



August 29, 2018

Ms. Krista Lee, Executive Director
Fiscal Review Committee
8th Floor, Rachel Jackson Bldg.
Nashville, TN 37243

RE: Aon Consulting, Inc. – Amendment 1
Document Solutions of Nashville – Amendment 5
Health Management Systems, Inc. – Amendment 1

Dear Ms. Lee:

The Department of Finance and Administration, Division of TennCare, is submitting for consideration by the Fiscal Review Committee the following three (3) amendments and all required documentation and approvals.

- 1) Aon Consulting, Inc. is the competitively procured Contractor that develops actuarially sound per capita costs on an annual basis to be used for compensating Managed Care Organization (MCO) participants within the Division of TennCare. The contract term included an initial three (3) year term with an additional three (3) one (1) year renewal options that the State may exercise. The proposed amendment is needed in order to exercise the contract's first renewal option as well as increase the maximum liability in anticipation of exercising the first renewal option.
- 2) Document Solutions of Nashville is a competitively procured contract providing litigation support services to the Division of TennCare. In this amendment we are requesting to extend the term of this contract an additional year through December 14, 2019, as requested in the Rule Exception Request and funds are also being added for the first time for this contract. Document Solutions of Nashville houses and manages the equivalent of more than 50 million pages of material belonging to TennCare in multiple secure locations ranging from biometric access data vaults to secure web-hosted repositories. This vendor has provided TennCare with legal technology and litigation support services for more than a decade. Services provided include eDiscovery consulting, data collections, data filtering, data processing, search consulting, technology assisted review, web hosting, cross matter management, production services, and scanning/photocopying. Their experience and expertise has enabled TennCare to significantly reduce what it spends when responding to requests for information. In addition, this vendor has continually and proactively reduced the rates for their services, both on a case-by-case basis and contractually.

With the support provided by this vendor, TennCare has responded to 951 records requests and 57 subpoenas since 2016. TennCare has also seen an increase to 22 current active litigation holds. Document Solutions is assisting TennCare in several of those cases, including in anticipation for trial in a large lawsuit this fall. . Document Solutions of Nashville has established relationships with other agencies including the Office of the Attorney General, further ensuring the collection, production, and review of documents in conjunction with



outside counsel is a cost-effective and efficient process.

- 3) Health Management Systems, Inc. is a competitively procured contract for the provision of Third Party Liability recovery services. It is necessary to amend the contract to add funding to support the continuation of recovery and cost avoidance services throughout the remainder of the term and to also exercise a renewal option as laid out in contract section B.2. The recoveries associated with this contract are not amounts that can easily be projected and vary significantly from one payment cycle to the other, depending on the dollar amounts of recoveries made, as well as the percentage of reimbursement to the contractor according to their cost and associated rates and percentage of reimbursement in the contract.

TennCare respectfully submits the above referenced contract amendments for consideration and approval by the Fiscal Review Committee. We look forward to promptly providing any additional information as may be requested by the Committee.

Sincerely,

A handwritten signature in blue ink, appearing to read "William Aaron", with a long horizontal line extending to the right.

William Aaron
Chief Financial Officer

cc: Wendy Long, M.D., Deputy Commissioner

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	
Kevin C. Bartels for Michael F. Perry	Digitally signed by Kevin C. Bartels for Michael F. Perry DN: cn=Kevin C. Bartels for Michael F. Perry, o=CPO, ou, email=Kevin.C.Bartels@tn.gov, c=US Date: 2018.08.13 13:43:02 -05'00'
CHIEF PROCUREMENT OFFICER	DATE

Agency request tracking #	31865-00437	
1. Procuring Agency	Department of Finance and Administration Division of TennCare	
2. Contractor	Health Management Systems, Inc.	
3. Edison contract ID #	48584	
4. Proposed amendment #	1	
5. Contract's Original Effective Date	January 4 th , 2016	
6. Current end date	January 31 st , 2019	
7. Proposed end date	January 31 st , 2020	
8. Current Maximum Liability or Estimated Liability	\$ 60,000,000.00	
9. Proposed Maximum Liability or Estimated Liability	\$ 65,000,000.00	
10. Strategic Technology Solutions Pre-Approval Endorsement Request <i>– information technology service (N/A to THDA)</i>	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
11. eHealth Pre-Approval Endorsement Request <i>– health-related professional, pharmaceutical, laboratory, or imaging</i>	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
12. Human Resources Pre-Approval Endorsement Request <i>– state employee training service</i>	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
13. Explain why the proposed amendment is needed	This competitively procured contract with Health Management Systems, Inc. is for the provision of Third Party Liability recovery services. It is necessary to amend the contract to add funding to support the continuation of recovery and cost avoidance services throughout the remainder of the term and to also exercise a renewal option as laid out in contract section B.2. The recoveries associated with this contract are not amounts that can easily be projected and vary significantly from one payment cycle to the other, depending on the dollar amounts of recoveries made, as well as the percentage of reimbursement to the contractor according to their cost and associated rates and percentage of	

Agency request tracking #	31865-00437
reimbursement in the contract.	
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)	
 8/9/18	



CONTRACT AMENDMENT COVER SHEET

Agency Tracking # 31865-00437	Edison ID 48584	Contract #	Amendment # 1		
Contractor Legal Entity Name Health Management System, Inc.			Edison Vendor ID 0000005815		
Amendment Purpose & Effect(s) Exercise the First Renewal Option					
Amendment Changes Contract End Date: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		End Date: January 31, 2020			
TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A):			\$ 5,000,000.00		
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2016	\$5,000,000.00	\$5,000,000.00			\$10,000,000.00
2017	\$10,000,000.00	\$10,000,000.00			\$20,000,000.00
2018	\$10,000,000.00	\$10,000,000.00			\$20,000,000.00
2019	\$6,250,000.00	\$6,250,000.00			\$12,500,000.00
2020	\$1,250,000.00	\$1,250,000.00			\$2,500,000.00
TOTAL:	\$32,500,000.00	\$32,500,000.00			\$65,000,000.00
American Recovery and Reinvestment Act (ARRA) Funding: <input type="checkbox"/> YES <input type="checkbox"/> 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.			<i>CPO USE</i>		
			<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Speed Chart (optional)</td> <td style="width: 50%;">Account Code (optional)</td> </tr> </table>		
Speed Chart (optional)	Account Code (optional)				

**AMENDMENT #1 TO CONTRACT 48584
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION,
DIVISION TENNCARE
AND
HEALTH MANAGEMENT SYSTEMS, INC.**

This Amendment is made and entered by and between the State of Tennessee, Department of Finance and Administration, Division of TennCare, hereinafter referred to as the "State" and Health Management Systems, 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 on January 4, 2016 ("Effective Date") and extend for a period of forty-nine (49) months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.
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 Sixty Five Million Dollars (\$65,000,000.00) ("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.

Required Approvals. The State is not bound by this Amendment until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

Amendment Effective Date. The revisions set forth herein shall be effective January 31, 2019. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

HEALTH MANAGEMENT SYSTEMS, INC.:

SIGNATURE **DATE**

PRINTED NAME AND TITLE OF SIGNATORY (above)

**DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF TENNCARE:**

LARRY B. MARTIN, COMMISSIONER **DATE**

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Matt Brimm	*Contact Phone:	615-687-5811		
*Presenter's name(s):	William Aaron				
Edison Contract Number: <i>(if applicable)</i>	#48584	RFS Number: <i>(if applicable)</i>	31865-00437		
*Original or Proposed Contract Begin Date:	01/04/2016	*Current or Proposed End Date:	01/31/2019		
Current Request Amendment Number: <i>(if applicable)</i>	1				
Proposed Amendment Effective Date: <i>(if applicable)</i>	01/31/2019				
*Department Submitting:	Department of Finance and Administration				
*Division:	Division of TennCare				
*Date Submitted:	8/30/2018				
*Submitted Within Sixty (60) days:	Yes				
<i>If not, explain:</i>	N/A				
*Contract Vendor Name:	Health Management Systems, Inc.				
*Current or Proposed Maximum Liability:	\$60,000,000.00				
*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: 2016	FY: 2017	FY: 2018	FY: 2019	FY	FY
\$10,000,000.00	\$20,000,000.00	\$20,000,000.00	\$10,000,000.00	\$	\$
*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from Edison)					
FY:2016	FY:2017	FY:2018	FY:	FY	FY
\$7,396,773.09	\$15,819,936.17	\$14,567,171.12 *Expenditures through May 2018	\$	\$	\$
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:			The contract maximum liability and FY breakout is based solely on contracted percentage of funds that are recovered for the State and administration costs associated with these recoveries. It would be challenging to adequately predict exact		

Supplemental Documentation Required for
Fiscal Review Committee

	amounts until recoveries are submitted to TennCare, at which point appropriate recovery percentages are paid to the contractor.		
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:	N/A		
*Contract Funding Source/Amount:			
State:	\$30,000,000.00	Federal:	\$30,000,000.00
<i>Interdepartmental:</i>		<i>Other:</i>	
If “ <i>other</i> ” please define:			
If “ <i>interdepartmental</i> ” please define:			
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
Method of Original Award: <i>(if applicable)</i>		Request for Proposal	
*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?		The projected cost prior to contract award were unknown. The cost of the service was totally dependent upon the recoveries the Contractor made on behalf of the State. The Contract maximum liability is currently \$60,000,000.00 which was a projection only. Since this is a recovery contract, the more the State pays the Contractor, the more funds that have been recovered on behalf of the State.	
*List number of other potential vendors who could provide this good or service; efforts to identify other competitive procurement alternatives; and the reason(s) a sole-source contract is in the best interest of the State.		This contract was competitively procured through an RFP and was sent to eleven (11) potential providers. This request is to exercise the first of two existing renewal option as stated in contract section B.2.	
*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		No disciplinary actions identified.	

Supplemental Documentation Required for
Fiscal Review Committee

organizations, or through any legal action.	
*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 activity, including but not limited to fraud.	TennCare Googled and did not identify any illegal activity. Language in the contract requires immediate notification to the state regarding illegal activity or fraud if discovered during the term of this Contract.



CONTRACT

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

Begin Date January 4, 2016	End Date January 31, 2019	Agency Tracking # 31865-00437	Edison Record ID 48584
Contractor Legal Entity Name Health Management Systems, Inc.			Edison Vendor ID 0000005815

Goods or Services Caption (one line only)
Estate Recovery and Third Party Liability Services

Contractor <input checked="" type="checkbox"/> Contractor	CFDA # 93.778 Dept of Health & Human Services/Title XIX
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Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2016	\$5,000,000.00	\$5,000,000.00			\$10,000,000.00
2017	\$10,000,000.00	\$10,000,000.00			\$20,000,000.00
2018	\$10,000,000.00	\$10,000,000.00			\$20,000,000.00
2019	\$5,000,000.00	\$5,000,000.00			\$10,000,000.00
TOTAL:	\$30,000,000.00	\$30,000,000.00			\$60,000,000.00

Contractor Ownership Characteristics:

Minority Business Enterprise (MBE): African American, Asian American, Hispanic American, Native American

Woman Business Enterprise (WBE)

Tennessee Service Disabled Veteran Enterprise (SDVBE)

Tennessee Small Business Enterprise (SBE): \$10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees.

Other: For-Profit Corporation

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

Competitive Selection RFP

Other

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) TN00000177	Account Code (optional) 70803000
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Health Management Systems, Inc.

Edison Contract ID: 48584

Vendor #: 0000005815

CONTRACT EXPENDITURES BY FISCAL YEAR
(Payment Detail Attached)

FY 2016	\$7,396,773.09	
FY 2017	\$15,819,936.17	
FY 2018	<u>\$14,567,171.12</u>	(Expenditures through May 2018)
TOTAL	<u><u>\$37,783,880.38</u></u>	

Health Management Systems, Inc.
 Edison Contract ID: 48584

FY 2016 Payments

Fiscal Year	Unit	Voucher ID	Invoice	Pymt Date	Pymt Amt
2016	31865	01327301	026005	5/20/2016	\$1,067,425.81
2016	31865	01350916	027915	6/29/2016	\$396,538.17
2016	31865	01350918	027306	6/29/2016	\$686,619.04
2016	31865	01350919	026956	6/29/2016	\$850,000.00
2016	31865	01350930	027895	7/7/2016	\$128,360.73
2016	31865	01350936	026266	7/7/2016	\$151,382.83
2016	31865	01350929	027343	7/7/2016	\$207,797.91
2016	31865	01350932	026625	7/7/2016	\$293,606.97
2016	31865	01350937	026589	7/7/2016	\$316,664.08
2016	31865	01350934	026614	7/7/2016	\$850,000.00
2016	31865	01350923	027916	7/7/2016	\$850,000.00
2016	31865	01369479	028327	8/11/2016	\$202,269.69
2016	31865	01369477	028401	8/11/2016	\$546,107.86
2016	31865	01369478	028314	8/11/2016	\$850,000.00

Total FY 2016: \$7,396,773.09

FY 2017 Payments

Fiscal Year	Unit	Voucher ID	Invoice	Pymt Date	Pymt Amt
2017	31865	01400337	029006	9/30/2016	\$342,468.84
2017	31865	01400336	028849	9/30/2016	\$850,000.00
2017	31865	01400539	029132	10/6/2016	\$175,464.53
2017	31865	01436902	030106	12/12/2016	\$152,178.71
2017	31865	01436898	029526_RB	12/12/2016	\$195,464.52
2017	31865	01436904	029647_RB	12/12/2016	\$199,334.77
2017	31865	01436908	030209	12/12/2016	\$220,188.12
2017	31865	01436916	029407_RB	12/12/2016	\$850,000.00
2017	31865	01436903	029981_RB	12/12/2016	\$850,000.00
2017	31865	01440627	031018	12/15/2016	\$195,738.92
2017	31865	01440625	030902	12/15/2016	\$213,931.63
2017	31865	01440623	030991	12/15/2016	\$850,000.00
2017	31865	01444180	031202	1/3/2017	\$850,000.00
2017	31865	01479117	031379	2/27/2017	\$43,667.13
2017	31865	01479114	031357	2/27/2017	\$174,648.43
2017	31865	01479116	032168	2/27/2017	\$212,317.95
2017	31865	01479115	032203	2/27/2017	\$850,000.00
2017	31865	01479122	032202	2/28/2017	\$175,728.20

FY 2017 (Continued)

2017	31865	01500353	032781	4/5/2017	\$152,265.59
2017	31865	01500361	032779	4/5/2017	\$449,880.53
2017	31865	01500360	032780	4/5/2017	\$850,000.00
2017	31865	01520218	034039	5/10/2017	\$177,328.20
2017	31865	01520294	033488	5/10/2017	\$186,744.65
2017	31865	01520217	033959	5/10/2017	\$376,483.04
2017	31865	01520298	033326	5/10/2017	\$483,394.25
2017	31865	01520215	034040	5/10/2017	\$850,000.00
2017	31865	01520295	033476	5/10/2017	\$850,000.00
2017	31865	01546792	034742	6/29/2017	\$212,140.53
2017	31865	01546790	034639	6/29/2017	\$254,842.25
2017	31865	01546791	034682	6/29/2017	\$850,000.00
2017	31865	01558353	035333	7/17/2017	\$154,856.14
2017	31865	01558352	035394	7/17/2017	\$312,340.48
2017	31865	01558351	035221	7/18/2017	\$850,000.00
2017	31865	01580241	036091_RB	8/29/2017	\$213,103.93
2017	31865	01580240	036053	8/29/2017	\$345,424.83
2017	31865	01580239	036043	8/29/2017	\$850,000.00

Total FY 2017:

\$15,819,936.17

FY 2018 Payments

Fiscal Year	Unit	Voucher ID	Invoice	Pymt Date	Pymt Amt
2018	31865	01594468	036761	9/25/2017	\$183,447.17
2018	31865	01594469	036680	9/25/2017	\$244,693.79
2018	31865	01594467	036762	9/25/2017	\$850,000.00
2018	31865	01640340	038022	12/29/2017	\$130,204.62
2018	31865	01640346	037350	12/29/2017	\$198,391.65
2018	31865	01640344	037331	12/29/2017	\$211,462.33
2018	31865	01640339	038674	12/29/2017	\$218,491.28
2018	31865	01640347	038723	12/29/2017	\$228,818.60
2018	31865	01640341	037977	12/29/2017	\$441,135.82
2018	31865	01640353	038724	12/29/2017	\$850,000.00
2018	31865	01640351	038023	12/29/2017	\$850,000.00
2018	31865	01640627	037296	1/2/2018	\$850,000.00
2018	31865	01669319	039309	2/22/2018	\$193,203.05
2018	31865	01669320	039447	2/22/2018	\$220,315.09
2018	31865	01669328	040148	2/23/2018	\$156,512.45
2018	31865	01669327	040085	2/23/2018	\$306,227.19
2018	31865	01669325	039290	2/23/2018	\$850,000.00
2018	31865	01669326	039778	2/23/2018	\$850,000.00
2018	31865	01696285	040722	4/6/2018	\$1,645.09

FY 2018 (Continued)

2018	31865	01696286	040951	4/11/2018	\$15,862.59
2018	31865	01696284	040679	4/11/2018	\$244,619.07
2018	31865	01696282	040474	4/11/2018	\$545,577.33
2018	31865	01696283	040678	4/11/2018	\$850,000.00
2018	31865	01730945	041483	6/19/2018	\$119,685.73
2018	31865	01730951	042816	6/19/2018	\$181,269.94
2018	31865	01730947	042124	6/19/2018	\$286,357.16
2018	31865	01730946	042123	6/19/2018	\$356,964.86
2018	31865	01730954	041484	6/19/2018	\$850,000.00
2018	31865	01730973	042815	6/20/2018	\$182,180.21
2018	31865	01730972	041700	6/20/2018	\$235,680.66
2018	31865	01730974	042125	6/20/2018	\$850,000.00
2018	31865	01730971	042704	6/20/2018	\$850,000.00
2018	31865	01747406	043547	7/19/2018	\$55,168.77
2018	31865	01747405	043652	7/19/2018	\$259,256.67
2018	31865	1747408	043651	7/19/2018	\$850,000.00

Total FY 2018:

\$14,567,171.12



CONTRACT

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

Begin Date January 4, 2016	End Date January 31, 2019	Agency Tracking # 31865-00437	Edison Record ID 48584
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Contractor Legal Entity Name Health Management Systems, Inc.	Edison Vendor ID 0000005815
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Goods or Services Caption (one line only)
Estate Recovery and Third Party Liability Services

Contractor <input checked="" type="checkbox"/> Contractor	CFDA # 93.778 Dept of Health & Human Services/Title XIX
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Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2016	\$5,000,000.00	\$5,000,000.00			\$10,000,000.00
2017	\$10,000,000.00	\$10,000,000.00			\$20,000,000.00
2018	\$10,000,000.00	\$10,000,000.00			\$20,000,000.00
2019	\$5,000,000.00	\$5,000,000.00			\$10,000,000.00
TOTAL:	\$30,000,000.00	\$30,000,000.00			\$60,000,000.00

Contractor Ownership Characteristics:

Minority Business Enterprise (MBE): African American, Asian American, Hispanic American, Native American

Woman Business Enterprise (WBE)

Tennessee Service Disabled Veteran Enterprise (SDVBE)

Tennessee Small Business Enterprise (SBE): \$10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees.

Other: For-Profit Corporation

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

Competitive Selection RFP

Other

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) TN00000177	Account Code (optional) 70803000
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**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION
HEALTH MANAGEMENT SYSTEMS, INC.**

This Contract, 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 "HCFA" and Health Management Systems, Inc., hereinafter referred to as the "Contractor," is for provision of Third Party Liability Recoveries (TPL Recoveries), as defined in the "SCOPE OF SERVICES." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is a For-Profit Corporation
Contractor Place of Incorporation or Organization: New York
Contractor Edison Registration ID # 0000005815

A. SCOPE OF SERVICES:

A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract. Terms associated with this contract are located in Attachment A.

A.2. Estate Recovery. - The State of Tennessee is required by federal and state law to seek recovery for any funds expended by TennCare, up to the total amount paid by TennCare, on behalf of individuals age fifty-five (55) and older who have received TennCare Long Term Care Services and Supports (LTSS) provided by the State, as well as individuals of any age who have been determined "permanently institutionalized". The Contractor shall work with the TennCare Estate Recovery Director, or his designee, and the TennCare Office of the General Counsel (OGC) to assist in their Estate Recovery (ER) efforts by establishing and maintaining an ER case management system (ER CMS) to track those TennCare enrollees who die while receiving LTSS benefits, hereinafter referred to as "decedent" or "decedents," and determining whether the decedents owned any real or personal property that can be accessed through the TennCare ER process to recoup the cost of care paid for by TennCare. The Contractor shall also receive incoming ER inquiries such as Requests for Release (RFR), document callers' requests for information, confirm CHOICES decedents' dates of death (DOD), perform asset searches and arrange for real property title searches, determine whether a probate case has been opened for each decedent, and provide the appropriate documentation to the decedents' representatives and/or OGC.

A.3. ER Services Facilities.

a. ER Communications. The Contractor shall provide, at no additional cost to TennCare, toll-free telephone and fax numbers, and the State will provide an email address to be used by the Contractor. The telephone number, fax number and email address shall remain the property of the State when the Contractor's contractual relationship with the State has ended. These ER communication options shall serve as the "front-end" entry point for persons seeking information about or providing information to the State about ER issues, including, but not limited to, RFRs, TennCare ER claims, TennCare ER releases and exemptions, and referrals of certain ER matters to TennCare OGC.

b. Location. Unless otherwise directed by the State, the Contractor's primary TennCare ER staff listed below in A.3.f. shall be located in the TennCare office located at 310 Great Circle Road in Nashville, Tennessee.

c. ER Staff Hours of Operation. The Contractor shall accept ER calls from 8.00 a.m. to 4:30 p.m. Central Time (CT) Monday through Friday, except on official State holidays. Unless otherwise directed in writing by the State, the Contractor shall ensure that it is fully



operational by the Implementation Date, as defined in Section A.4 below, and Contractor shall be prepared for service delivery and call acceptance on this date.

- d. Accessibility for Individuals with Hearing and/or Speech Disabilities. At no cost to the caller and for the hours of operation specified in A.3.c, the Contractor shall provide a telecommunications relay service (TRS) in order to serve individuals with hearing and/or speech disabilities. In addition, if the Contractor uses an automated-attendant system in connection with its work under this Contract, including, but not limited to, voicemail and messaging, or an interactive voice response system, for receiving and directing incoming telephone calls, that system must provide free of charge effective real-time communication with individuals using auxiliary aids and services, including TTYs and all forms of FCC-approved telecommunications relay systems, including Internet-based relay systems. Unless otherwise directed in writing by the State, the Contractor shall use the Tennessee Relay Service (TNRS) offered by the Tennessee Regulatory Authority (TRA) as its TRS provider. These services shall be provided at no additional cost to the State.
- e. Accessibility for Individuals with Limited English Proficiency (LEP). For purposes of this Contract, "Individuals with Limited English Proficiency" shall be defined as individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English.

At no cost to the caller and for the hours of operation specified in A.3.c., the Contractor shall use real time, third-party telephonic interpreter services to assist callers who are Individuals with Limited English Proficiency (LEP). Third party telephonic interpreter services for callers with LEP shall include Arabic, Mandarin, Bosnian, Kurdish, Somali, Japanese, and Vietnamese and other languages as may be designated by the State. If the Contractor utilizes an outside source in providing third-party telephonic interpreter services, this outside source shall be considered a subcontractor and shall comply with subcontractor requirements as specified in Section D. of this contract. These services shall be provided at no additional cost to the State.

- f. ER Staffing Requirements. In addition to the staffing requirements for the other recovery services (e.g., TPL, Subrogation, Medicare Coordination of Benefits, Medicare Crossover Claims and Credit Balance Audits) set forth in Section A.19, the Contractor shall provide the ER staff required in this Section A.3.f. All ER staff shall have a working knowledge of ER in Tennessee and shall be required to attend the mandatory ER training provided by the State and set forth in Section A.3.i. below. The Contractor shall, at all times during this Contract, have at a minimum, the following ER staff on site in the TennCare office in Nashville dedicated full time to performing ER services:

1. One (1) Paralegal who will perform ER services under the direction of OGC. The Paralegal shall have the requisite authority from the Contractor to decide day to day matters on behalf of the Contractor arising from its provision of ER services to TennCare. The Paralegal shall have supervisory responsibility for the ER Legal Assistant whose duties are described below. The Paralegal shall hold an American Bar Association (ABA) approved Paralegal Certificate or equivalent, with at least five (5) years of comparable experience.
2. One (1) Legal Assistant who shall assist the Paralegal and perform ER services. The ER Legal Assistant shall have sufficient education and/or knowledge of estate law in Tennessee to permit him/her to perform the ER services required in this Contract.

- g. State Approval of Contractor ER Staff. The Contractor shall offer the State an opportunity to interview the proposed ER staff and any proposed replacement(s) thereof, prior to such staff beginning work. The State may, at any time during the Contract period disapprove any staff person(s) assigned by the Contractor to perform ER services under this Contract, regardless of the work location of that staff person. Upon notification by the State to the



Contractor that a staff person has been disapproved, the staff person shall immediately cease work under this Contract. The decision of the State on these matters shall not be subject to appeal. Any vacancies in ER staff, whether caused at the request of the State or otherwise, shall be filled by the Contractor within thirty (30) days of the staff member's last day of work, subject to prior approval by the State, as indicated above, which shall not unreasonably be withheld. Failure to timely fill such vacancies may result in liquidated damages as set forth in this Contract.

- h. Vacancies in ER Staff. The Contractor shall not remove any approved ER staff member from her/his assigned duties under the Contract for any period of time exceeding two (2) weeks without State prior written approval, and Contractor shall immediately provide a substitute staff member to fill the vacancy, who shall be subject to prior approval by the State. The Contractor shall notify the State in writing of any proposed change in ER staff at least thirty (30) days prior to the change or as soon as the change is known if the employee's notification to the Contractor is less than thirty (30) days. The State understands that ER staff will on occasion take vacation time or attend corporate functions, which will require brief time away from their assigned duties.
 - i. ER Staff Training. All Contractor ER staff shall attend and satisfactorily complete mandatory ER training, to be provided by the State at no cost to the Contractor, prior to the ER staff being permitted to start work, including any new or substitute staff referenced in A.3.h. above. Follow-up training of ER staff shall be required when deemed necessary by the State and shall be provided at no cost to the Contractor.
- A.4. ER Services Readiness Review and Implementation Date. The contract start date of January 4, 2016 is twenty-eight (28) days prior to the "Implementation Date" of February 1, 2016, when all contract services including ER services shall begin. Prior to February 1, 2016, the Contractor shall demonstrate to the State's satisfaction that it is able to meet the ER requirements of this Contract, including training specified in Section A.3.i. hereunder. Once TennCare has verified the Contractor meets all ER requirements of this Contract, it shall notify the Contractor in writing of readiness to begin providing ER services.
- A.5. ER Services. The Contractor shall begin to perform all ER services on the Implementation Date. The ER services to be provided to support and assist the State in its TennCare ER efforts shall be performed in accordance with written instructions provided by the State, the requirements set forth in this Contract, and as directed by the State through Control Memoranda. Such services shall include, but not be limited to, those described below and shown in the Estate Recovery Performance Requirements Table included in Section A.5:
- a. LTSS ER Database. The Contractor shall create, update and maintain a database of current TennCare enrollees who are receiving LTSS services (LTSS ER Database) in a format approved by TennCare.
 - b. ER CMS. The Contractor shall create and maintain a fully searchable ER CMS database system containing ER case files on (i) all decedents identified by the Contractor or TennCare as being subject to ER, (ii) those decedents who were not receiving LTSS benefits at the time of their death but are the subject of communication between the decedents' family members or other representatives and the Contractor or TennCare, such as RFR requests, and (iii) such other ER cases as TennCare may require. The ER CMS shall be used by Contractor to create each ER case file, archive all documents and correspondence relating to each case, to serve as a record of all Contractor activities, and contain such other information as TennCare may direct in writing or by Control Memorandum. The ER CMS shall be fully accessible by the TennCare Estate Recovery Director and OGC, or their designees.
 - c. Telephone Services. The Contractor shall provide telephone services, including, but not limited to promptly answering all inbound telephone calls; executing warm transfers as



necessary to appropriate TennCare business units or external entities; identifying and authenticating callers and their relationship with the decedent or the decedent's estate in accordance with State-approved authentication protocol and HIPAA/HITECH as supplemented by additional safeguards developed by the State; fully assisting callers as completely and consistently as possible within the scope of this Contract; and escalating calls for which the Contractor ER staff requires assistance to the appropriate person in TennCare OGC via warm transfer. The Contractor shall conduct outbound calls to individuals as appropriate, including but not limited to, call backs to callers with questions; returning calls that were disconnected; obtaining information or documentation relating to ER cases; completing issue resolution; and requesting verification of information that was previously provided. The Contractor shall return all telephone calls within one (1) business day of receipt of the telephone message.

- d. ER Document Management Services (ER DMS). Beginning on the Implementation Date, the Contractor shall open all items received by the Contractor from all sources including, but not limited to mail, fax and email, within one (1) business day of receipt by Contractor, affix a TennCare-approved date stamp identifying the date of receipt of each document, review all documents and take the necessary actions to prioritize and process such documentation in accordance with written instructions provided by the State. All court pleadings and hearing notices shall be hand delivered or transmitted electronically to OGC within one (1) business day of receipt by Contractor. All documents received by the Contractor shall be attached to the appropriate ER case file in the ER CMS in a format that is approved by the State. Failure to timely or fully comply with ER DMS requirements may result in the assessment of liquidated damages as set forth in this Contract.
- e. Outgoing Mail. The Contractor shall produce and mail the appropriate ER documentation as required by written instructions provided by the State.
- f. Process ER Cases. In accordance with written instructions provided by the State, the Contractor shall process each ER case and provide the services set forth in the "Estate Recovery Performance Requirements" Table contained in Section A.5.i, within the deadlines shown therein. Failure to timely or fully comply with such performance requirements may result in the assessment of liquidated damages as permitted in this Contract.
- g. Reports. The Contractor shall provide the following reports within the timeframe indicated below. Failure to timely provide complete and accurate reports in the approved format or to timely and fully respond to on request reports (ORRs) by the specified due date may result in the assessment of liquidated damages as set forth in this Contract.
 1. Pursuant to written instructions provided by the State, the Contractor shall submit a written monthly reconciliation report, in a format approved by the State, within ten (10) calendar days after the end of each month. The reconciliation report shall, at a minimum, include the following monthly statistics (broken down to a business day detail) and year-to-date statistics, as well as any additions or deletions requested by Control Memoranda:
 - (a) Number of non-probate cases referred to OGC during the previous month;
 - (b) Number of Requests for Release (RFRs) that were granted during the previous month;
 - (c) Number of Requests for Release (RFRs) that were not granted during the previous month;
 - (d) Number of "No Benefits" releases issued within seven (7) days from receipt of RFR by Contractor during the previous month, itemized by case;



- (e) Number of "No Benefits" releases issued beyond seven (7) days from receipt of RFR by Contractor during the previous month, itemized by case;
- (f) Number of surviving spouse "Deferral Releases" issued within seven (7) days from receipt of RFR by Contractor during the previous month, itemized by case;
- (g) Number of surviving spouse "Deferral Releases" issued beyond seven (7) days from receipt of RFR by Contractor during the previous month, itemized by case;
- (h) Number of ER cases in which claims were filed within one hundred twenty (120) days of probate case being opened;
- (i) All court filing fees paid by Contractor during the previous month, itemized by ER case and type of filing;
- (j) Identity of LTSS enrollees who were determined to have died during the previous month while receiving LTSS benefits, itemized by enrollee name, Social Security Number and date of death (DOD), and
- (k) Number of new ER cases opened during the previous month.

2. As directed by the State, the Contractor shall also provide ORRs at no additional cost to the State. The ORRs may relate to any ER services provided by the Contractor and shall be requested by Control Memoranda.

- h. Deposit ER Funds. Pursuant to written instructions provided by the State, the Contractor shall deposit all ER collections each business day into an approved lockbox at an approved banking institution.
- i. ER Performance Requirements. The Contractor shall provide satisfactory performance of all ER services in compliance with the Contract and any Control Memoranda, written instructions provided by the State, and the performance requirements set forth in the following table:

ESTATE RECOVERY PERFORMANCE REQUIREMENTS		
	SERVICES FOR EACH ER CASE	DEADLINE FOR COMPLETING SERVICES
1	Create, update and maintain the LTSS ER Database	Daily
2.	Create, update and maintain the ER CMS, to include copies of all documentation relating to each ER case in a format approved by the State	Daily
3	Check LTSS ER Database for enrollees identified as having died while receiving TennCare LTSS benefits using databases which shall include, but are not be limited to, the TennCare Managed Care Organizations (MCOs) databases and InterChange.	Daily



ESTATE RECOVERY PERFORMANCE REQUIREMENTS		
	SERVICES FOR EACH ER CASE	DEADLINE FOR COMPLETING SERVICES
4	Open an ER case file for each decedent identified in Item 3 above and add the case to the ER CMS, or link to an established decedent case file by SSN.	Daily
5	Open an ER case file for each decedent identified from receipt of an RFR or any other communication, EVEN THOUGH the decedent named in the RFR or other communication was NOT a LTSS enrollee at the time of his/her death and add the case to the ER CMS, or link to an established decedent case file by SSN.	Daily
6	Open an ER case file for each decedent, identified from receipt of an RFR or any other communication, who was survived by a spouse and add the case to the ER CMS or link to an established case file by SSN.	Daily
7	Check with the applicable probate courts to determine if a probate case has been opened for each decedent identified in Item 3 above	Weekly
8	Mail TennCare-approved Condolence, Request for Release (RFR), and Estate Recovery Informational letter to the decedent's estate representative or other appropriate individual, if no other RFR response has been sent.	45 days from DOD
9	Issue TennCare-approved Release where no LTSS benefits were received by decedent ("No Benefits Release")	7 business days from receipt of RFR by Contractor.
10	Issue TennCare-approved Release to decedent's surviving spouse, if applicable ("Deferral Release")	7 business days from receipt of RFR by Contractor.
11	Issue TennCare-approved acknowledgement of receipt of RFR in all cases other than those in which a No Benefits Release or a Deferral Release is issued by the Contractor	7 business days from receipt of RFR by Contractor
12	Prepare TennCare-approved Cost of Recovery Claim and Affidavit for filing in probate court	80 days from DOD
13	Complete asset search, including search for real property, for both decedent and spouse, for the five (5) year period of time prior to the date on which the decedent was enrolled in the TennCare LTSS program	100 days from DOD
14	If asset search indicates decedent or spouse own real property, obtain title search from TennCare-approved title search attorney or other title vendor for both decedent and spouse to include all records and databases required by TennCare	135 days from DOD



ESTATE RECOVERY PERFORMANCE REQUIREMENTS		
	SERVICES FOR EACH ER CASE	DEADLINE FOR COMPLETING SERVICES
15	File both Cost of Recovery Claim and Affidavit in the correct court.	Within 120 days of probate case being opened
16	IF PROBATE IS NOT OPENED WITHIN 195 DAYS from DOD: Forward case file to OGC containing all TennCare-required documentation, to include: <ol style="list-style-type: none"> 1. Unfiled Cost of Recovery Claim and Affidavit; 2. Asset search, including real property and value of real property according to the Tennessee Assessors Website; 3. Title search, including any back property tax information; 4. All correspondence, letters, emails, phone logs, and other communications received by or created by Contactor to date 	195 days from DOD
17	IF PROBATE IS OPENED PRIOR TO 195 DAYS from DOD: Forward case file to OGC containing all TennCare-required documentation, to include: <ol style="list-style-type: none"> 1. Contractor Referral Letter to OGC with reason for referral; 2. Copy of letter (including Claim/Affidavit and check for filing fees) sent to probate court transmitting Claim and Affidavit for filing AND copy of FILE-STAMPED Cost Recovery Claim and Affidavit; 3. Asset search, including real property and value of real property according to the Tennessee Assessors Website; 4. Title search, including any back property tax information; 5. All correspondence, letters, emails, phone logs, and other communications received by or created by Contactor to date 	Within 5 business days of learning of probate being opened
18	Open and review all documents received by the Contractor from all sources within one (1) business day of receipt to determine priority pursuant to written instructions	Within 1 business day of receipt by Contractor
19	Pursuant to written instructions, hand deliver or electronically forward all court pleadings and notices of hearing to OGC within one (1) business day of receipt by Contractor	Within 1 business day of receipt by Contractor
20	Return all telephone calls within one (1) business day	Within 1 business day of receipt of telephone message by Contractor
21	All other services and actions required of the Contractor as directed in writing by the State	As applicable

A.6. Reimbursement of Actual Costs to Contactor. Pursuant to written instructions provided by the State, the Contactor shall pay all costs required by the applicable court to file ER Claims and Affidavits and other pleadings in forced probate proceedings, as well as the costs to perform asset



searches and obtain real property title searches. The Contractor shall obtain receipts for all such payments. Such costs shall be itemized by ER case on Contractor's monthly invoice for reimbursement by the State per Contract Section C.3.b. Each such invoice shall contain sufficient itemization to identify the specific ER case each cost relates to and the reason for the cost reimbursement request. Copies of receipts for each cost shall be provided to the State upon request.

- A.7. Litigation Support. If any litigation should arise that requires the defense of a TennCare claim before any court or tribunal, the Contractor shall cooperate fully and timely with any OGC attorneys or paralegals in defense of the claim, at no additional cost to the State. The Contractor shall make its personnel available to testify in Tennessee, whether in person before a tribunal or by deposition. The Contractor agrees to waive any objections to any subpoena issued by a Tennessee tribunal, in an ER case. The Contractor shall promptly provide OGC with all information within the Contractor's control if required to do so by a discovery demand or court order.
- A.8. End of Contract Transition Plan. As part of the transition of this Contract to a new State TPL and ER vendor when this Contract ends, the Contractor shall develop and provide to the State a Transition Plan no later than one hundred and eighty (180) days prior to the Contract end date. The Transition Plan shall contain the information requested by TennCare in a Control Memorandum.
- A.9. Transition Requirements. Prior to the end of the Contract term or extension of the Contract term, or in the event of a Contract Termination or Partial Takeover pursuant to Contract Sections D.5, D.6 and E.11, the State may contract with a successor contractor (Successor Contractor) to assume Contractor's duties and requirements upon termination of this Contract. This may result in a period of transition during which Contractor continues to provide services while the Successor Contractor prepares to assume those services, with a switch over from the Contractor to the Successor Contractor occurring on an implementation date specified by the State. Contractor shall be required to participate as directed by the State, at no additional cost, in assisting with the transition by providing information relating to Contractor's duties and attending meetings with the State and/or Successor Contractor. Contractor shall help the State and/or the Successor Contractor develop a comprehensive Transition Plan covering both the Contractor's and the Successor Contractor's duties and responsibilities to ensure a smooth transition of responsibilities. Contractor shall at all times act in good faith towards the State and/or Successor Contractor to facilitate as smooth a transition as possible.

The State will use the Control Memorandum process to specify deliverables required of the Contractor in aid of the transition process. Failure to fully and timely cooperate with the State's request or provide the requested deliverables may result in liquidated damages as specified in this Contract or in the applicable Control Memorandum. The State shall not be liable to the Contractor for any costs and expenses relating to these deliverables or to the services provided by the Contractor during the transition period, other than as set forth in Contract Section C.3.

- A.10. Third Party Liability (TPL) Insurance Resource File Maintenance - Cost avoidance and "pay and chase" activities for medical services are the contractual responsibility of TennCare's Managed Care Organizations (MCOs); however, TennCare works to provide the MCOs with assistance in verifying TPL. The Contractor shall verify insurance coverage information for the Bureau of TennCare-eligible recipient population by conducting data matches with insurance carriers and other entities and develop and maintain a process to update the Medicaid Management Information System (MMIS). Each record on the TPL resource file shall be validated on at least an annual basis. Insurance policies that are considered void or suspect shall be removed from the TPL resource file. A monthly reconciliation of the number of policies added, validated, or deleted shall be submitted to the Bureau within ten (10) calendar days of the end of the month.
- A.11. Subrogation - The Contractor shall develop a plan to identify subrogation recovery claims and establish a process to:
- a. Pursue recovery of identified pharmacy and dental claims;



- b. Notify TennCare managed care organizations of possible subrogation claims based upon data mining activities;
 - c. Provide the Bureau of TennCare with a toll free number and website information to assist with the subrogation process, and
 - d. Develop a plan to identify and recover claims paid by TennCare (Medicaid) that were the result of an injury caused by the negligence of a third party where an insurance company or any other responsible party has paid damages to the enrollee.
- A.12. Medicare Coordination of Benefits. The Contractor shall develop and maintain processes to ensure that the TennCare program does not pay for expenses that are obligations of the Medicare program. The Contractor shall recoup funds from Medicare and associated Medicare plans on behalf of TennCare and notify TennCare of Medicare recovery activities including:
- a. Reviewing TennCare pharmacy data to determine whether TennCare paid for prescriptions that are the obligation of a Medicare Part D drug plan. The Contractor shall recoup funds from Medicare Part D plans on behalf of TennCare. A quarterly report of dual eligible recipients who have a paid TennCare pharmacy claim shall be remitted to TennCare no more than 10 (ten) days following the end of a quarter.
 - b. Reviewing TennCare eligibility data to identify TennCare enrollees who are over age 65, end-stage renal disease, or otherwise eligible but are not enrolled in Medicare. The Contractor shall develop an annual Outreach program to contact and assist members in gaining Medicare enrollment when possible. An annual report of the number of members contacted and the number of members who have gained Medicare enrollment through the annual Outreach effort shall be submitted to TennCare.
- A.13. Medicare Crossover Claims -The Contractor shall conduct an annual review of TennCare's Medicare crossover claims and shall produce a report that reviews a statistically valid sample of Crossover claims. The annual review shall examine compliance with established Crossover claims policies, procedures, and rates and shall focus on a state fiscal year (July through June). The review shall result in a compliance report to be issued no later than December 1st of each year.
- A.14. Credit Balance Audits - The Contractor shall have the capability of identifying and recovering overpayments from providers via on-site audits and desk reviews. Credit Balance audits shall be conducted only on providers that have been approved by TennCare.
- A.15. Additional Recovery Projects - The Contractor shall perform additional recovery projects as requested and approved by TennCare to recover funds where other insurance coverage is available, including but not limited to hospitalization, major medical, or incidental policies as determined and requested by TennCare
- A.16. Computer Equipment and Systems - The Contractor shall develop and install (after obtaining prior written approval from the State) all computer software, hardware and data access lines necessary to conduct the activities and/or perform the services within the scope of the Contract. The Contractor shall be responsible for all costs incurred for obtaining any necessary data access, software and hardware to perform the scope of work under this Contract. The Contractor shall provide a system that will meet the interface needs and requirements of the current Medicaid Management Information System (MMIS). The Contractor shall be prepared to provide any necessary interface capabilities that may be required by the current or any subsequent MMIS.
- A.17. The Contractor shall be responsible for any expenses incurred pursuant to implementation activities associated with the Contract and shall be responsible for any expenses incurred for changes to the



MMIS required by the Contractor including, but not limited to, file layout changes and/or data upload interfaces.

- A.18. The Contractor shall provide, at no additional cost to the State, instructional guidelines as well as instruction to State staff that details each recovery process for those areas/proposed projects the Bureau of TennCare deems appropriate, and instructional guidelines to the State for the performance of any project that TennCare determines should be performed by State staff that may have been previously performed by the contractor.
- A.19. Staffing Requirements. In addition to the ER staffing requirements set forth in Section A.3.f., the Contractor shall also designate a minimum of one (1) full-time on-site employee to maintain permanent presence at the Bureau of TennCare office, located at 310 Great Circle Road, Nashville, Tennessee, for the duration of the contract. This employee's designated assignment shall be TPL Recovery Services described in Sections A.10 through A.15 above. No additional cost shall be paid to Contractor for on-site staff. All other Contractor staff required to support the contract, including support for Contractor's ER staff, shall be located at offices of the Contractor, including at a minimum:
- a. Project Manager and designated Back-up Project Manager assigned directly to the scope of the work included in this Contract. Both persons shall possess a clear understanding of the nature and scope of work to be performed and shall be available and accessible by phone during the hours of 8:00 a.m. through 4:30 p.m. CST, Monday through Friday, excluding state-observed holidays;
 - b. Key personnel, assigned to the scope of work included in this contract, with a working knowledge of the work to be performed; and
 - c. Clerical and support staff with skills and appropriate training required for the successful completion of scope of work to be performed.
- A.20. Control Memorandum(a) (CM) Process - The CM process shall be utilized by the State to clarify Contract requirements, issue instruction to the Contractor, document action required of the Contractor, or request information from the Contractor. In addition, the CM process shall be used by the State to impose assessments of damages, either actual or liquidated. This process will be used to address issues or matters that do not require a contract amendment. Each CM must be in writing and indicate the date on which it was issued. CMs may provide relevant history, background, and other pertinent information regarding the issue(s) being addressed in the CM. Each CM will establish a deadline or timeframe for the Contractor's reply or other action. All CMs submitted to the Contractor must be signed and approved by the State's Project Director (or his/her designee). When the CM pertains to damages, either actual or liquidated, the State may issue consecutive CMs, as may be necessary or appropriate.
- a. A CM may include one (1) or more of the following five (5) components of the CM process described below:
 - (1) On Request Report (ORR) - a request directing the Contractor to provide information by the time and date set out in the CM.
 - (2) Control Directive (CD) - instructions that require the Contractor to complete, within a designated timeframe, one (1) or more deliverables or to perform any other request from the State that is within the scope of the Contract. A CD may also provide clarification of certain Contract terms. Once a CM/CD has been issued, it shall be considered to be incorporated into this Contract.
 - (3) Notice of Potential Damages (Actual or Liquidated) (NPD) - notification to the Contractor that the State has determined that a potential Contract performance or compliance issue exists and that the State is contemplating assessing damages, actual



and/or liquidated. The NPD shall identify the Contract provision(s) on which the State determination rests.

- (4) Notice of Calculation of Potential Damages (Actual or Liquidated) (NCPD) – notification to the Contractor that provides a calculation of the amount of potential damages, actual and/or liquidated, that the State is contemplating assessing against the Contractor. NPDs and NPCDs may be issued consecutively or simultaneously.
 - (5) Notice of Intent to Assess Damages (Actual or Liquidated) (NIAD) – notification to the Contractor that the State is assessing damages and specifying whether the damages are actual damages, liquidated damages, or both. The NIAD shall identify the NPD and NCPD upon which it is based. The NIAD shall specify the total amount and type of damages, whether actual or liquidated, the State intends to assess. Following the issuance of an NIAD, the State may elect to withhold damages from payments due to Contractor. The State may not issue a NIAD without first issuing a NPD and a NCPD.
- b. Damages for failure to comply with CM. Contractor shall fully comply with all CMs. Failure to do so may result in sanctions, including liquidated damages as listed in Attachment B (Liquidated Damages) and/or termination of the Contract.
 - c. Appeal of Damages by Contractor. Contractor may appeal either the basis for NPD or calculation of NCPD potential damages, either actual or liquidated. To do so, the Contractor shall submit to the State's Project Director (or his/her designee) a written response to the NPD and/or NCPD within ten (10) business days of receipt of a CM which includes a NPD or a NCPD. The State's Project Director (or his/her designee) shall review the appeal and provide notice of his/her determination to the Contractor through a CM within ten (10) business days of receipt of the appeal from the Contractor. If the Contractor disagrees with the State's Project Director's (or his/her designee) initial appeal determination or the State's Project Director (or his/her designee) is unable to resolve the appeal, the Contractor may submit a written request to the State's Project Director (or his/her designee) that the matter be escalated to senior management of the Agency. Contractor shall submit such a request for escalation within ten (10) business days of its receipt of the initial appeal determination from the State's Project Director (or his/her designee) or of notification by the State's Project Director that he/she is unable to resolve the appeal. The State's senior management shall provide written notice of its final determination to the Contractor CM within ten (10) days of receipt of the appeal from the Contractor. Upon appeal or escalation, the State shall not increase the amount of the potential damages.

- A.21. The Contractor shall, as directed by the State and at no additional cost to the State, coordinate with, facilitate the prompt exchange of information between, and work collaboratively with any and all other State contractors and State Agencies. If required in order for the Contractor to proceed with any part of the Scope of Services which involves sharing or obtaining information of a confidential, proprietary, or otherwise valuable nature with or from another State contractor, the Contractor may be requested to sign mutually agreeable documents, including but not limited to Non-Disclosure Agreements (Non-Disclosure Documents), which are reasonably necessary to maintain cooperation and collaboration among and with any and all other State contractors and State agencies in the performance of the Contract.

All information the Contractor may receive, have disclosed to it, or otherwise becomes known to Contractor during the performance of this Contract from any other State contractor, that the State contractor considers to be propriety or confidential in nature pursuant to a Non-Disclosure Document entered into between the Contractor and another State contractor, shall be governed by such Non-Disclosure Document.

Nothing in this Section, including failure to negotiate and enter into a Non-Disclosure Document acceptable to Contractor with another State contractor, shall be construed to relieve the Contractor of its duty to perform any requirements or deliverables under this Contract. Other than



as permitted in Section C. of this Contract, Payment Terms and Conditions, the Contractor shall not invoice the State for any such coordination services, and the State shall not be liable to the Contractor for payment of any such coordination services, without the prior written consent of the State.

- A.22. This Contract does not authorize the Contractor to engage in the practice of law or perform any legal services on behalf of the State, and the Contractor is hereby specifically prohibited from doing so.

B. CONTRACT PERIOD:

- B.1. This Contract shall be effective on January 4, 2016 ("Effective Date") and extend for a period of thirty-seven (37) months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.
- B.2. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to two (2) renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty-one (61) months.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Sixty Million Dollars (\$60,000,000.00) ("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.
- C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.
 - a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
 - b. The Contractor shall be compensated based upon the following payment methodology:

Service Description	Amount (per compensable increment)
	\$ 850,000.00 per month



Contract Administrative functions including all Contract Base Operations, Third Party Liability Resource File Maintenance and Staffing (excluding percentage of recoveries in C.3.c)	
Reimbursement of Estate Recovery Court Filing Fees (A.6)	<u>Actual Filing Fees Incurred</u>

- c. The Contractor shall be reimbursed based on the following percentage of actual recoveries made on behalf of the State:

Recovery	Per Percentage of Recovery
Estate Recovery (A.2)	<u>10</u> % of Collections
Subrogation (A.11)	<u>8</u> % of Collections
Medicare Recoupments (A.12.a.)	<u>10</u> % of Collections
Credit Balance Audits (A.14)	<u>8</u> % of Collections
Additional Recovery Activities (A.15)	<u>15</u> % of Collections

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:

310 Great Circle Road
Nashville, TN 37243

- a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following 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;
 - (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
 - (6) Contractor name;
 - (7) Contractor Tennessee Edison registration ID number;
 - (8) Contractor contact for invoice questions (name, phone, or email);
 - (9) Contractor remittance address;
 - (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
 - (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
 - (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
 - (13) Amount due for each compensable unit of good or service; and
 - (14) Total amount due for the invoice period.
- b. Contractor's invoices shall:
- (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
 - (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
 - (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
 - (4) Include shipping or delivery charges only as authorized in this Contract.
- c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that 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 other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services 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 invoice or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.
- 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 that 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, properly completed documentation.
- a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and



- b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

D. MANDATORY TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.
- D.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract, other than information or data that is necessary for one or more Contract deliverables, 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. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

The State:

Department of Finance and Administration
Division of Health Care Finance and Administration
310 Great Circle Road
Nashville TN 37243
Telephone # (615) 507-6443
FAX # (615) 253-5607
Darin.j.gordon@tn.gov

The Contractor:

Douglas Williams, President
Markets
Health Management Systems, Inc.
5615 High Point Drive
Irving, TX 75038
Telephone # 972-916-2650
FAX # 214-453-3281
douglas.williams@hms.com

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

All information or data that is necessary for one or more deliverables set forth in this Contract shall be transmitted between HCFA and Contractor via the data transfer method specified in advance by HCFA. This may include, but shall not be limited to, transfer through HCFA's SFTP system. Failure by the Contractor to transmit information or data that is necessary for a deliverable in the manner specified by HCFA, may, at the option of HCFA, result in Liquidated Damages as set forth on Contract Attachment B hereto.



- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- D.6. 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 materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.
- D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation 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 under 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 (6) 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 (6) months has been, an employee of the State of Tennessee.

- D.9. 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, creed, color, religion, sex, national origin, or any



other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination. In addition, the Contractor shall comply with the provisions of Contract Section E.27 (Nondiscrimination Compliance Requirements) and this Section D.9 shall not be deemed to limit or abridge any requirement set forth in Section E.27.

- D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 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 agrees 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 C, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor 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 Term, 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 under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from 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. Contractor's 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 Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) 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.12. 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.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, 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 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.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party 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 are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.
- D.19. 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 to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor,



through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

- D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.
- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
 - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
 - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
 - d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.
- D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 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 under Tenn. Code Ann. §§ 8-35-101, *et seq.*, 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 Term.
- D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.23. 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 offense in



connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The 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.

- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.
- D.25. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract. In addition, the Contractor shall comply with the provisions of Contract Section E.16, (Applicable Laws, Rules, Policies and Court Orders), and this Section D.25 shall not be deemed to limit or abridge any requirement set forth in Section E.16.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 407.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, 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, whether written or oral.

- D.28. 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 of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. 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. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
 - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes Attachment A, Terms and Definitions, Attachment B, Performance Standards and Liquidated Damages, and Attachment C, Attestation RE: Personnel Used in Performance.
 - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
 - e. any technical specifications provided to proposers during the procurement process to award this Contract; and,
 - f. the Contractor's response seeking 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, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.
- E.2. 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 that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, 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. Confidential Information shall not be disclosed except as required or permitted under state or federal law. The Contractor shall only use Confidential information for activities pursuant to and related to the performance of the Contract. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

The obligations set forth in this Section shall survive the termination of this Contract.

- E.3. State Ownership of Goods. The State shall have ownership, right, title, and interest in all goods provided by Contractor under this Contract including full rights to use the goods and transfer title in the goods to any third parties.
- E.4. Ownership of Software and Work Products.
- a. Definitions.



- (1) "Contractor-Owned Software," shall mean commercially available software the rights to which are owned by Contractor, including but not limited to commercial "off-the-shelf" software which is not developed using State's money or resources.
- (2) "Custom-Developed Application Software," shall mean customized application software developed by Contractor solely for State.
- (3) "Rights Transfer Application Software," shall mean any pre-existing application software owned by Contractor or a third party, provided to State and to which Contractor will grant and assign, or will facilitate the granting and assignment of, all rights, including the source code, to State.
- (4) "Third-Party Software," shall mean software not owned by the State or the Contractor.
- (5) "Work Product," shall mean all deliverables exclusive of hardware, such as software, software source code, documentation, planning, etc., that are created, designed, developed, or documented by the Contractor exclusively for the State during the course of the project using State's money or resources, including Custom-Developed Application Software. If the deliverables under this Contract include Rights Transfer Application Software, the definition of Work Product shall also include such software. Work Product shall not include Contractor-Owned Software or Third-Party Software.

b. Rights and Title to the Software

- (1) All right, title and interest in and to the Contractor-Owned Software shall at all times remain with Contractor, subject to any license granted under this Contract.
- (2) All right, title and interest in and to the Work Product, and to modifications thereof made by State, including without limitation all copyrights, patents, trade secrets and other intellectual property and other proprietary rights embodied by and arising out of the Work Product, shall belong to State. To the extent such rights do not automatically belong to State, Contractor hereby assigns, transfers, and conveys all right, title and interest in and to the Work Product, including without limitation the copyrights, patents, trade secrets, and other intellectual property rights arising out of or embodied by the Work Product. Contractor and its employees, agents, contractors or representatives shall execute any other documents that State or its counsel deem necessary or desirable to document this transfer or allow State to register its claims and rights to such intellectual property rights or enforce them against third parties.
- (3) All right, title and interest in and to the Third-Party Software shall at all times remain with the third party, subject to any license granted under this Contract.

c. The Contractor may use for its own purposes the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of performing under this Contract. The Contractor may develop for itself, or for others, materials which are similar to or competitive with those that are produced under this Contract.

E.5 State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible personal property furnished by the State for the Contractor's use under this Contract. Upon termination of this Contract, all property furnished by the State shall be returned to the State in the same condition as when received, less



reasonable wear and tear. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the fair market value of the property at the time of loss.

- E.6. Work Papers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis work papers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.
- E.7. Prohibited Advertising or Marketing. The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.
- E.8. 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 Contractor, 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 any contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

- E.9. Intellectual Property. 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 or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.
- E.10. Liquidated Damages. If failure to comply with requirements of this contract occurs, ("Liquidated Damages Event"), the State may assess damages on Contractor ("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 Contractor's failure to fulfill its obligations regarding the Liquidated Damages Event as these amounts are likely to be uncertain and not easily proven. Contractor has carefully reviewed the Liquidated Damages contained in Attachment B and agrees that these amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of a Liquidated Damages Event, and are a reasonable estimate of the damages that would occur from a Liquidated Damages Event. The Contractor agrees that the Liquidated Damages are in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or any other sections of this Contract.

The State is not obligated to assess Liquidated Damages before availing itself of any other remedy. The State may choose to avail itself of any other remedy available under this Contract or at law or equity.

- E.11 Partial Takeover of Contract. The State may, at its convenience and without cause, exercise a partial takeover of any service that the Contractor is obligated to perform under this Contract, including any service which is the subject of a subcontract between Contractor and a third party (a "Partial Takeover"). A Partial Takeover of this Contract by the State shall not be deemed a breach of contract. The Contractor shall be given at least thirty (30) days prior written notice of a Partial Takeover. The notice shall specify the areas of service the State will assume and the date the State will be assuming. The State's exercise of a Partial Takeover shall not alter the Contractor's other duties and responsibilities under this Contract. The State reserves the right to withhold from the Contractor any amounts the Contractor would have been paid but for the State's exercise of a Partial Takeover. The amounts shall be withheld effective as of the date the State exercises its right to a Partial Takeover. The State's exercise of its right to a Partial Takeover of this Contract shall not entitle the Contractor to any actual, general, special, incidental, consequential, or any other damages irrespective of any description or amount.
- E.12 Unencumbered Personnel. The Contractor shall not restrict its employees, agents, subcontractors or principals who perform services for the State under this Contract from performing the same or similar services for the State after the termination of this Contract, either as a State employee, an independent contractor, or an employee, agent, subcontractor or principal of another contractor with the State.
- E.13. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its



employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify and/or procure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

The Contractor shall report to the State any instances of unauthorized access to or potential disclosure of PII in the custody or control of Contractor ("Unauthorized Disclosure") that come to the Contractor's attention. Any such report shall be made by the Contractor within twenty-four (24) hours after the Unauthorized Disclosure has come to the attention of the Contractor. Contractor shall take all necessary measures to halt any further Unauthorized Disclosures. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals whose PII was affected by the Unauthorized Disclosure. The Contractor shall bear the cost of notification to all individuals affected by the Unauthorized Disclosure, including individual letters and public notice. The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to this State under this Contract or otherwise available at law.

- E.14. Federal Funding Accountability and Transparency Act (FFATA). This Contract requires the Contractor to provide supplies or services that are funded in whole or in part by federal funds that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Contractor provides information to the State as required.

The Contractor shall comply with the following:

- a. Reporting of Total Compensation of the Contractor's Executives.
- (1) The Contractor shall report the names and total compensation of each of its five most highly compensated executives for the Contractor's preceding completed fiscal year, if in the Contractor's preceding fiscal year it received:
 - i. 80 percent or more of the Contractor's annual gross revenues from federal procurement contracts and federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - ii. \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts), and federal financial assistance subject to the Transparency Act (and subawards); and
 - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>).

As defined in 2 C.F.R. § 170.315, "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 C.F.R. § 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 the Term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the term extension 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.15. Survival. The terms, provisions, representations, and warranties contained in Sections D.11 (Records), D.19 (Hold Harmless), D.20 (HIPAA Compliance), E.2 (Confidentiality of Records), E.7 (Prohibited Advertising), E.9 (Intellectual Property) E.13 (Personally Identifiable Information), E.19 (Notification of Breach), E.21 (SSA Data), and E.25 (IRS Data) of this Contract shall survive the completion of performance, termination or expiration of this Contract.
- E.16. Applicable Laws, Rules, Policies and Court Orders. The Contractor agrees to comply with all applicable federal and State laws, rules, regulations, sub-regulatory guidance, executive orders, HCFA waivers, and all current, modified or future Court decrees, orders or judgments applicable to the State's TennCare and CHIP programs. Such compliance shall be performed at no additional cost to the State.
- E.17. Business Associate. Contractor hereby acknowledges its designation as a business associate under HIPAA and agrees to comply with all applicable HIPAA regulations. In accordance with the HIPAA regulations, the Contractor shall, at a minimum:
 - a. Comply with requirements of the HIPAA, including, but not limited to, the transactions and code sets, privacy, security, and identifier regulations. 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 HCFA all transactions and code sets required by HIPAA in the appropriate standard formats, utilizing appropriate and adequate safeguards, as specified under the law and as directed by HCFA so long as HCFA 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 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 HCFA 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, HCFA may terminate this Contract.
- d. Ensure that Protected Health Information (PHI) exchanged between the Contractor and HCFA 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 regulations shall be de-identified to secure and protect the individual enrollee's PHI;
- e. Report to HCFA'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 its internal policies and procedures, records and other documentation related to the use and disclosure of PHI available upon request to the U.S. Secretary of Health and Human Services for the purposes of determining compliance with the HIPAA regulations;
- h. Create and adopt policies and procedures to periodically audit adherence to all HIPAA regulations;
- i. Agree to ensure that any agent, including a subcontractor, to whom it provides PHI that was created, received, maintained, or transmitted by or on behalf of HCFA agrees to use reasonable and appropriate safeguards to protect the PHI.
- j. If feasible, return or destroy all PHI, in whatever form or medium (including any electronic medium) and all copies of 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 an oath in writing that such return or destruction has been completed; (2) identify any PHI which cannot feasibly be returned or destroyed; and (3) certify that it will only use or disclose such PHI for those purposes that make its return or destruction infeasible;
- k. 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;

- l. 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;
 - m. Create and implement policies and procedures to address present and future HIPAA 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;
 - n. Provide an appropriate level of training to its staff and employees regarding HIPAA related policies, procedures, enrollee rights and penalties prior to the HIPAA implementation deadlines and at appropriate intervals thereafter;
 - o. Track training of Contractor staff and employees and maintain signed acknowledgements by staff and employees of the Contractor's HIPAA policies;
 - p. Be allowed to use and receive information from HCFA where necessary for the management and administration of this Contract and to carry out business operations where permitted under the regulations;
 - q. Be permitted to use and disclose PHI for the Contractor's own legal responsibilities;
 - r. 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;
 - s. Continue to protect and secure PHI and personally identifiable information relating to enrollees who are deceased; and
 - t. Track all security incidents as defined by HIPAA and, as required by the HIPAA Reports. The Contractor shall periodically report in summary fashion to HCFA such security incidents.
- E.18. Information Holders. HCFA 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 HCFA 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 HCFA's express written approval. The Contractor shall notify HCFA's Privacy Office immediately upon becoming aware of any security incident that would constitute a "breach of the security of the system" as defined in TCA 47-18-2107.
- E.19. Notification of Breach and Notification of Suspected Breach. - The Contractor shall notify HCFA's Privacy Office immediately upon becoming aware of any incident, either confirmed or suspected, that represents or may represent unauthorized access, use or disclosure of encrypted or unencrypted computerized data that materially compromises the security, confidentiality, or integrity of enrollee PHI maintained or held by the Contractor, including any unauthorized acquisition of enrollee PHI by an employee or otherwise authorized user of the Contractor's system. This includes, but is not limited to, loss or suspected loss of remote computing or telework devices such as laptops, PDAs, Blackberrys or other Smartphones, USB drives, thumb drives, flash drives, CDs, and/or disks.
- E.20. Transmission of Contract Deliverables. All information or data that is necessary for one or more deliverable set forth in this Contract shall be transmitted between HCFA and Contractor via the



data transfer method specified in advance by HCFA. This may include, but shall not be limited to, transfer through HCFA's SFTP system. Failure by the Contractor to transmit information or data that is necessary for a deliverable in the manner specified by HCFA, may, at the option of HCFA, result in liquidated damages as set forth on Contract Attachment B, hereto.

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 (5U.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 HCFA, the data governed by the Contract for any purpose other than that set forth in this Contract for the administration of the HCFA program. Should the Contractor propose a redisclosure of said data, the Contractor must specify in writing to HCFA the data the Contractor proposes to redisclose, to whom, and the reasons that justify the redisclosure. HCFA will not give permission for such redisclosure unless the redisclosure is required by law or essential to the administration of the HCFA 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 HCFA.
- d. The Contractor shall restrict access to the data obtained from HCFA 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 HCFA's prior written approval.
- e. The Contractor shall ensure that its employees:
 - (1) properly safeguard PHI/PII furnished by HCFA 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 HCFA or HCFA 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 HCFA



immediately upon becoming aware to report the actual or suspected loss. The Contractor will use the Loss Worksheet located at http://www.tn.gov/assets/entities/tenncare/attachments/phi_piiworksheet.pdf to quickly gather and organize information about the incident. The Contractor must provide HCFA 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, HCFA 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. HCFA may immediately and unilaterally suspend the data flow under this Contract, or terminate this Contract, if HCFA, in its sole discretion, determines that the Contractor has:
(1) made an unauthorized use or disclosure of HCFA SSA-supplied data; or (2) violated or failed to follow the terms and conditions of this Contract.
- h. 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.
- i. **Definitions**
 - (1) "SSA-supplied data" – information, such as an individual's social security number, supplied by the Social Security Administration to HCFA to determine entitlement or eligibility for federally-funded programs (CMPPA between SSA and F&A; IEA between SSA and HCFA).
 - (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:

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

- b. The Contractor must have adequate safeguards to assure that:
 - (1) 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,
 - (2) the information is adequately stored and processed so that it is protected against unauthorized disclosure for other purposes.

- c. The Contractor must have criteria that govern the types of information about applicants and beneficiaries that are safeguarded. This information must include at least--
 - (1) Names and addresses;
 - (2) Medical services provided;
 - (3) Social and economic conditions or circumstances;
 - (4) Contractor evaluation of personal information;
 - (5) Medical data, including diagnosis and past history of disease or disability
 - (6) Any information received for verifying income eligibility and amount of medical assistance payments, including income information received from SSA or the Internal Revenue Service;
 - (7) Any information received for verifying income eligibility and amount of medical assistance payments;
 - (8) Income information received from SSA or the Internal Revenue Service must be safeguarded according to Medicaid and CHIP requirements;
 - (9) Any information received in connection with the identification of legally liable third party resources; and,
 - (10) Social Security Numbers.

- d. The Contractor must have criteria approved by HCFA specifying:
 - (1) the conditions for release and use of information about applicants and beneficiaries;
 - (2) 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 HCFA;
 - (3) The Contractor shall not publish names of applicants or beneficiaries;
 - (4) 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;
 - (5) If, because of an emergency situation, time does not permit obtaining consent before release, the Contractor shall notify HCFA, the family or individual immediately after supplying the information.
 - (6) 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 HCFA 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.



- (7) 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 HCFA at least ten (10) days prior to the required production date so HCFA may inform the court of the applicable statutory provisions, policies, and regulations restricting disclosure of information.
 - (8) 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 HCFA.
- 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
- E.24. 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 HCFA as provided in Section D.6, 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.25. Internal Revenue Service (IRS) Safeguarding Of Return Information:
- a) Performance - In performance of this contract, the contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:
 - (1) This provision shall not apply if information received or delivered by the Parties under this Contract is NOT "federal tax returns or return information" as defined by IRS Publication 1075 and IRC 6103.
 - (2) All work will be done under the supervision of the contractor or the contractor's employees. The contractor and the contractor's employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.
 - (3) Any Federal tax returns or return information (hereafter referred to as returns or return information) made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Disclosure to anyone other than an officer or employee of the contractor will be prohibited.
 - (4) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
 - (5) The contractor certifies that the data processed during the performance of this contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.



- (6) Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.
- (7) All computer systems receiving, processing, storing, or transmitting Federal tax information must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal tax information.
- (8) No work involving Federal tax information furnished under this contract will be subcontracted without prior written approval of the IRS.
- (9) The contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.
- (10) The agency will have the right to void the contract if the contractor fails to provide the safeguards described above.

b) Criminal/Civil Sanctions

- (1) Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
- (2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC section 7213A and 7431.



- (3) Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.
- (4) Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, contractors should be advised of the provisions of IRC Sections 7431, 7213, and 7213A (see Exhibit 6, *IRC Sec. 7431 Civil Damages for Unauthorized Disclosure of Returns and Return Information* and Exhibit 5, *IRC Sec. 7213 Unauthorized Disclosure of Information*). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the contractor should sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

Inspection - The IRS and the Agency shall have the right to send its officers and employees into the offices and plants of the contractor for inspection of the facilities and operations provided for the performance of any work under this contract. On the basis of such inspection, specific measures may be required in cases where the contractor is found to be noncompliant with contract safe.

- E.26. 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 Response to RFP 31865-00437 (Attachment 6.2, Section B.15) 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 Tennessee service-disabled veterans. Such reports shall be provided to the State of Tennessee Governor's Office of Diversity Business Enterprise in the required form and substance.

- E.27. Nondiscrimination Compliance Requirements. The Contractor shall comply with all applicable federal and state civil rights laws, regulations, rules, and policies and Contract Section D.9 of this Contract.

- a) In order to demonstrate compliance with the applicable federal and State civil rights laws and regulations, which may include, but are not limited to, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, and 42 U.S.C. § 18116 the Contractor shall designate a staff person to be responsible for nondiscrimination compliance.

The Contractor's Nondiscrimination Compliance Coordinator ("NCC") shall be responsible for compliance with the nondiscrimination requirements set forth in this Contract. The Contractor does not have to require that civil rights compliance be the sole function of the designated NCC



staff member. However, the Contractor shall identify the designated NCC staff member to HCFA by name.

The Contractor shall report to HCFA, in writing, to the attention of the HCFA Director of Non-Discrimination Contract Compliance, within ten (10) calendar days of the commencement of any period of time that the Contractor does not have a designated staff person for nondiscrimination compliance. At such time that this function is redirected, the name of the staff member who assumed the duties shall be reported in writing to HCFAs within ten (10) calendar days of assuming the duties of the NCC.

- (1) The Contractor's NCC shall develop a nondiscrimination training plan within thirty (30) days of the implementation of this Contract and shall provide a copy of such training plan to HCFA on an annual basis and upon request. If needed, the NCC may request an extension of time for this due date. Thereafter, this training plan shall be updated as needed to conform to changes in Federal and State law and provided to HCFA as set forth above.

On an annual basis, the NCC shall be responsible for making nondiscrimination training available to all Contractor staff and to its subcontractors that are considered to be recipients of federal financial assistance under this contract. The Contractor shall be able to show documented proof that the training was made available to the Contractor's staff and to its subcontractors that are considered to be recipients of federal financial assistance under this contract.

- (2) The Contractor shall, at a minimum, emphasize nondiscrimination in its personnel policies and procedures as it relates to hiring, promoting, operational policies, contracting processes and participation on advisory/planning boards or committees.
- (3) Prior to implementation of this Contract, Contractor shall provide its written policies and procedures that demonstrate nondiscrimination in the provision of services provided under this Contract to HCFA. These policies shall include topics, such as, the provision of language services to individuals with Limited English Proficiency and individuals requiring communication assistance in alternative formats and providing other forms of assistance to individuals with disabilities. These nondiscrimination policies and procedures shall be approved in writing by HCFA.
- (4) The Contractor shall keep such records as may be necessary in order to submit timely, complete and accurate compliance reports that may be requested by the U.S. Department of Health and Human Services ("HHS"), HCFA, and the Tennessee Human Rights Commission ("THRC") or their designees. If requested, the information shall be provided in a format and timeframe specified by HHS, HCFA, or THRC. The requested information may be necessary to enable HHS, HCFA, or THRC to ascertain whether the Contractor is complying with the applicable civil rights laws. For example, the Contractor should have available data showing the manner in which services are or will be provided by the program in question, and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination. Further examples of data that could be requested can be found at 45 C.F.R. § 80.6 and 28 C.F.R. § 42.406.
- (5) The Contractor shall permit access as set forth in the applicable civil rights laws, such as, 45 C.F.R. § 80.6 to HHS, HCFA, and THRC or their designees during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain whether the Contractor is complying with the applicable civil rights laws.
- (6) The Contractor shall make available to beneficiaries and participants in HCFA's programs and other interested persons information regarding the provisions of the applicable civil rights laws as set forth in the implementing regulations, including 45 C.F.R. § 80.6 and 45 C.F.R. § 84.8. For example, a notification shall state, where appropriate, that the Contractor does not discriminate in admission or access to, or treatment or employment in, its programs or activities. The notification



shall also include an identification of the responsible employee designated for its nondiscrimination compliance. This notice shall be considered a vital document and shall be available at a minimum in the English and Spanish languages.

- (7) The Contractor shall use and have available to individuals HCFA's discrimination complaint forms for the HCFA program or programs covered under this contract. These discrimination complaint forms shall be provided to individuals upon request and be available on the Contractor's website. HCFA's discrimination complaint forms are vital documents and must be available at a minimum in the English and Spanish languages. HCFA's Director of Non-Discrimination Contract Compliance shall work with the Contractor's NCC on providing the Contractor with the HCFA program's or programs' discrimination complaint forms that are required under this contract.

The Contractor shall provide assistance to individuals that request that the Contractor assist them with filing discrimination complaints with the HCFA program or programs covered under this contract. The Contractor shall inform its employees and its providers and subcontractors that are considered to be recipients of federal financial assistance under this contract about how to assist individuals with obtaining discrimination complaint forms and assistance with submitting the forms to the HCFA program or programs covered under this contract.

- (8) Written materials provided pursuant to this Contract shall be in plain language and ensure effective communication with Limited English Proficiency ("LEP") individuals and individuals with disabilities at no expense to these individuals and/or their representatives and shall meet the standards set forth in the applicable civil rights laws and guidance. Effective Communication may be achieved by providing interpretation and translation services and other forms of auxiliary aids or services, including, Braille and large print and shall be based on the needs of the individual and/or the individual's representative. Written materials specific to HCFA's programs' members shall be prior approved in writing by HCFA prior to the materials being sent to these individuals.
- (9) Written materials provided pursuant to this Contract shall include a number individuals can call free of charge for language assistance services. This information shall be considered a vital document and shall be available at a minimum in the English and Spanish languages.
- (10) In addition, written materials shall include information and a toll free number for individuals with disabilities to use in order to request assistance with accessing services or other program benefits that these individuals are entitled to under the applicable federal and state civil rights laws including, but not limited to, Section 504 of the Rehabilitation Act of 1973 and Titles II and III of the Americans with Disabilities Act of 1990. This information shall be considered a vital document and shall be available at a minimum in the English and Spanish languages.
- (11) Within ninety (90) calendar days of notification from HCFA, all vital Contractor documents related to this Contract shall be translated and available to each Limited English Proficiency ("LEP") group identified by HCFA in accordance with the applicable standards set forth below:
 - (i) If a LEP group constitutes five percent (5%) or 1,000, whichever is less, of the population targeted under this Contract, vital documents shall be translated into that LEP language. Translation of other documents, if needed, can be provided orally; or
 - (ii) If there are fewer than fifty (50) individuals in a language group that is part the population targeted under this Contract that reaches the five percent (5%) trigger in (a), the Contractor shall inform those individuals that it does not provide written translation of vital documents but provides written notice in that group's primary language of the right to receive competent oral interpretation of those written materials, free of cost.
 - (iii) At a minimum, all vital Contractor documents shall be translated and available in Spanish.



(12) In accordance with the requirements set forth in 42 U.S.C. § 300kk, the Contractor must develop and maintain the ability to collect and report data on race, ethnicity, sex, primary language, and disability status for the population targeted under this Contract and the parents or legal guardians of minors or legally incapacitated individuals targeted under this Contract. In collecting this data the Contractor shall use the Office of Management and Budget (OMB) standards, at a minimum, for race and ethnicity measures. Data collection standards for Race, Ethnicity, Sex, Primary Language, and Disability Status are available from the Office of Minority Health and on its website located at: <http://www.minorityhealth.hhs.gov/templates/content.aspx?ID=9227&lvl=2&lvlID=208>.

b) The Contractor shall submit the following nondiscrimination compliance deliverables to HCFA as follows:

Annually, HCFA shall provide the Contractor with a Nondiscrimination Compliance Questionnaire. The Contractor shall answer the questions contained in the Compliance Questionnaire and submit the completed Questionnaire to HCFA within ninety (90) days of the end of the calendar year with any requested documentation, which shall include, the Contractor's Assurance of Nondiscrimination. The signature date of the Contractor's Nondiscrimination Compliance Questionnaire shall be the same as the signature date of the Contractor's Assurance of Nondiscrimination. The Nondiscrimination Compliance Questionnaire deliverables shall be in a format specified by HCFA.

As part of the requested documentation for the Nondiscrimination Compliance Questionnaire, the Contractor shall submit copies of its nondiscrimination policies and procedures that demonstrate nondiscrimination in the provision of its services, programs, or activities provided under this Contract. These policies shall include topics, such as, the provision of language assistance services for LEP individuals and those requiring effective communication assistance in alternative formats, and providing assistance to individuals with disabilities. Any nondiscrimination policies and procedures that are specific to HCFA program members shall be prior approved in writing by HCFA.

Also as part of the requested documentation for the Nondiscrimination Compliance Questionnaire the Contractor shall include reports that capture data for all language assistance services used and provided by the Contractor under this Contract. One report shall contain the names of the Contractor's language assistance service providers, the languages that interpretation and translation services are available in, the auxiliary aids or services that were provided and that are available, the hours the language assistance services are available, and the numbers individuals call to access language assistance services. A separate report shall list all requests for language assistance services, including the requestor's name and identification number, the requested service, the date of the request, the date the service was provided, and the name of the service provider.

c) Discrimination Complaint Investigations. All discrimination complaints against the Contractor and its employees and its subcontractors that are considered to be recipients of federal financial assistance under this contract shall be resolved according to the provisions of this Section and the below subsections:

(1) Discrimination Complaints against the Contractor and/or Contractor's Employees. When complaints concerning alleged acts of discrimination committed by the Contractor and/or its employees related to the provision of and/or access to one of HCFA's programs are reported to the Contractor, the Contractor's NCC shall send such complaints within two (2) business days of receipt to HCFA. HCFA shall investigate and resolve all alleged acts of discrimination committed by the Contractor and/or its employees. The Contractor shall cooperate with HCFA during the investigation and resolution of such complaints. HCFA reserves the right to request that the Contractor's NCC assist with conducting the initial investigations and to suggest resolutions of alleged discrimination complaints. If HCFA requests that the Contractor's NCC assist HCFA with conducting the initial investigation, the Contractor's NCC within five (5) business days from the



date of the request shall start the initial investigation. The Contractor's NCC shall provide HCFA with all requested information, including but not limited to, the identity of the party filing the complaint; the complainant's relationship to the Contractor; the circumstances of the complaint; date complaint filed; and the Contractor's suggested resolution. HCFA shall review the Contractor's initial investigations and determine the appropriate resolutions for the complaints as set forth in subsection c below. During the complaint investigation, the Contractor shall have the opportunity to provide HCFA with any information that is relevant to the complaint investigation. Any documentation or materials related to such investigation shall be considered confidential and not subject to disclosure to any third party, unless disclosure is otherwise required by law.

- (2) Discrimination Complaints against the Contractor's Subcontractors that are recipients of federal financial assistance under this Contract. Should complaints concerning alleged acts of discrimination committed by the Contractor's subcontractors related to the provision of and/or access to one of HCFA's programs be reported to the Contractor, the Contractor's nondiscrimination compliance officer shall inform HCFA of such complaints within two (2) business days from the date Contractor learns of such complaints. If HCFA requests that the Contractor's nondiscrimination compliance officer assist HCFA with conducting the initial investigation, the Contractor's nondiscrimination compliance officer within five (5) business days from the date of the request shall start the initial investigation. Once an initial investigation has been completed, the Contractor's nondiscrimination compliance officer shall report his/her determinations to HCFA. At a minimum, the Contractor's nondiscrimination compliance officer's report shall include the identity of the party filing the complaint; the complainant's relationship to the Contractor; the circumstances of the complaint; date complaint filed; and the Contractor's suggested resolution. HCFA shall review the Contractor's initial investigations and determine the appropriate resolutions for the complaints as set forth in subsection (3) below. HCFA reserves the right to investigate and resolve all complaints concerning alleged acts of discrimination committed by the Contractor's subcontractors that are recipients of federal financial assistance under this Contract. The Contractor's Providers and Subcontractors that are recipients of federal financial assistance under this Contract shall cooperate with HCFA and the Contractor during discrimination investigations and resolutions.
- (3) Corrective Action Plans to Resolve Discrimination Complaints. If a discrimination complaint against the Contractor or its employees or one of its subcontractors who are recipients of federal financial assistance under this contract, is determined by HCFA to be valid, HCFA shall, at its option, either (i) provide the Contractor with a corrective action plan to resolve the complaint, or (ii) request that the Contractor submit a proposed corrective action plan to HCFA for review and approval that specifies what actions the Contractor proposes to take to resolve the discrimination complaint. Upon provision of the corrective action plan to Contractor by HCFA, or approval of the Contractor's proposed corrective action plan by HCFA, the Contractor shall implement the approved corrective action plan to resolve the discrimination complaint. HCFA, in its sole discretion, shall determine when a satisfactory discrimination complaint resolution has been reached and shall notify Contractor of the approved resolution. A discrimination complaint resolution corrective action plan may consist of approved nondiscrimination training on relevant discrimination topics. Prior to use, the nondiscrimination training material shall be reviewed and approved by HCFA. Time periods for the implementation of the corrective action plan nondiscrimination training shall be designated by HCFA.
- d) Electronic and Information Technology Accessibility Requirements. Contractor agrees to comply with the electronic and information technology accessibility requirements under the federal civil rights laws including Section 504 and Section 508 of the Rehabilitation Act of 1973 ("Section 508") and the Americans with Disabilities Act. To comply with the accessibility requirements for Web content and non-Web electronic documents and software, the Contractor shall use W3C's Web Content Accessibility Guidelines ("WCAG") 2.0 AA (For the W3C's guidelines see: <http://www.w3.org/TR/WCAG20/>) (Two core linked resources are Understanding WCAG 2.0 <http://www.w3.org/TR/UNDERSTANDING-WCAG20/> and Techniques for WCAG 2.0 <http://www.w3.org/TR/WCAG20-TECHS/>).



Should the Contractor have a designated staff member responsible for Contractor's electronic and information technology accessibility compliance, the name and contact information for this individual shall be provided to HCFA within ten (10) days of the implementation of this Contract and within ten (10) days of this position being reassigned to another staff member.

Prior to the start of this Contract and on an annual basis thereafter, the Contractor's staff that is designated to work on HCFA's electronic and information technology projects shall receive training on electronic and information technology accessibility requirements. The Contractor shall be able to show documented proof that this training was provided. In addition, Contractor shall provide a copy of its electronic and information technology accessibility training to HCFA upon request.

Contractor agrees to perform regularly scheduled (i.e., automatic) scans and manual testing for WCAG 2.0 AA compliance for all user content and applications in order to meet the standards for compliance. The Contractor must ensure that any system additions, updates, changes or modifications comply with WCAG 2.0 AA. Commercial Off-the-shelf ("COTS") products may be used to verify aspects of WCAG 2.0 AA compliance.

Additionally, the Contractor agrees to comply with Title VI of the Civil Rights Act of 1964. In order to achieve Title VI compliance the Contractor should add a system function that allows users to translate the content into a language other than English. This requirement may be satisfied by the provision of a link to Google translate or other machine translate tool.

Should the system or a component of the system fail to comply with the accessibility standards, the Contractor shall develop and submit to HCFA for approval a noncompliance report that identifies the areas of noncompliance, a plan to bring the system or component into compliance, an alternative/work around that provides users with the equivalent access to the content, and a timeframe for achieving that compliance. HCFA shall review the noncompliance report to determine whether or not it is acceptable and should be implemented. Once the noncompliance report is approved by HCFA the Contractor may implement the compliance plan. HCFA, in its sole discretion, shall determine when a satisfactory compliance plan resolution has been reached and shall notify the Contractor of the approved resolution. If Contractor is unable to obtain content that conforms to WCAG 2.0 AA, it shall demonstrate through its reporting to HCFA that obtaining or providing accessible content would fundamentally alter the nature of its goods and services or would result in an undue burden.

IN WITNESS WHEREOF,

HEALTH MANAGEMENT SYSTEMS, INC.:

12/16/15

CONTRACTOR SIGNATURE

DATE

Douglas Williams President, Markets

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)



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

Larry B. Martin
LARRY B. MARTIN, COMMISSIONER

12/16/2015
DATE



ATTACHMENT A

Scope of Services Terms and Definitions

Term	Definition
Business Days	Traditional workdays, including Monday, Tuesday, Wednesday, Thursday, and Friday. State Holidays are excluded.
Calendar Days	All seven days of the week.
Days	Unless otherwise specified, refers to calendar days.
Deliverable	A document, manual, or report (in hard copy, electronic format or specific medium as required) that the Contractor submits to the State to fulfill requirements of this Contract.
Estate Recovery	<p>A program created under Section 1917(b) of the Social Security Act that requires states offering Medicaid-reimbursed Long Term Care Services to seek adjustment or recovery for certain types of medical assistance from the estates of individuals who were age fifty-five (55) or older at the time such assistance was received, and from permanently institutionalized individuals of any age. For both mandatory populations, the State may elect to recover up to the total cost of all medical assistance provided.</p> <p>a) For persons age fifty-five (55) and older, the State is obligated to seek adjustment or recovery for NF (including ICF/IID) services, HCBS, and related hospital and prescription drug services.</p> <p>b) For permanently institutionalized persons, states are obligated to seek adjustment or recovery for the institutional services.</p>
FTI	Federal Tax Information regulated by the Internal Revenue Service
Holidays	Days on which official holidays and commemorations as defined in Tenn. Code Ann. § 15-1-101 are observed.
HIPAA	Health Insurance Portability and Accountability Act of 1996 (HIPAA) addresses, among other topics, the security and privacy of protected health information as well as requirements regarding electronic transaction standards.
HITECH	Health Information Technology for Economic and Clinical Health Act of 2009. Established enhanced privacy and security protections, including the notification of breach incidents and OCR enforcement of security risk assessments.
Individually Identifiable Health Information	<p>Information that is a subset of health information, including demographic information collected from an individual, and:</p> <p>a) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and</p> <p>b) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and</p> <p>c) That identifies the individual; or</p>



Term	Definition
	d) With respect to which there is a reasonable basis to believe the information can be used to identify the individual.
Individuals with Limited English Proficiency	Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English.
Information Technology	A combination of computing hardware and software that is used in: (a) the capture, storage, manipulation, movement, control, display, interchange and/or transmission of information, i.e. structured data (which may include digitized audio and video) and documents; and/or (b) the processing of such information for the purposes of enabling and/or facilitating a business process or related transaction.
InterChange	The State's Medicaid Management Information System (MMIS).
Long-Term Services and Supports	The program integrating nursing facility services for TennCare eligibles of any age and Home and Community Based Services (HCBS) for individuals aged sixty-five (65) and older and/or adults aged twenty-one (21) and older with physical disabilities are integrated into TennCare's Managed Care System. LTSS Programs also include ICFs/IID, HCBS, through a Section 1915(c) HCBS Waiver Program and the PACE Program
Personally Identifiable Information (PII)	Personally Identifiable Information means any information about an individual maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and information which can be used to distinguish or trace an individual's identity, such as their name, Social Security Number, date and place of birth, mother's maiden name, biometric records, including any other personal information which can be linked to an individual.
Protected Health Information (PHI)	<p>a) Means individually identifiable health information that is:</p> <ol style="list-style-type: none"> 1) Transmitted by electronic media; 2) Maintained in electronic media; or 3) Transmitted or maintained in any other form or medium. <p>b) Protected health information excludes individually identifiable health information in:</p> <ol style="list-style-type: none"> 1) Education records covered by the Family Educational Rights and Privacy Act, as amended, <u>20 U.S.C. 1232g</u>; 2) Records described at <u>20 U.S.C. 1232g(a)(4)(B)(iv)</u>; and 3) Employment records held by a covered entity in its role as employer.
Social Security or SSA	The federal Social Security Administration
Telecommunications Relay Service (TRS)	Telephone transmission services that provide the ability for an individual who has a hearing or speech disability to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech disability to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a text telephone or other non-voice terminal device and an individual who does not use such a device, speech-to-speech services, video relay services and non-English relay services. TRS supersedes the terms "dual party relay system," "message relay services," and "TDD Relay."



Term	Definition
TennCare	Tennessee's Medicaid program operated by the Bureau of TennCare, Department of Finance and Administration, as a 1115 Demonstration Waiver program (No. 11-W-00151/4). Additional information is available at http://www.tn.gov/tenncare/index.shtml .
Tennessee Relay Service (TNRS)	A program of the Tennessee Regulatory Authority (TRA) that provides free, statewide assisted telephone service to those with speech, hearing, and visual impairments. More information is available at http://www.tn.gov/tra/consumerfiles/relaycenter.shtml .
Warm Transfer	Executing a telephonic transfer to a specific individual within or outside of the Contractor's place of business to include introducing the caller to the individual to whom the caller is transferred before hanging up.
Week	The traditional seven-day week, Sunday through Saturday.



ATTACHMENT B

Performance Standards and Liquidated Damages

The Performance Standards described in the table below shall be in effect throughout the contract term. In the sole discretion of the State, Contractor may not be held liable for any liquidated damages resulting from circumstances beyond the Contractor's control, such as the unavailability of State technology systems or the inability to accept electronic data caused by entities outside the Contractor's control. In cases in which the performance failure is determined to have been caused at least in part by fault of the State or outside entity, the State may determine the percentage of responsibility it or the outside entity bears for the failure of performance and reduce any liquidated damage by said percentage.

The State may assess liquidated damages 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 has failed to meet one or more of the requirements described in this Contract in a proper and/or timely manner, the State will notify the Contractor in writing of the deficiency and of the potential liquidated damages to be assessed pursuant to the Control Memorandum Process set forth in Contract Section A.20.

Liquidated damages may be assessed in the amounts indicated below for the time period in which the deficiency occurs. Liquidated damages may be retroactive to the date of notice of deficiency and continue until such time as the Director of HCFA, or his designee, determines the deficiency has been cured. The liquidated damages will be deducted by the State from any monthly payment due to the Contractor.

For all Performance Standards measured in percentages, calculations for said percentages shall be made using the following standard: less than five-tenths (.5) of a percentage point will round down to the nearest percentage point and five-tenths (.5) and over will round up to the nearest percentage point.

A general liquidated damage of five hundred dollars (\$500.00) per day/occurrence, as applicable, may be assessed at the sole discretion of the State for any violation of a contract provision that is not specifically listed in the following table.

Item	Topic	Performance Standard	Measurement	Liquidated Damage Amount
1	No Benefit Releases	Mail appropriate release letter within seven (7) business days of receipt of Request for Release (RFR) form as required in Section A.5.i.9.	Date of receipt of RFR by Contractor as shown on date stamp to be affixed to all mail, faxes, email or other correspondence on the actual date it was received	For each release letter, a maximum of two hundred fifty dollars (\$250.00) for each day on and after the Contractor fails to mail an appropriate release letter within seven (7) business days of receipt of Request for Release form.



Item	Topic	Performance Standard	Measurement	Liquidated Damage Amount
2	Deferral Releases	Mail appropriate release letter within seven (7) business days of receipt of Request for Release (RFR) form as required in Section A.5.i.10.	Date of receipt of RFR by Contractor as shown on date stamp to be affixed to all mail, faxes, email or other correspondence on the actual date it was received	For each release letter, a maximum of two hundred fifty dollars (\$250.00) for each day on and after the Contractor fails to mail an appropriate release letter within seven (7) business days of receipt of Request for Release form.
3	Receipt of RFR	Mail appropriate acknowledgement of receipt of RFR in all other cases other than those with No Benefits Release or a Deferral Release within seven (7) business days of Contractor's receipt as required in Section A.5.i.11	Date of receipt of RFR by Contractor as shown on date stamp to be affixed to all mail, faxes, email or other correspondence on the actual date it was received	For each acknowledgement of receipt of RFR, a maximum of one hundred dollars (\$100.00) for each day beyond seven (7) business days from Contractor's receipt of RFR the Contractor fails to mail the appropriate acknowledgement letter
4	Condolence, RFR and ER Informational Letter	Mail Condolence, RFR and ER Informational Letter within forty-five (45) days of decedent's date of death (DOD) if no other RFR response has been sent as required in Section A.5.i.8.	Decedent's DOD	For each Condolence, RFR and Informational Letter, a maximum of five hundred dollars (\$500.00) for each day beyond forty-five (45) days following decedent's DOD that the Contractor fails to mail the appropriate letter
5	Claim and Affidavit Filings	Contractor must file both the claim and affidavit in the correct court within one hundred twenty (120) days of probate being opened for an estate as required in Section A.5.i.15.	Date probate estate opened	For each applicable case, a maximum of five thousand dollars (\$5,000.00) for each day beyond one hundred twenty (120) days of probate estate being opened that the Contractor fails to file both the claim



Item	Topic	Performance Standard	Measurement	Liquidated Damage Amount
				and affidavit in the correct court
6	Forwarding ER Cases to OGC	In cases where probate is not opened, Contractor must forward case, including all TennCare-required documentation, to OGC within one hundred ninety-five (195) days of the Decedent's DOD, as required in Section A.5.i.16	Decedent's DOD	For each applicable case, a maximum of five thousand dollars (\$5,000.00) for each day beyond one hundred ninety-five (195) days of the Decedent's DOD the Contractor fails to forward to the case, along with all required documentation
7	Forwarding ER Cases to OGC	In cases where probate is opened, Contractor must forward case, including all TennCare-required documentation, to OGC within five (5) business days of learning probate has been opened, as required in Section A.5.i.17	Date Contractor learned probate case was opened	For each applicable case, maximum of five thousand dollars (\$5,000.00) for each day on and after the Contractor fails to forward to the case, along with all required documentation, within five (5) business days of learning probate has been opened.
8	Forwarding court pleadings and notices of hearing to OGC	Contractor shall forward all court pleadings and notices of hearing to OGC within one (1) business day of receipt pursuant to written instructions and Section A.5.i.19	Written instructions provided by the State	A maximum of one thousand dollars (\$1,000.00) for each business day beyond the required one (1) business day that Contractor fails to forward all court pleadings and notices of hearing to OGC as required in written instructions



Item	Topic	Performance Standard	Measurement	Liquidated Damage Amount
				provided by the State and Section A.5.i.19
9	Returning all telephone calls within one (1) business day	Contractor shall return all telephone calls within one (1) business day of receipt of telephone message	Written instructions and Section A.5.i.20	For each telephone call, a maximum of one thousand dollars (\$1,000.00) for each day beyond one (1) business day from the date the Contractor receives a telephone message that the Contractor fails to return the call
10	HIPAA/HITECH, Privacy/Security	Failure to comply with HIPAA and HITECH Rules resulting in an unauthorized disclosure of PHI as described in Section E. and HIPAA Business Associate Agreement.		Up to fifty thousand dollars (\$50,000.00) per incident.
11	HIPAA/HITECH, Privacy/Security	Failure to have adequate Privacy and Security Safeguards and Policies as described in Section E and HIPAA Business Associate Agreement.		Up to twenty-five thousand dollars (\$25,000.00) or Five hundred dollars (\$500.00) 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 Agreement, the CONTRACTOR shall be liable for all costs associated with the provision of



Item	Topic	Performance Standard	Measurement	Liquidated Damage Amount
				such safeguard services.
12	HIPAA/HITECH, Privacy/Security	Failure to timely report violations in use and Disclosure of PHI as described in Section E and HIPAA Business Associate Agreement.		Five hundred dollars (\$500.00) per day that the reporting was not conducted according to time requirements.
13	HIPAA/HITECH, Privacy/Security	Failure to timely report Privacy/Security incidents as described in Section E and HIPAA Business Associate Agreement.		Five hundred dollars (\$500.00) per day that the reporting was not conducted according to time requirements.



Item	Topic	Performance Standard	Measurement	Liquidated Damage Amount
14	HIPAA/HITECH, Privacy/Security	Failure to seek express written approval from the State, including the execution of the appropriate agreements to effectuate transfer and exchange of State recipient PHI or State confidential information including, but not limited to, a data use agreement, trading partner agreement, business associate agreement or qualified protective order prior to the use or disclosure of PHI to a third party for any purpose other than the purpose of this Agreement. (See ancillary Business Associate Agreement executed between the parties) as described in Section E and HIPAA Business Associate Agreement.		Five hundred dollars (\$500.00) per recipient per occurrence.



Item	Topic	Performance Standard	Measurement	Liquidated Damage Amount
15	HIPAA/HITECH, Privacy/Security	Failure by the Contractor to prevent the use or disclosure of State recipient data or State confidential data 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) as described in Section E and HIPAA Business Associate Agreement.		One thousand dollars (\$1,000.00) per recipient per occurrence.
16	Medicaid/CHIP Safeguards	Knowing and willful disclosure of PII in violation of Section E.22		One thousand dollars (\$1,000.00) per person or entity, per use or disclosure.
17	SSA	Failure to secure PII as described in Section E.21		\$500 per recipient, per occurrence.
18	FTI	Failure to secure FTI pursuant to Contract E.25		\$500 per recipient, per occurrence.



ATTACHMENT C

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	48584
CONTRACTOR LEGAL ENTITY NAME:	Health Management Systems, Inc.
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	██████████

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.

Douglas Williams President, Markets

PRINTED NAME AND TITLE OF SIGNATORY

12/16/15

DATE OF ATTESTATION