards through the creation and definition of privacy and security policies, procedures and controls. The Contractor shall be responsible for privacy and security management, monitoring and testing through the term of this Contract.

a. Privacy and Security Objectives – The Contractor shall implement policies, procedures and controls to meet key privacy and security objectives including but not limited to the following:

i. The Contractor shall prevent and detect unauthorized physical access and use. Appropriate physical security shall be in place to protect hardware, software, storage medium and other equipment from unauthorized access or use.

ii. The Contractor shall prevent and detect unauthorized electronic use or access. Technical and administrative safeguards shall be in place to prevent and detect unauthorized or inappropriate access to electronic information.

iii. The Contractor shall protect against loss of use or destruction of key data and critical systems. Key electronic data shall be regularly backed-up and maintained off-site. Recovery procedures for mission-critical data, in the event of a business interruption or disaster, shall be implemented and maintained.

iv. The Contractor shall monitor, report and resolve data security issues. Safeguards, controls, procedures, and logs shall be regularly reviewed. Security concerns and issues shall be reported to appropriate management for resolution

v. The Contractor shall review and test technical, administrative and physical security controls to ensure confidentiality, integrity and availability.

b. System Vulnerability Testing – All components of the infrastructure shall be reviewed and tested to ensure they protect program systems and data. Tests shall focus on the technical, administrative, and physical security controls that have been implemented in order to provide confidentiality, integrity, and availability. The Contractor shall ensure that systems and applications have been thoroughly tested and hardened to prevent critical application security flaws. Prior to production implementation, the Contractor must arrange for the performance of security and vulnerability testing of the application by a third party qualified to perform such tests, including penetration tests. The Contractor must submit, for review and approval by the State, the proposed scope of testing as well as the name and qualifications of the party performing the tests. The Contractor is responsible for the costs of this testing. The State may elect to perform independent testing. Testing shall confirm that systems and applications are protected from buffer overflow, cross-site scripting, SQL injection, and unauthorized access. Testing shall also confirm that intrusion prevention and detection measures, including but not limited to network or application firewalls, are properly implemented and configured and perform as expected, detecting and prohibiting unauthorized access. The Contractor must address and resolve any significant, identified vulnerabilities and must arrange for repeat testing to confirm resolution.

c. System Maintenance – The Contractor shall use system maintenance methods to prevent unauthorized system changes and to ensure that authorized system maintenance activities shall not unintentionally disrupt service or degrade established security mechanisms. The Contractor shall create and maintain change management documentation and procedures. The Contractor shall perform code review and test all system changes prior to release into the production environment. The Contractor shall establish secure coding patterns and shall perform code review to ensure compliance with patterns and best practices. All software and hardware shall be free of malicious

code. The application shall not store authentication credentials or sensitive data in its code.

d. Annual Security Risk Assessment – The Contractor shall conduct an annual security risk assessment, performed by an independent third-party security Contractor, to verify that the Contractor's environment containing the program data is secure. Broader Contractor-wide assessments that include review of processes and systems supporting the Tennessee APCD program are acceptable. The Contractor shall provide a certified copy of the Security Risk Assessment to TennCare.

e. Access Management – The Contractor shall maintain user accounts for authorized Carrier and TennCare staff. The Contractor shall implement authentication, authorization and access control mechanisms to manage access to the secure website and to program data. The Contractor shall employ least-privilege, role-based access to ensure that users have access to only the functions and data required and authorized. The Contractor shall limit the number of staff that can grant or modify access. All systems and applications shall verify the identity of all users before allowing access.

i. User Accounts and Passwords – User accounts and passwords shall comply with State standards including, but not limited to the following:

(1) Unique user names;
(2) Password complexity;
(3) Password history;
(4) Password expiration;
(5) Password encryption, at rest and in transit;
(6) Account lockout after multiple failed login attempts;

ii. Session Termination – The secure website shall enforce session timeouts during periods of user inactivity, not to exceed timing guidance as defined by system security best practices such as, but not limited to NIST, ARRA/HITECH, and HIPAA. The secure website must allow a user to explicitly and completely terminate a session.

iii. Periodic Review – The Contractor shall periodically review and confirm, at least quarterly, that all active users are still authorized and associated with Carriers or TennCare. Accounts for terminated, unauthorized or inactive users shall be disabled within a reasonable period.

f. Logging – The Contractor shall ensure that all data transmission, access and processing activities are logged.

i. The Contractor shall store all server, web service and database access logs for ten (10) years following the contract period termination, to ensure that full audit trails are available and can be followed if necessary.

ii. The Contractor shall capture all relevant data elements in logs, including but not limited to:

(1) Access date and time
(2) Username attempting access
(3) Success or failure of access
(4) Source of access
(5) Target of access

g. Monitoring – The contractor shall generate and review routine reports regarding system access. The contractor shall review the log information collected on a regular basis, as defined by systems security best practices and regulations (NIST, ARRA/HITECH, and HIPAA) to identify unauthorized or inappropriate access to any device or service within the network, suspicious network scans or other anomalies. The Contractor shall audit all attempted accesses that fail or succeed identification, authentication, and authorization

requirements. In addition to the data captured in these reports, the Contractor's syster shall retain additional detailed information, suitable for forensics that shall be provided tc TennCare upon request.

h. Unauthorized Release, Access, Use or Disclosure of Data – The Contractor is strictly prohibited from releasing or using data or information for any purpose other than those purposes specifically authorized by TennCare. The Contractor shall encrypt data at rest, on file storage, database storage, or on back-up media, and in transit. Aggregated and consolidated data shall not be accessible through the secure website. The Contractor shall provide written notification of any breach in security to the State immediately upon becoming aware of the occurrence. The Contractor shall fully cooperate with the State in investigation of any breach, security incident or vulnerability. The Contractor shall be solely liable for costs associated with any breach of State data housed at their location(s), including but not limited to notification and any costs incurred or damages assessed. Failure to comply with provisions regarding release, access, use or disclosure of data could be a violation of Tennessee or Federal laws and rules and may lead to damages and breach of the Contract.

A.13. Hosting and Infrastructure Requirements

a. Hardware and Software – The Contractor shall provide the hardware, software, communications, and other infrastructure necessary to meet the requirements of the contract at no additional cost to the State or Carriers, including any licenses that must be maintained by the carriers or TennCare. The Carriers and TennCare are responsible for any hardware (PCs) to access the system, as well as any software licenses to access and utilize the data extracts, such as Oracle, SQL or Microsoft Excel.

b. Hosting Environment – The Contractor shall maintain a secure hosting environment to provide required services under this Contract. The Contractor shall provide a secure, Class A data center to house equipment, with 24/7 system monitoring, managed firewall services, and managed backup services. The Contractor shall have an alternate secure hosting site available in the event that it is not possible to restore operations in the primary site within two weeks.

i. Network – The data center must have a redundant, fault-tolerant network and connections to the Internet. The Contractor shall benchmark speed and performance of data upload based on expected file sizes and shall maintain sufficient network bandwidth to support concurrent upload by multiple submitters, maintaining acceptable performance against benchmarks. The Contractor shall not be responsible for issues on State or Carrier networks or the public Internet.

ii. Environmental Systems – The data center must have fault tolerant, redundant environmental systems, including power, temperature and humidity control, and fire suppression.

iii. Physical Security – The data center must be physically secured. Access must be restricted to authorized personnel using multi-layered controls and procedures. Policies for granting access must be in place and followed. Access shall only be granted to those with a need to perform tasks in the data center.

iv. Network, Server and Application Security – The data center network must include robust firewall, intrusion prevention and intrusion detection systems to prevent and detect unauthorized access.

c. System Management and Monitoring – The Contractor shall manage the databases and services on all servers located at the Contractor's facility. The Contractor must monitor all servers and applications and shall use both automated and manual tools and processes to monitor performance, as well as prevent and detect unauthorized access. All servers and devices must have currently-supported and hardened operating systems, the latest anti-viral, anti-hacker, anti-spam, anti-spyware, and anti-malware utilities. The environment, as a whole, shall have aggressive intrusion detection and prevention features.

d. Maintenance – The Contractor shall maintain fully-supported, current versions of all hardware and software components. The Contractor shall maintain hardware and software maintenance and support services as necessary to ensure proper operation and maintenance of systems. The Contractor shall install all hardware and software patches, updates, and other utilities according to vendor recommendations, as required to maintain system operations and security. All critical patches shall be applied within sixty (60) days of general release, or sooner if required. All patches and updates shall be fully tested prior to implementation in the production environment. The Contractor shall repair or replace hardware or software, or any portion thereof, so that the system operates in accordance with the specifications, terms, and requirements of the Contract. A regularly scheduled maintenance window shall be identified (e.g., weekly, monthly, or quarterly) at which time all relevant server patches and application upgrades shall be applied. A critical outage shall be designated when a business function cannot be met by a nonperforming application and there is no work around to the problem. Unless critical or agreed to by TennCare, the Contractor shall perform system maintenance that results in system downtime only on weekends. All maintenance shall be scheduled and Carriers and TennCare shall be notified seventy-two (72) hours in advance of any downtime. The Contractor shall maintain a record of maintenance activities. The Contractor shall generate system usage and performance reports on a monthly basis, including but not limited to the following:
   i. Server up-time and down-time;
   ii. All critical outages; including issue and resolution;
   iii. All changes, patches and upgrades implemented;
   iv. System access; and
   v. Any other issues and resolution.

e. Business Continuity and Disaster Recovery – Systems shall be configured with level of redundancy so that typical component failures shall not disrupt service. The Contractor shall define, implement and exercise adequate business continuity and disaster recovery procedures. The Contractor shall have documented disaster recovery plans that address the recovery of hardware, software and data. The Contractor shall adhere to a defined and documented back-up schedule and procedure, including regular full and incremental back-up. The Contractor shall manage back-up, off-site data storage, and restore operations. Tapes or other back-up media must be securely transferred from the primary site to another secure location to avoid complete data loss with the loss of a facility.

A.14. Oversight/Auditing –

a. Access to Information – The Contractor shall, upon request, provide TennCare, or its designee, with any data and documentation TennCare deems necessary for oversight of the project requirements.

b. Access to Contractor Facilities – The Contractor shall, within two (2) days notice of TennCare's request, provide TennCare, or its designee, access to the Contractor's facilities for an onsite audit of any and all aspects of the system including information about its development, testing, and operations.

A.15. Project Management – The Contractor will be responsible for management of the project to ensure successful completion of the scope of service.

a. Project Management Methodology – The Contractor shall utilize the State's project management methodology in this project and shall follow best practices established by the Project Management Institute (PMI), as codified in the Project Management Body of Knowledge (PMBOK) - Fourth Edition or subsequent editions (American National Standards Institute (ANSI)/PMI 99-001-2008) and the ISO/IEEE 12207-2008, System and Software Engineering - Software Lifecycle Processes where applicable. The Contractor's approach shall include:
   i. use of a Project Manager;
   ii. a kick-off meeting and initial working session;
   iii. formal management of a project plan and work breakdown structure;
   iv. periodic project management meetings,
   v. status reporting, and

vi. issue and risk logs.

The Contractor shall employ a methodology for the implementation and management of the program to ensure that project objectives are achieved.

b. Project Plan Requirements – The Contractor shall develop project plans according to the State's project management methodology, industry standards and best practices. Unless otherwise directed or approved by the State, the Contractor shall maintain project plans on TennCare's Microsoft Project Server (MSPS).

i. Project plans created or maintained by the Contractor must meet criteria or requirements including, but not limited to, the following:

(1) The Project Plan must include relevant and sufficiently detailed work breakdown structure (WBS);
(2) The WBS shall include estimates of effort based on an approved estimation methodology;
(3) Task duration shall be manageable and meaningful;
(4) The Project Plan shall be resource loaded and leveled;
(5) The Project Plan shall include resource rates;
(6) The Project Plan shall identify predecessor and successor activities, task dependencies, and critical path;
(7) The Project Plan shall clearly identify deliverables, milestones and key milestones.
(8) The Project Plan must be base-lined and submitted for review through the Control Memorandum process, described in Section A.16 and must be approved by the State. Any significant changes to the project plan or any changes to the Project Plan's baseline must be submitted for review and approval through this process.

ii. The State must approve the Contractor's approach for:

(1) Defining baseline resource costs;
(2) Measuring and updating Project Plan work and progress;
(3) Calculating EV and ES Project Plan metrics; and
(4) Reporting Project Plan status.

c. Project Tracking and Status Reporting – The Contractor shall track progress against Project Plans and shall report status in form and format approved by the State. The Contractor shall document and manage Project Plan risks, issues and action items. The Contractor shall report Project Plan status weekly, utilizing a State approved template which includes Earned Value (EV) and Earned Schedule (ES) metrics as directed by the State. During implementation and for the first three (3) months of operations, the Contractor shall provide weekly written status reports. The reports shall include, at a minimum, an assessment of progress against plan, any slipped or slipping tasks, risks and issues, mitigation plans, and changes needed to the Implementation Plan or Plan of Operations. For the remainder of the contract term, the Contractor shall provide a bimonthly status report, submitted by the tenth business following the close of the reporting period. Status reports must include at least the following information:

i. A progress update showing work completed, impact of schedules missed, and, if needed, desired plan changes. All plan changes are subject to the prior approval of TennCare.
ii. For services required but not rendered, actions planned but not taken or completed, there must be an explanation of the failure to meet the schedule and detailed plans to overcome the failure as well as to prevent its recurrence.
iii. A narrative review of activities and progress during the reporting period. This shall include the status of relationships with Carriers for the receipt of data and a summary of new/updated data received, as well as an outline of problems encountered and whether and how they were solved, and deliverables scheduled and delivered.

iv. A summary of the problems that the Contractor encountered or might reasonab expect to encounter, and recommended solutions, including specific discussion on systems issues as they relate to data transfers with Carriers or TennCare.

d. Risk, Issue, Decision and Action Tracking – The Contractor shall document and manage project risks, issues, decisions and action items as directed and consistent with the State's project management methodology. The Contractor shall encourage team members, management, and stakeholders to be open about informing the team of potential risks and shall reinforce that all project team members are in a position to identify and bring forth risks which may impact this project. The Contractor shall confer with the Project Director (or his/her designee), as necessary, to assess impact and likelihood of occurrence of identified risks. The Contractor shall develop risk mitigation plans for identified risks based on risk rating, as directed by the State.

e. Issue Escalation – If an issue has not been acceptably resolved, then the issue may be escalated. The owner of the issue shall confer with project management to determine the appropriate management escalation action to take. The first level of issue escalation shall be to the Project Director (or his/her designee). If the Project Director (or his/her designee) is not able to resolve an issue within five (5) business days, or if the issue cannot be resolved at the Project Director level, the Project Director (or his/her designee) shall escalate to the TennCare Chief Information Officer (CIO) (or his/her designee). If the TennCare CIO is not able to resolve the issue within three (3) business days, the TennCare CIO shall escalate the issue to the TennCare Director (or his/her designee) for consideration and final resolution. Types of issues that shall be escalated may include, but are not limited to:
   i. Issues that are past their target resolution date and are urgent;
   ii. Issues that have a significant impact on the project or organization;
   iii. Issues that shall have a significant impact on project scope;
   iv. Issues that may result in additional cost to the State; and
   v. Issues that may cause the project schedule to slip or for a deliverable to be critically late.

A.16. Control Memorandum Process – The Control Memorandum Process shall be utilized by TennCare and Contractor to clarify or enforce Contract requirements, to issue instruction to the Contractor or request instruction from the State, to document submission of Contract deliverables, to document required action, approval or disposition, including, but not limited to, disputes or appeals regarding actual or liquidated damages assessments by the State. This process is not intended to replace the change control process described in Section A.17, to accommodate contract modifications or to bypass processes for mutual agreement in negotiating changes in Contract scope and reimbursement that would otherwise require a contract amendment.

a. Each Control Memorandum issued by either the State or Contractor shall be in writing and contain a unique identification number. Both parties shall utilize Control Memorandum to propose, approve, or change project plans, and staffing plans, to submit deliverables, to document contractually required decisions, actions, approvals or dispositions, to clarify interpretation of contract requirements, or to make any material changes to the project.

b. When issued by the State, the Control Memorandum may include one (1) or more of the following six (6) notices or instructions as applicable and designate a reasonable due date for Contractor's reply or other action. When the Control Memorandum pertains to actual damages or liquidated damages, the State may issue consecutive Control Memoranda incorporating the applicable notices or instructions as described below.
   i. On Request Report (ORR) – a request included in the Control Memorandum issued by TennCare directing the Contractor to provide information by close of business (COB) on a designated due date. An ORR shall be treated as a request for information only, and shall not be used to direct that a given task be completed. Failure to complete or comply with an ORR by the due date may result in the assessment of actual damages, if permitted under this Contract,

and/or the assessment of liquidated damages listed in Attachment B (Liquidated Damages).

ii. Control Directive – an instruction included in the Control Memorandum issued by TennCare that requires the Contractor to complete a certain deliverable or perform any other request from TennCare within the scope of the Contract, by a designated due date. Contractor's failure to complete or comply with the Control Directive by the due date may result in the assessment of actual damages, if permitted under this Contract, and/or the assessment of liquidated damages listed in Attachment B (Liquidated Damages). Once a Control Directive has been issued with the Control Memorandum, it shall be considered to be incorporated into this Contract. Failure to complete or comply as required with a Control Directive may result in sanctions including liquidated damages for each day the Control Directive is not completed or complied with as required.

iii. Potential Actual Damages or Potential Liquidated Damages Notice (PADN/PLDN) – a notice included in the Control Memorandum issued by TennCare to the Contractor that the State has determined that a potential contract performance or compliance issue exists and that the State is contemplating assessing actual damages and/or liquidated damages listed in Attachment B (Liquidated Damages). The State shall notify the Contractor of any potential contract performance or compliance issue within ninety (90) days of the Contractor's written notice of the issue to the State through a Control Memorandum or the State's discovery of the issue. The PADN/PLDN shall identify the Contract provision(s) on which the State bases any potential contract performance or compliance issue and, if available, a projection of the potential actual damages and/or liquidated damages. The parties acknowledge that the total amount of actual damages and/or liquidated damages specified in the PADN/PLDN may not be the final amount assessed. Contractor may, in an attempt to settle this matter informally, within ten (10) business days of receipt of the PADN/PLDN, elect to respond to the PADN/PLDN through the Control Memorandum process. If the State, after review of any information provided by Contractor, continues to assert that potential damages are warranted, the State shall so notify the Contractor through the Control Memorandum. The PADN/PLDN satisfies the State's requirement to provide notice of potential damages and shall preserve the State's rights under the Contract to assess damages. This is the first step in the assessment of Actual or Liquidated Damages.

iv. Calculation of Potential Actual Damages or Potential Liquidated Damages Notice (CPADN/CPLDN) – a notice included in the Control Memorandum issued by TennCare to Contractor that calculates the amount of potential actual damages or potential liquidated damages. If the Contractor elects to formally appeal either the basis or calculation of potential actual or potential liquidated damages, the Contractor must file an appeal by written response to the Control Memorandum within ten (10) business days of receipt of the State's CPADN/CPLDN. The Project Director (or his/her designee) shall review the appeal and provide notice of determination through the Control Memorandum. If the Contractor disagrees with the State's initial appeal determination or the Project Director (or his/her designee) is unable to resolve the appeal, the Contractor may request through a Control Memorandum to the State escalation of the appeal to the TennCare Director (or his/her designee) for reconsideration and final determination. Contractor shall send such notice within ten (10) business days of receipt of the State's initial appeal determination. Notice of the final determination made by the TennCare Director (or his/her designee) will be provided to the Contractor by the Project Director (or his/her designee) through the Control Memorandum. If the Contractor loses this formal appeal, the State in its sole discretion, may assess actual or liquidated damages. This is the second step in the assessment of Actual or Liquidated Damages. The State may not issue a Calculation of Potential Actual Damages or Potential Liquidated Damages Notice (CPADN/CPLDN) before also issuing a Potential Actual Damages or Potential Liquidated Damages Notice (PADN/PLDN).

v. Intent to Assess Final Actual Damages/Liquidated Damages Notice (AD/LDN) – a notice included in the Control Memorandum issued by TennCare to Contractor

that the State is assessing actual damages and/or liquidated damages. This notice shall identify the Contract provision(s) on which the State bases the damages and specify the total amount of actual damages and/or liquidated damages the State intends to assess. At this point, the State may elect to withhold damages from payments due to Contractor. This is the third step in the Assessment of Actual or Liquidated Damages. The State may not issue an Intent to Assess Final Actual Damages / Liquidated Damages Notice (AD/LDN) without first issuing a Calculation of Potential Actual Damages or Potential Liquidated Damages Notice (CPADN/CPLDN).

vi. Assessment of Actual Damages/Liquidated Damages Notice (AADN/ALDN) – a notice included in the Control Memorandum issued by TennCare containing a final demand for payment of actual and/or liquidated damages. This is the fourth step in the Assessment of Actual or Liquidated Damages. The State may not issue an Assessment of Actual Damages / Liquidated Damages Notice (AADN/ALDN) before also issuing an Intent to Assess Final Actual Damages/Liquidated Damages Notice (AD/LDN).

c. The State and Contractor shall utilize the Control Memorandum(a) Process as set forth below:

i. Each party shall designate the individual(s) authorized to initiate Control Memorandum(a),

ii. When the State becomes aware of a problem or a potential problem, the State shall issue a Control Memorandum(a) that may include one or more of the notices or instructions described in Section A.16.b (i) through (vi) above.

iii. The Contractor shall comply with all Control Memorandum(a), except where the Control Memorandum is not within the scope of the Contract. In the event that the Contractor determines that the Control Memorandum is not within the scope of the Contract, the State and the Contractor shall address the change to the scope of the Contract through the change order process as described in Section A.17. Contractor's failure to complete or comply with Control Memorandum(a) as required may result in sanctions including liquidated damages listed in Attachment B (Liquidated Damages) and possible termination of the Contract.

iv. All Control Memoranda submitted shall be reviewed and prioritized by the State's Project Director (or his/her designee.) All Control Memoranda submitted to the Contractor shall be signed and approved by the State's Project Director (or the State's Project Director's designee). All Control Memoranda submitted by the Contractor shall be signed and approved by the Contractor's authorized representative.

v. Control Memorandum issued by TennCare or Contractor shall contain the history, background, and any other pertinent information regarding the issue and/or issues being addressed in the Control Memorandum(a).

A.17. Change Orders – The State may, at its sole discretion and with written notice to the Contractor, request changes in the scope of services that are necessary but were inadvertently unspecified in the scope of services of this Contract.

a. Memorandum of Understanding – No more than ten (10) business days after receipt of a written change order request from the State, the Contractor shall respond with a written proposal for completing the service. Said proposal must specify:

i. the effect, if any, of implementing the requested change(s) on all other services required under this Contract;

ii. the specific effort involved in completing the change(s);

iii. the expected schedule for completing the change(s);

iv. the maximum number of person hours required for the change(s); and

v. the maximum cost for the change(s), PROVIDED THAT such maximum cost shall not exceed the product of the person hours required multiplied by the appropriate payment rate proposed for change order work.

b. Approval – The Contractor shall not perform any change order service until the State has approved the change order proposal. If approved, the State will sign the change order proposal, and it shall constitute a Memorandum of Understanding (MOU) between the

Contract Parties pertaining to the specified change(s) and shall be incorporated, hereby as a part of this Contract.

c. Change Order Performance – Subsequent to State approval of an MOU, the Contractor shall complete the required change order services. The State will be the sole judge of the acceptable completion of change order work and, upon such determination, shall provide the Contractor written approval of the work.

d. Change Order Remuneration – The State will remunerate the Contractor only for acceptable work. All acceptable work performed pursuant to an approved MOU, without a formal amendment of this contract, shall be remunerated in accordance with and further limited by contract section C.3.c, PROVIDED THAT, the State shall be liable to the Contractor only for the cost of the actual person hours worked to complete the change order work, not to exceed the maximum cost for the change detailed in the MOU. In no instance shall the State be liable to the Contractor for the cost of any person hours worked in excess of the maximum person hours indicated in or of any amount exceeding the maximum cost specified by the approved MOU authorizing the service. Upon State approval of the change order work, the Contractor shall invoice the State in accordance with the relevant provisions of this Contract.

A.18. General Requirements

a. Meetings – Unless otherwise designated or approved, all project meetings shall take place at State Offices in Nashville Tennessee. The Contractor shall coordinate and conduct project meetings including but not limited to:

i. Kick-Off Meeting – The Contractor Project Manager and relevant key staff shall travel to Nashville, Tennessee, to conduct an initial project kick-off meeting to initiate the project. It is expected the meeting will be required, at a minimum, as an input to the development of the implementation project plan.
ii. Project Status Meetings – The Contractor shall coordinate and conduct regular status meetings, in person or by telephone, to review project status reports as submitted.
iii. Contract Review Meetings – The Contractor Project Manager and relevant key staff shall, every three (3) months beginning in the first month of the Contract, travel to Nashville, Tennessee, to meet with project representatives from TennCare to review past quarter performance and upcoming quarter activity.
iv. Ad Hoc Meetings – The Contractor shall ensure that key Contractor staff shall be readily available, in person or by telephone, to consult with TennCare staff regarding project issues or status.

b. Reports and Information Access – The Contractor shall provide ad hoc progress reports, data, or information as requested by TennCare. Upon request the Contractor shall provide detailed documentation on any and all aspects of the project to ensure complete transparency of the processes used for collection, quality assurance testing, consolidation, and release of the data, including results of Contractor's testing of their solution. The Contractor shall provide an annual report on the last day of the month following the end of each year of the Contract, and with the final request for reimbursement that provides, at a minimum, a detailed review of the operations under this Contract, including a discussion of problems encountered and resolved or outstanding, and recommendations for change.

c. Project Documents and Artifacts – All user, technical, and system documentation as well as project plans, status reports, and correspondence shall be developed and maintained in file formats and types specified by TennCare. The Contractor shall maintain a repository of all project documents and artifacts and shall maintain version history of all project documents and artifacts.

d. Ownership of Information – Data, information, and reports collected or prepared by the Contractor as part of the project shall be deemed to be owned by TennCare.

e. Acceptance Criteria – The Contractor shall collaborate with TennCare to develop and agree upon acceptance criteria for this initiative. In order to perform acceptance testing prior to Carrier submission, the Contractor shall utilize test data for all acceptance testing. Potential acceptance criteria include, but are not limited to:

i. Run time required to process data;
ii. Performance of patient and provider matching algorithms;
iii. Successful completion of data audits and audit report production;
iv. Review of data extracts.

f. Right of Rejection – The State unconditionally reserves the right to reject any and all deliverables that do not meet State requirements. The State may withhold payment or assess damages for failure to meet contract requirements.

g. Contract Transition – The Contractor shall develop and submit, three (3) months prior to conclusion of the Contract, a transition plan to assist TennCare in continuing collection of the data. The Contractor shall cooperate with any new Contractor or with State of Tennessee staff to ensure all existing data is supplied and any code and documentation needed to provide continuity of the project is supplied to the State and de-identification and consolidation methods are fully transferred. The Contractor shall turn over, at the conclusion of the Contract, all data provided by Carriers and electronic versions of all application source code and documentation developed for the project. The Contractor shall, as directed by TennCare at the conclusion of the Contract, supply TennCare with copies of all consolidated and unconsolidated data from Carriers in a comprehensive and organized manner including written documentation of the contents of the data files. Data shall be transmitted or supplied as directed by the State. Any transfer media shall become the property of TennCare. At the end of the contract and following approval by TennCare, the Contractor shall securely destroy all program data held or stored by Contractor.

h. Staffing – The Contractor shall assign staff with relevant experience and skills. In developing the staffing plan, the Contractor shall:

i. Examine TennCare needs and contract requirements to identify the mix of skills and experience required.
ii. Identify roles and positions needed.
iii. Provide staff with skills including, but not limited to, the following:

(1) Project planning, management and leadership
(2) Tasks and process documentation
(3) Data management
(4) Quality assurance
(5) Communication
(6) Plan participants' management updates and reports

iv. Assign a senior project manager who shall be responsible for the entire project during implementation.
v. Assign a senior manager who shall act as the Account Manager, dealing with ongoing client management.
vi. Assign staff to other project roles and positions.
vii. Use senior and technical consultants as needed during implementation and operations to design, implement and support the program.
viii. Provide staff training on contract and project requirements, processes and tools.

i. Quality Assurance – Throughout the scope of the project, the Contractor shall perform routine quality assurance measures to ensure the data and all other supporting processes to accomplish daily operation tasks adhere to a set of quality checks to assist in proactively identifying potential risk associated with the project and any project lags.

j. Correction of Deficiencies – Any corrections of deficiencies relating to the Contract Scope of Services requirements or deliverables and any investigation necessary to determine the source of such deficiencies shall be completed by the Contractor at no cost to the State.

B. CONTRACT TERM:

B.1. This Contract shall be effective for the period beginning November 1, 2013 and ending on October 31, 2016. 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 Two Million Nine Hundred Forty-Two Thousand Four Hundred Ninety-Nine Dollars and Ninety Cents ($2,942,499.90). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's 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 for said units, milestones, or increments of service based upon the following payment rates:

Service Description	Amount (per compensable increment)
Completion of Project Plan – as detailed by Pro Forma contract section A.3.	$ 84,000.00 *

Completion of Carrier Registration – Carrier Registration Process – as detailed by *Pro Forma* Contract Section A.7. To include Design, Development, Testing and Implementation.	$ 197,000.00 *
Completion of Data Collection, Validation and Consolidation – Data activities – as detailed by *Pro Forma* Contract Sections A.9, A.10. To include Design, Development, Testing and Implementation.	$ 321,000.00 *
Completion of Data Extracts – Software Development – as detailed by *Pro Forma* Contract Section A.11. To include Design, Development, Testing and Implementation.	$ 98,000.00
Post Implementation Operational Support – as detailed by *Pro Forma Contract* Section A.4.	$ 62,083.33 **

* **80% of proposed amount will be paid upon completion of task; the remaining 20% will be paid upon successful completion of Data Extracts**

** **Monthly Post Implementation Operational payments will begin one month after successful completion of Data Extracts**

c. The Contractor shall be compensated for changes requested and performed pursuant to Contract Section A.17., without a formal amendment of this contract based upon the payment rates detailed in the schedule below and as agreed pursuant to said Section A.17., PROVIDED THAT compensation to the Contractor for such "change order" work shall not exceed TEN PERCENT (10%) of the contract maximum liability less the cost for post-implementation support. If, at any point during the Contract period, the State determines that the cost of necessary "change order" work would exceed said maximum amount, the State may amend this Contract to address the need.

Service Description	**Amount** (per compensable increment)
Additional Services (that may be required by the State and agreed by the Contract Parties pursuant to pro forma contract, section A.17.)	$ 190.00 / Blended Hourly Rate **(Not to Exceed 2000 hours)**

(d) Should the Contract be amended for extension of term as specified in Section B.2, the following rates from shall apply from November 1, 2016 through October 31, 2018:

Service Description	**Amount** (per compensable increment)
Post Implementation Operational Support	$ 64,000.00/ Month
Additional Services (that may be required by the	

State and agreed by the Contract Parties pursuant to pro forma contract, section A.17.)	$ 190.00/ Blended Hourly Rate **(Not to Exceed 2000 hours)**

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 after completion of all work, described in section C.3 of this Contract, and present said invoices no more often than required, with all necessary supporting documentation, to:

Division of Health Care Finance and Administration
Fiscal Office – 4 E
310 Great Circle Road
Nashville, TN 37243-1102

a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).

(1) Invoice Number (assigned by the Contractor);
(2) Invoice Date;
(3) Contract Number (assigned by the State);
(4) Customer Account Name: Department of Finance and Administration, Division of Health Care Finance and Administration, Office of Health Planning
(5) Customer Account Number (assigned by the Contractor to the above-referenced State Agency);
(6) Contractor Name;
(7) Contractor Federal Employer Identification, Social Security, or Tennessee Edison Registration ID Number Referenced in Preamble of this Contract;
(8) Contractor Contact for Invoice Questions (name, phone, and/or fax);
(9) Contractor Remittance Address;
(10) Description of Delivered Service;

b. The Contractor understands and agrees that an invoice 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) Only be submitted for completed service and shall not include any charge for future work;
(3) Not include sales tax or shipping charges; and
(4) Initiate the timeframe for payment (and any discounts) only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this section C.5.

C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice or matter in relation thereto. A payment by the State shall not be construed as acceptance of any part of the work or service provided or as approval of any amount invoiced.

C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any payment, 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 Human Resources, and the Comptroller of the Treasury).

D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

D.3. Termination for Convenience. The 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, each 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 handicap or 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 *Tennessee Code Annotated*, Section 12-4-124, *et seq.*, 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 A, 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 *Tennessee Code Annotated*, Section 12-4-124, *et seq.* 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 there from, 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
Division of Health Care Finance and Administration
310 Great Circle Road
Nashville TN 37243
(615) 507-6443 (Phone)
(615) 253-5607 (FAX)
Darin.j.gordon@tn.gov

The Contractor:

Pate McCartney, SVP
Truven Health Analytics
830 Crescent Centre Drive, Suite 600
Franklin, TN 37067
(615) 778-6410 (Phone)
(734) 604-0546 (Cell)
pate.mccartney@truvenhealth.com

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. 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, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.

E.5. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the 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.6. 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, and as amended.

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 the Access, Use and Disclosure of PHI; and
4. Timely Reporting of Privacy and/or Security Incidents.

The Contractor warrants that it shall cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and HITECH and their accompanying regulations, in the course of performance of the Contract so that both parties will be in compliance with HIPAA and HITECH.

The State and the Contractor shall 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.7. As a party to this Contract, the Contractor hereby acknowledges its designation as a covered entity and/or business associate under the HIPAA regulations and agrees to comply with all applicable HIPAA and HITECH (hereinafter "HIPAA/HITECH") regulations. In accordance with HIPAA/HITECH regulations, the Contractor shall, at a minimum:

a. Comply with requirements of the Health Insurance Portability and Accountability Act of 1996 and the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH), including, but not limited to, the transactions and code sets, privacy, security, and identifier regulations, by their designated compliance dates. Compliance includes meeting all required transaction formats and code sets with the specified data sharing agreements required under the regulations;

b. Transmit/receive from/to its providers, subcontractors, clearinghouses and TennCare a transactions and code sets required by the HIPAA/HITECH regulations in the appropriat standard formats, utilizing appropriate and adequate safeguards, as specified under the law and as directed by TennCare so long as TennCare direction does not conflict with the law;

c. Agree that if it is not in compliance with all applicable standards defined within the transactions and code sets, privacy, security and all subsequent HIPAA/HITECH standards, that it will be in breach of this Contract and will then take all reasonable steps to cure the breach or end the violation as applicable. Since inability to meet the transactions and code sets requirements, as well as the privacy and security requirements can bring basic business practices between TennCare and the Contractor and between the Contractor and its providers and/or subcontractors to a halt, if for any reason the Contractor cannot meet the requirements of this Section, TennCare may terminate this Contract in accordance with the Business Associate Agreement ancillary to this Contract;

d. Ensure that Protected Health Information (PHI) exchanged between the Contractor and TennCare is used only for the purposes of treatment, payment, or health care operations and health oversight and its related functions. All PHI not transmitted for these purposes or for purposes allowed under the federal HIPAA/HITECH regulations shall be de-identified to secure and protect the individual enrollee's PHI;

e. Report to TennCare's Privacy Office immediately upon becoming aware of any use or disclosure of PHI in violation of this Contract by the Contractor, its officers, directors, employees, subcontractors or agents or by a third party to which the Contractor disclosed PHI;

f. Specify in its agreements with any agent or subcontractor that will have access to PHI that such agent or subcontractor agrees to be bound by the same restrictions, terms and conditions that apply to the Contractor pursuant to this Section;

g. Make available to TennCare enrollees the right to amend their PHI in accordance with the federal HIPAA regulations. The Contractor shall also send information to enrollees educating them of their rights and necessary steps in this regard;

h. Make an enrollee's PHI accessible to TennCare immediately upon request by TennCare;

i. Make its internal policies and procedures, records and other documentation related to the use and disclosure of PHI available to the U.S. Secretary of Health and Human Services for the purposes of determining compliance with the HIPAA/HITECH regulations upon request;

j. Create and adopt policies and procedures to periodically audit adherence to all HIPAA/HITECH regulations, and for which Contractor acknowledges and promises to perform, including but not limited to, the following obligations and actions:

k. Agree to ensure that any agent, including a subcontractor, to whom it provides PHI that was created, received, maintained, or transmitted on behalf of TennCare agrees to use reasonable and appropriate safeguards to protect the PHI.

l. If feasible, return or destroy all PHI, in whatever form or medium (including any electronic medium) and all copies of an any data or compilations derived from and allowing identification of any individual who is a subject of that PHI upon termination, cancellation, expiration or other conclusion of the Agreement, and in accordance with this Section of this Contract. The Contractor shall complete such return or destruction as promptly as possible, but not later than thirty (30) days after the effective date of the termination, cancellation, expiration or other conclusion of the Agreement. The Contractor shall identify any PHI that cannot feasibly be returned or destroyed. Within such thirty (30) days after the effective date of the termination, cancellation, expiration or other conclusion of the Agreement, the Contractor shall: (1) certify on oath in writing that such

return or destruction has been completed; (2) identify any PHI which cannot feasibly b returned or destroyed; and (3) certify that it will only use or disclose such PHI for thos purposes that make its return or destruction infeasible;

m. Implement all appropriate administrative, physical and technical safeguards to prevent the use or disclosure of PHI other than pursuant to the terms and conditions of this Contract and, including, but not limited to, privacy, security and confidentiality requirements in 45 CFR Parts 160 and 164;

n. Set up appropriate mechanisms to limit use or disclosure of PHI to the minimum necessary to accomplish the intended purpose of the use or disclosure;

o. Create and implement policies and procedures to address present and future HIPAA/HITECH regulatory requirements as needed, including, but not limited to: use and disclosure of data; de-identification of data; minimum necessary access; accounting of disclosures; enrollee's right to amend, access, request restrictions; notice of privacy practices and right to file a complaint;

p. Provide an appropriate level of training to its staff and employees regarding HIPAA/HITECH-related policies, procedures, enrollee rights and penalties prior to the HIPAA/HITECH implementation deadlines and at appropriate intervals thereafter;

q. Track training of Contractor staff and employees and maintain signed acknowledgements by staff and employees of the Contractor's HIPAA/HITECH policies;

r. Be allowed to use and receive information from TennCare where necessary for the management and administration of this Contract and to carry out business operations where permitted under the regulations;

s. Be permitted to use and disclose PHI for the Contractor's own legal responsibilities;

t. Adopt the appropriate procedures and access safeguards to restrict and regulate access to and use by Contractor employees and other persons performing work for the Contractor to have only minimum necessary access to PHI and personally identifiable data within their organization;

u. Continue to protect and secure PHI AND personally identifiable information relating to enrollees who are deceased;

v. Be responsible for informing its enrollees of their privacy rights in the manner specified under the regulations;

w. Make available PHI in accordance with 45 CFR 164.524;

x. Make available PHI for amendment and incorporate any amendments to PHI in accordance with 45 CFR 164.526; and

y. Obtain a third (3rd) party certification of their HIPAA transaction compliance ninety (90) calendar days before the start date of operations, as applicable, and at the request of the State.

The Contractor shall track all security incidents as defined by HIPAA/HITECH, and, as required by the HIPAA/HITECH Reports. The Contractor shall periodically report in summary fashion such security incidents.

E.8. TennCare and the Contractor are "information holders" as defined in TCA 47-18-2107. In the event of a breach of the security of Contractor's information system, as defined by TCA 47-18-2107, the Contractor shall indemnify and hold TennCare harmless for expenses and/or damages related to the breach. Such obligations shall include, but not be limited to, mailing notifications to affected enrollees. Substitute notice to written notice, as defined by TCA 47-18-2107(e)(2)and(3), shall only be permitted with TennCare's express written approval. The

Contractor shall notify TennCare's Privacy Office immediately upon becoming aware of ar security incident that would constitute a "breach of the security of the system" as defined in TC 47-18-2107.

E.9. Notification of Breach and Notification of Provisional Breach - The Contractor shall notify TennCare's Privacy Office immediately upon becoming aware of any incident, either confirmed or provisional, that represents or may represent unauthorized access, use or disclosure of encrypted or unencrypted computerized data that materially compromises the security, confidentiality, or integrity of enrollee PHI maintained or held by the Contractor, including any unauthorized acquisition of enrollee PHI by an employee or otherwise authorized user of the Contractor 's system. This includes, but is not limited to, loss or suspected loss of remote computing or telework devices such as laptops, PDAs, Blackberrys or other Smartphones, USB drives, thumb drives, flash drives, CDs, and/or disks.

E.10. 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.11. 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 or Memoranda of Understanding pursuant to section A.17. of this contract (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.12. 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 31865-00360 (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.13. 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.14. 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 sub recipients 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.15. 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 entit (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.16. 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.17. 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 above referenced, Attachment B 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.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. 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 sub awards); 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 sub awards); 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.

E.20. 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.21. Social Security Administration (SSA) Required Provisions for Data Security. The Contractor shall comply with limitations on use, treatment, and safeguarding of data under the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, related Office of Management and Budget guidelines, the Federal Information Security Management Act of 2002 (44 U.S.C. § 3541, *et seq.*), and related National Institute of Standards and Technology guidelines. In addition, the Contractor shall have in place administrative, physical, and technical safeguards for data.

a. The Contractor shall not duplicate in a separate file or disseminate, without prior written permission from TennCare, the data governed by the Contract for any purpose other than that set forth in this Contract for the administration of the TennCare program. Should the Contractor propose a redisclosure of said data, the Contractor must specify in writing to TennCare the data the Contractor proposes to redisclose, to whom, and the reasons that justify the redisclosure. TennCare will not give permission for such redisclosure unless the redisclosure is required by law or essential to the administration of the TennCare program.

b. The Contractor agrees to abide by all relevant federal laws, restrictions on access, use, and disclosure, and security requirements in this Contract.

c. The Contractor shall provide a current list of the employees of such contractor with access to SSA data and provide such lists to TennCare.

d. The Contractor shall restrict access to the data obtained from TennCare to only those authorized employees who need such data to perform their official duties in connection with purposes identified in this Contract. The Contractor shall not further duplicate, disseminate, or disclose such data without obtaining TennCare's prior written approval.

e. The Contractor shall ensure that its employees:

(1) properly safeguard PHI/PII furnished by TennCare under this Contract from loss, theft or inadvertent disclosure;

(2) understand that they are responsible for safeguarding this information at all times, regardless of whether or not the Contractor employee is at his or her regular duty station;

(3) ensure that laptops and other electronic devices/ media containing PHI/PII are encrypted and/or password protected;

(4) send emails containing PHI/PII only if encrypted or if to and from addresses that are secure; and,

(5) limit disclosure of the information and details relating to a PHI/PII loss only to those with a need to know.

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

f. Loss or Suspected Loss of Data – If an employee of the Contractor becomes aware of suspected or actual loss of PHI/PII, he or she must immediately contact TennCare immediately upon becoming aware to report the actual or suspected loss. The Contractor will use the Loss Worksheet located at http://www.tn.gov/tenncare/forms/phi_piiworksheet.pdf to quickly gather and organize information about the incident. The Contractor must provide TennCare with timely updates as any additional information about the loss of PHI/PII becomes available.

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

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

h. In order to meet certain requirements set forth in the State's Computer Matching and Privacy Protection Act Agreement (CMPPA) with the SSA, the Parties acknowledge that this Section shall be included in all agreements executed by or on behalf of the State. The Parties further agree that FISMA and NIST do not apply in the context of data use and disclosure under this Agreement as the Parties shall neither use nor operate a federal information system on behalf of a federal executive agency. Further, NIST is applicable to federal information systems; therefore, although encouraged to do so, the State, its contractors, agents and providers are not required to abide by the NIST guidelines.

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

j. Definitions

(1) "SSA-supplied data" – information, such as an individual's social security number, supplied by the Social Security Administration to TennCare to determine entitlement or eligibility for federally-funded programs (CMPPA between SSA and F&A; IEA between SSA and TennCare).

(2) "Protected Health Information/Personally Identifiable Information" (PHI/PII) (45 C.F.R. 160.103; OMB Circular M-06-19) – Protected health information means individually identifiable health information that is: (i) Transmitted by electronic media; (ii) Maintained in electronic media; or (iii) Transmitted or maintained in any other form or medium.

(3) "Individually Identifiable Health Information" – information that is a subset of health information, including demographic information collected from an individual, and: (1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) identifies the individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

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

E.22 Medicaid and CHIP - The Contractor must provide safeguards that restrict the use or disclosure of information concerning applicants and beneficiaries to purposes directly connected with the administration of the plan:

i. Purposes directly related to the administration of Medicaid and CHIP include:
(a) establishing eligibility;
(b) determining the amount of medical assistance;
(c) providing services for beneficiaries; and,
(d) conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to Medicaid or CHIP administration.

ii. The Contractor must have adequate safeguards to assure that—
(a) Information is made available only to the extent necessary to assist in the valid administrative purposes of those receiving the information, and information received under 26 USC is exchanged only with parties authorized to receive that information under that section of the Code; and,
(b) the information is adequately stored and processed so that it is protected against unauthorized disclosure for other purposes.

iii. The Contractor must have criteria that govern the types of information about applicants and beneficiaries that are safeguarded. This information must include at least--
(a) Names and addresses;
(b) Medical services provided;
(c) Social and economic conditions or circumstances;
(d) Contractor evaluation of personal information;
(e) Medical data, including diagnosis and past history of disease or disability; and
(f) Any information received for verifying income eligibility and amount of medical assistance payments, including income information received from SSA or the Internal Revenue Service,

(g) Any information received for verifying income eligibility and amount of medical assistance payments

(h) Income information received from SSA or the Internal Revenue Service must be safeguarded according to Medicaid and CHIP requirements

(i) Any information received in connection with the identification of legally liable third party resources.

(j) Social Security Numbers.

iv. The Contractor must have criteria approved by TennCare specifying

(a) the conditions for release and use of information about applicants and beneficiaries:

(b) Access to information concerning applicants or beneficiaries must be restricted to persons or Contractor representatives who are subject to standards of confidentiality that are comparable to those of TennCare.

(c) The Contractor shall not publish names of applicants or beneficiaries.

(d) The Contractor shall obtain permission from a family or individual, whenever possible, before responding to a request for information from an outside source, unless the information is to be used to verify income, eligibility and the amount of medical assistance payment to an authorized individual or entity;

(e) If, because of an emergency situation, time does not permit obtaining consent before release, the Contractor shall notify TennCare, the family or individual immediately after supplying the information.

(f) The Contractor's policies must apply to all requests for information from outside sources, including governmental bodies, the courts, or law enforcement officials.

(i.) The Contractor shall notify TennCare of any requests for information on applicants or beneficiaries by other governmental bodies, the courts or law enforcement officials ten (10) days prior to releasing the requested information.

(g) If a court issues a subpoena for a case record or for any Contractor representative to testify concerning an applicant or beneficiary, the Contractor must notify TennCare at least ten (10) days prior to the required production date so TennCare may inform the court of the applicable statutory provisions, policies, and regulations restricting disclosure of information, effective until Jan. 1, 2014.

(h) The Contractor shall not request or release information to other parties to verify income, eligibility and the amount of assistance under Medicaid or CHIP, prior to express approval from TennCare.

E.23. Employees Excluded from Medicare, Medicaid or CHIP. The Contractor does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly employ, in the performance of this Contract, employees who have been excluded from participation in the Medicare, Medicaid, and/or CHIP programs pursuant to Sections 1128 of the Social Security Act.

E.24. Tennessee Department of Revenue Registration. The Contractor shall be registered with the Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material requirement of this Contract.

10-22-13

10/24/13

IN WITNESS WHEREOF,

TRUVEN HEALTH ANALYTICS, INC.:

10/16/13 10/24/13

CONTRACTOR SIGNATURE **DATE**

JONATHAN S. NEWPOL, EXECUTIVE VICE PRESIDENT

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE

CENTRAL PROCUREMENT OFFICE

10-27-13

Larry B. Martin / CD — 10/18/2013

LARRY B. MARTIN, COMMISSIONER — DATE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	39377
CONTRACTOR LEGAL ENTITY NAME:	Truven Health Analytics, Inc.
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	061467923

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.

PRINTED NAME AND TITLE OF SIGNATORY Jonathan S. Newpol
Executive Vice President

10/16/13

DATE OF ATTESTATION

Attachment B

Liquidated Damages

The State may choose the following remedy in the event the Contractor fails to properly perform its obligations under this Contract in a proper and/or timely manner. Upon determination that the Contractor is not completing one or more of the services described in Section A under this Contract in a proper and/or timely manner, the State will notify the Contractor in writing pursuant to the Control Memorandum Process set forth in Section A.16 of this Contract. If a specific Contract issue and corresponding liquidated damage is not specified below, the State may assess general liquidated damages for any failure by the Contractor to comply with the terms of the Contract in the amount of Five hundred dollars ($500.00) pursuant to the Control Memorandum Process set forth in Contract Section A.16. Liquidated damages shall be assessed for the time period in which the deficiency occurs. Should the deficiency remain uncorrected for more than thirty (30) calendar days from the date of notification by the State, the State may impose an additional general liquidated damage of five hundred dollars ($500) per business day from the date of the original notification to Contractor until said deficiency is resolved to the State's satisfaction.

Liquidated damages may be retroactive to the date of notice of deficiency and continue until such time as the Deputy Commissioner of Health Care Finance and Administration, or his or her designee, determines the deficiency has been cured. If damages are assessed, the State shall reduce the Contractor's payment for services in the following month's invoice by the amount of damages. In the event that damages due exceed the State fees payable to Contractor in a given payment cycle, the State shall invoice Contractor for the amount exceeding the fees payable to Contractor and the Contractor shall make payment to the State for these fees within thirty (30) calendar days of the invoice date.

	ISSUES	DAMAGE
1.	Failure to submit finalized Implementation Project Plan within twenty (20) business days after the contract start date. (Section A.3.a.)	The damage that may be assessed shall be five hundred dollars ($500) per calendar day.
2.	Failure to submit finalized Plan of Operations within one (1) month of contract start date. (A.4.a.)	The damage that may be assessed shall be five hundred dollars ($500) per calendar day.
3.	The Contractor is responsible for amending their collection and consolidation system to keep current with any changes made to the statute or rules and any changes made to industry standard coding systems for the life of the Contract, including the adoption of National Council for Prescription Drug Programs (NCPDP) and ASC X12N standards, at no additional cost. Failure to incorporate needed modifications in their system within three (3) months from the adoption of any statute or rule change to incorporate needed modifications in contractor's system. (Section A.5.a.)	The damage that may be assessed shall be one thousand dollars ($1,000) per calendar day.
4.	Failure to provide within twenty-one (21) days of contract start date a communication plan and materials to introduce Carriers to the reporting law and its requirements and the Contractor's role, requirements and methods for submission of the data; and other materials deemed helpful by the Contractor and TennCare. (Section A.6.c.)	The damage that may be assessed shall be five hundred dollars ($500.00) per calendar day.

5.	Failure to host a Secure Project Website for use by Contractor, Carriers and TennCare. (Section A.6.f.)	The damage that may be assessed shall be one thousand dollars ($1,000.00) per occurrence.
6.	Failure to perform data element level de-identification software as required by State or Federal law or regulation, to allow each Carrier to de-identify individual data elements, as specified in Tennessee rules, within the Carrier prepared data files, prior to submission. (Section A.8)	The damage that may be assessed shall be one thousand dollars ($1,000.00) per occurrence.
7.	Failure to provide data aggregation and Consolidation services, including a Common Database, Data Conversion, Record Changes, Record Replacement, Common Encrypted Person Identifier, Common Provider Identifier, Common Provider Practice Identifier, Consolidation Process, and any Additional Review and as warranted. (Section A.10)	The damage that may be assessed shall be one thousand dollars ($1,000.00) per occurrence.
8.	Failure to provide the hardware, software, communications and other infrastructure necessary to meet the requirements of the contract at no additional cost to the State or Carriers, including any licenses that must be maintained by the carriers or TennCare. (Section A.13.a)	The damage that may be assessed shall be one thousand dollars ($1,000.00) per occurrence.
9.	Failure to maintain a secure hosting environment to provide required services under this Contract and provide a secure Class A data center to house equipment, 24/7 system monitoring, managed firewall services, and managed backup services. (Section A.13.b)	The damage that may be assessed shall be five thousand dollars ($5,000.00) per occurrence.
10.	Failure to comply with HIPAA and HITECH Rules resulting in an unauthorized disclosure of PHI as described in Sections E.6 and E.7.	The damage that may be assessed shall be up to Ten Thousand Dollars ($10,000) per incident.
11.	Failure to have adequate Privacy and Security Safeguards and Policies as described in Sections E.6 and E.7.	The damage that may be assessed shall be up to Five Thousand Dollars ($5,000) per incident.
12.	Failure to timely report violations in use and Disclosure of PHI as described in Sections E.6. and E.7.	The damage that may be assessed shall be up to Five Hundred Dollars ($500.00) per calendar day until cured.
13.	Failure to timely report Privacy/Security incidents as described in Sections E.7 and E.8.	The damage that may be assessed shall be up to Five Hundred Dollars ($500.00) per calendar day until cured.
14.	Failure to ensure that all State 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 which compromises the security or privacy of TennCare enrollee protected health	The damage that may be assessed shall be Five Hundred Dollars ($500) per recipient per occurrence, and, if the State deems credit monitoring and/or identity theft safeguards are needed to protect those State recipients 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

	information (See ancillary Business Associate Agreement executed between the parties)	
15.	Failure by the Contractor to prevent the use or disclosure of State recipient data or State confidential in any form via any medium with any third party beyond the boundaries and jurisdiction of the United States (See ancillary Business Associate Agreement executed between the parties)	The damage that may be assessed shall be One Thousand Dollars ($1,000) per recipient per occurrence.
16	Failure to comply with limitations on release, access, use, disclosure, treatment, and safeguarding of data as described in Sec. E.21 and Sec. A.12.h.	The damage that may be assessed shall be One Thousand Dollars ($1,000) per recipient per occurrence.
17.	Failure to provide safeguards that restrict the use or disclosure of information concerning applicants and beneficiaries to purposes directly connected with the administration of the plan as described in Sec. E.22	The damage that may be assessed shall be One Thousand Dollars ($1,000) per recipient per occurrence.