



DELEGATED REVENUE CONTRACT AUTHORITY

Agency Tracking # 31865-00347	Edison ID 40515	Begin July 1, 2014	End June 30, 2015
Edison Record ID of Prior Year, Similar DR (if any) 30593		Last Possible End Date of Authorized Contracts June 30, 2019	
Subject Service Provision of TennCare Eligibility Information through the TennCare Database			
<i>OCR USE - DR</i>			



DELEGATED REVENUE CONTRACT AUTHORITY

This application for delegated authority, if approved as required by professional service contacting regulations, shall authorize the applicant state agency (referenced herein as the "Contracting Agency") to enter multiple Revenue Contracts without individual, independent approval review, PROVIDED THAT all such contracts are within the limits, guidelines, and conditions specified herein.

Contracting Agency:	Department of Finance and Administration Division of Health Care Finance and Administration Bureau of TennCare
Subject Program:	TennCare Eligibility Data Access
A. What is the specific purpose of the delegated authority? <p>This Authority is for the provision of TennCare Eligibility Information on Eligible Recipients through the TennCare Database. The eligibility information shall be restricted to the specific purposes of verification and reporting of eligibility for Medicaid benefits specific to individuals and dates of service where a medical assistance recipient is requesting payment for medical services and a treatment relationship exists to support and justify the authorized party's request. The subscriber shall be an approved Medicaid provider and must include its valid TennCare provider number and National Provider Identifier (NPI) in the Procuring Party's contract. The Eligibility Verification Service provided to subscribers by the Procuring Party shall allow subscribers access to eligibility information only by the input of required data elements as specified in the relevant HIPAA implementation guide and TennCare companion guide for the eligibility inquiry request transaction as published on the TennCare Internet site, including any subsequent amendments or revisions. Procuring Party and subscribers are responsible for adherence to directions, guidance and conditions contained within amendments and revisions to both the HIPAA Implementation Guide AND TennCare Companion Guide. Required data elements shall include appropriate identifying information for the individual and relevant date(s) of service(s). A span of service dates cannot exceed ninety (90) calendar days. If a specific date of service is requested, the date cannot be more than twelve (12) months prior to the query date. The Procuring Party shall forward eligibility inquiry request transactions received from subscribers to TennCare in the format specified in the published TennCare companion guide.</p>	
B. What are the responsibilities of the state under the subject contracts and how will they impact current state operations and public service? <p>The State agrees to provide current TennCare Eligibility Information on its eligible recipients as specified in the relevant HIPAA implementation guide and TennCare companion guide for the eligibility inquiry response transaction as published on the TennCare Internet site, including any subsequent amendments or revisions. In the course of daily operations the State shall update the eligibility information and shall provide this information to the Procuring Party through on-line access to the State's TCMIS system. Federal regulations related to providers' treatment, payment and health-care operations (TPO) require healthcare payers (TennCare) to provide access to data via standard transactions as outlined in HIPAA laws. There is a large volume of Federal and State regulations that govern data access, transfer, storage and sharing. TennCare complies with ALL of these regulations and we have multiple staff positions that monitor this compliance.</p>	
C. What will be the maximum period for each contract?	48 months



D. Will the anticipated total revenue from all contracts pursuant to the delegated authority cover all associated state costs?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
E. What is the anticipated total revenue to the state from ALL contracts pursuant to the delegated authority <u>in excess of costs</u>?	\$ See Below
<p>The projected dollar amount of this Revenue Authority is determined based both on the actual number of revenue contracts that are put in place throughout the term of this Authority as well as which of the two (2) payment structures below that the Contractor chooses. At a minimum each contract would pay a minimum set up fee of \$2,500 plus \$.02 per transaction up to \$10,000 set up plus \$.04 each time a transaction is accessed.</p> <p>Secure File Transfer Protocol (SFTP) Batch: access to TennCare's Eligibility Information may be achieved through a Virtual Private Network (VPN) connection to TennCare's SFTP server. The user is charged a Two Thousand Five Hundred Dollar (\$2,500.00) setup fee (for transaction testing, VPN setup and directory, security, and scripting costs) and Two Cents (\$.02) per transaction.</p> <p>Realtime Access: access to TennCare's Eligibility Information may be achieved through a socket connection. The user is charged a Ten Thousand Dollar (\$10,000.00) setup fee (for socket-related software and hardware, socket testing and directory, security, and scripting costs) and Four Cents (\$.04) per transaction.</p>	
F. CONTRACTING AGENCY DECLARATION: <ol style="list-style-type: none">1. The summary cover correctly records the requested delegated authority period in which every contract must begin.2. The Contracting Agency will make each agreement in accordance with<ol style="list-style-type: none">a) the pre-defined, competitive process or impartial process (e.g., awarding the same contract to all applicants in a pre-defined class in order of receipt) detailed at Attachment 1; andb) by means of a contract drafted in compliance with the model agreement detailed at Attachment 2 (and including a summary cover completed and attached to the face of each copy).3. The Contracting Agency will ensure that every contract entered pursuant to the delegated authority is compliant with the following requirements.<ol style="list-style-type: none">a) Resources necessary to meet state responsibilities shall be budgeted and available.b) Each shall be an agreement under which the other contracting party has a specified monetary obligation to the state, but the state has NO monetary obligation to the other contracting party.c) Each shall be consistent with state of Tennessee and program policy, rules, and regulations, including all applicable federal laws, rules, regulations, and requirements.d) Each shall be assigned a unique number for tracking purposes.e) NONE shall create an employer/employee relationship as prohibited by the Rules of the Department of Finance and Administration, Chapter 0620-3-3.	



- f) NONE shall procure goods, materials, supplies, equipment, or services EXCEPT as provided herein and for the program specified.
- g) NONE shall provide for monetary payment(s) of any type or amount by the state to any party.
- 4. The Contracting Agency will retain records to document that each contract pursuant to the delegated authority has been made in accordance with the limits, guidelines, and conditions specified herein.
- 5. The Contracting Agency will provide all such reports and information relating to the execution of this delegated authority as may be requested by the state officials who approve the delegated authority.

IN WITNESS WHEREOF, and by signature below, I affirm, certify, and assure that all information detailed herein is, to the best of my knowledge, accurate and represents the limits, guidelines, conditions, and procedures that the Contracting Agency staff shall follow in making each contract hereunder.

Larry B. Martin / cd

2/5/2014

Larry B. Martin, Commissioner

Date



ATTACHMENT 1

PRE-DEFINED PROCURING PARTY SELECTION PROCEDURES

A non-competitive contracting party selection shall NOT be made pursuant to this delegated authority. If it is not possible to complete a competitive selection as described below, the contracting agency may follow applicable regulations to enter a non-competitive, revenue contract.

The contracting agency shall retain records to show the clearly competitive basis of each contract pursuant to this delegated authority including documentation that each was entered in accordance with the contracting party selection procedures below.

The State will contract with any agency that agrees to the language stipulated in the contract as well as privacy documents required. Federal regulations related to TPO require healthcare payers (TennCare) to provide access to data via standard transactions as outlined in HIPAA laws.



ATTACHMENT 2

REVENUE CONTRACT TEMPLATE

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE
AND
PROCURING PARTY NAME**

This Contract, by and between the State of Tennessee, Department of Finance and Administration, Division of Health Care Finance and Administration (HCFA), Bureau of TennCare, hereinafter referred to as the "State" and/or "TennCare" and Procuring Party Legal Entity Name, hereinafter referred to as the "Procuring Party," is for the provision of TennCare eligibility information on its eligible members through the TennCare database, as further defined in the "SCOPE OF SERVICES."

The Procuring Party is a/an Individual, For-Profit Corporation, Non-Profit Corporation, Special Purpose Corporation Or Association, Partnership, Joint Venture, Or Limited Liability Company.
Procuring Party Place of Incorporation or Organization: Location

A. SCOPE OF SERVICES:

- A.1. Purpose. The purpose of this contract is to provide Eligibility Verification Services to the Procuring Party. Procuring Party shall send requests to the State for verification of eligibility (HIPAA 270) and the State shall send a response (HIPAA 271) to the Procuring Party regarding verification of eligibility.

The Procuring Party agrees that it shall maintain a list of its subscribing providers (subscriber) and upon written request by the State shall furnish a copy of its contracts with each subscriber to the State within thirty (30) business days of the request.

- A.2. The Procuring Party agrees that it shall only release to subscribers information contained in the eligibility response transaction provided by TennCare and with whom the subscriber has a treatment relationship. The Procuring Party shall not supplement eligibility information, including subscriber or coverage data, except to decode coded values or otherwise format the response for readability.
- A.3. The Eligibility Verification Service provided to subscribers by the Procuring Party shall allow subscribers access to eligibility information only by the input of required data elements as specified in the relevant Health Insurance Portability and Accountability Act of 1996 (HIPAA) implementation guide and TennCare companion guide for the eligibility inquiry request transaction as published on the TennCare Internet site, including any subsequent amendments or revisions. Procuring Party and subscribers are responsible for adherence to directions, guidance and conditions contained within amendments and revisions to both the HIPAA Implementation Guide and TennCare Companion Guide. Required data elements shall include appropriate identifying information for the member and relevant date(s) of service(s). A span of service dates cannot exceed ninety (90) calendar days. If a specific date of service is requested, the date cannot be more than twelve (12) months prior to the query date. The Procuring Party shall forward eligibility inquiry request transactions received from subscribers to TennCare in the format specified in the published TennCare companion guide.



- A.4. To the extent Procuring Party is classified as a Health Care Clearinghouse, the Procuring Party shall not inquire *en masse* (data matching of less than fifty percent (50%)) for eligibility data for an entire subscriber roster where the inquiry is not in the context of immediate treatment, payment or health care operations. To the extent the Procuring Party is classified as a Health Care Clearinghouse, the Procuring Party may forward requests on behalf of and on the explicit request of health care subscribers who in turn can request the eligibility data only to support a direct patient treatment relationship and verification of eligibility to support treatment, payment or health care operations for a member who represents that he/she is covered by Medicaid or whom the health care provider reasonably believes to be covered by Medicaid.
- A.5. It shall be the responsibility of the Procuring Party to ensure satisfaction of all its responsibilities as specified in this Contract. No subscriber contract terminates or reduces the legal responsibility of the Procuring Party to TennCare to ensure that all activities under this Contract are carried out.

The Procuring Party shall not execute subscriber contracts with providers who have been excluded from participation in the Medicare, Medicaid, CHIP program, and/or any other federal health care program and/or who are otherwise not in good standing with the TennCare program.

The Procuring Party agrees that all contracts with Subscribers shall, at a minimum, be in writing and contain the following requirements:

- a. That access to eligibility information shall be restricted to the specific purposes of verification and reporting of eligibility for Medicaid benefits specific to members and dates of service where a member is requesting payment for medical services and a treatment relationship exists to support and justify the subscriber's request.
- b. That verification of eligibility under the system is not an assurance of payment by the State and that the records of the State as to a recipient's eligibility status shall be the final authority.
- c. That the subscriber indemnifies and holds harmless the State, its agents and employees, from any and all claims by such subscriber or any recipient who is aggrieved by the actions of any party under this Contract.
- d. That the subscriber must be an approved Medicaid Provider and must include its valid TennCare Provider number and National Provider Identifier (NPI) in the Procuring Party's contract.
- e. That fees charged subscribers must be consistent with the market rate for similar subscription services.
- f. The Procuring Party shall maintain records for three (3) years showing subscriber name, member name and I.D. number. The Procuring Party shall submit to random auditing by the State, and shall, if requested, provide a service auditor's report attesting to the condition of the Procuring Party's activities, including controls over information technology and related processes, as well as privacy, security and confidentiality safeguards.
- g. All proprietary information, including but not limited to, provider reimbursement information provided to TennCare, shall be deemed confidential and not subject to disclosure under the Tennessee Public Records Act, Tenn. Code Ann. § 10-7-501, *et seq.*
- h. The private, confidential, and individually identifying data collected, maintained, or used in the course of performance of this Contract shall neither be disseminated, used nor disclosed in violation of any federal and/or State laws, including, but not limited to, the Medicaid Safeguarding Information on Individuals regulations, 42 CFR 431.300 *et seq.*



the Privacy Act of 1974, 5 U.S.C. § 552a; the Tennessee Public Records Act, Tenn. Code Ann. § 10-7-501, *et seq.*; the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C.A. § 1320d *et seq.*, 45 C.F.R. §§ 164.508, 510, 512(e); the Identity Theft Victims' Rights Act of 2004, Tenn. Code Ann. § 39-14-150; Tennessee Identity Theft Deterrence Act of 1999, Tenn. Code Ann. § 47-18-2101 *et seq.*; the Financial Privacy and the Safeguards Rules located in Title V of the Gramm-Leach Bliley Act of 1999 (GLB), PL 106-102, 113 Stat 1338 (November 12, 1999) (when in the course of performance the Procuring Party causes data to have GLB Financial Privacy Rule or Safeguard Rule implication); American Recovery and Reinvestment Act of 2009 (ARRA), Health Information Technology for Economic and Clinical Health Act (HITECH Act), (Pub. L. 111-5), § 13001, *et seq.* (Feb. 17, 2009); Identity Theft Red Flags and Address Discrepancies Under the Fair and Accurate Credit Transactions Act of 2003, 72 FR 63718-01 (November 9, 2007) (the "Red Flag Rules"); and the Substance Abuse and Mental Health Services confidentiality regulations.

- i. For training of and information to subscriber's employees about the subscriber's obligations to the TennCare Program; accountability for the actions of employees; and acceptance of the requirements of the TennCare Program.
 - j. That information made available pursuant to this Contract is confidential in nature and is protected as such pursuant to State and Federal laws, rules, regulations, and policies. Therefore, it is expressly agreed by all parties to this Contract that information relating to members and providers obtained pursuant to this Contract shall be treated as confidential information by all agents, employees, representatives or others acting on behalf of the parties, to the extent and manner that confidential treatment is provided under State or Federal Laws, and the information shall not be used in any manner except as necessary for the proper discharge of the parties rights and obligations under this Contract.
 - k. Assurance that reasonable efforts are made by the State to ensure that the information made available to the Procuring Party pursuant to this Contract is complete, accurate, and current. However, it is expressly agreed by all parties to this Contract that the State does not warrant that the information is complete, accurate, or current and the State expressly disclaims any liability as a result of reliance by any party on the contents of the information. The parties further agree to hold the State harmless from any claims arising, directly or indirectly, out of reliance on the completeness, accuracy, or timeliness of the information provided by the State.
 - l. All subscriber contracts shall include the effective date of the contract, a signature page which contains the Procuring Party and subscriber names which are typed or legibly written, subscriber's business name with titles, if applicable, contact information, and dated signatures of all appropriate parties;
- A.6. The Procuring party agrees to comply with all State and Federal laws, rules, regulations, policies and court orders as they exist or as amended that are or may be applicable to this Contract, including, but not limited to, those laws, rules, regulations, and policies contained in ancillary contracts/agreements such as the Trading Partner Agreement and Business Associate Agreement, where applicable.
- A.7. Confidential Information (i) shall be held by the Procuring Party in strictest confidence at all times; (ii) shall not be disclosed or divulged by the Procuring Party to any person or entity, except those employees and agents of the Procuring Party who require access to such information, and only after those employees and agents have been instructed that the information is subject to the confidentiality and safeguarding obligations set forth herein; and (iii) shall not be used by the Procuring Party for any purpose not set forth herein or otherwise authorized in writing by TennCare. The Parties shall diligently exercise the highest degree of care to preserve privacy, security and integrity of, and prevent unauthorized access to, the Confidential Information. By



executing this Contract, the Procuring Party assures that it has established written policies and procedures relating to confidentiality, including the confidentiality of protected health information (PHI) and eligibility information. The Procuring Party further assures, by executing this Contract, that its organization has implemented administrative, technical and physical safeguards and mechanisms that protect against the unauthorized or inadvertent disclosure of confidential information to any person or entity outside its organization.

- A.8. Any information obtained by TennCare Parties, intermediaries or carriers in the course of carrying TennCare contracts/agreements shall not be disclosed and remain confidential; furthermore, such requests which have been made pursuant to the Tennessee Public Records Act, Tenn. Code Ann. § 10-7-501, *et seq.* shall be denied under authority of an appropriate statutory exemption.
- A.9. TennCare contemplates data sharing within the ambit of HIPAA to include, but not be limited to, specific testing environments for the purpose of establishing a treatment relationship or to respond to Medicare Advantage plan finder file eligibility inquiries for the purpose of identifying dual eligibles enrolled in the Medicare Advantage plan. Such transactions shall be implemented under the health care operations permitted use set forth in HIPAA and for payment purposes, respectively.
- A.10. The Procuring Party, if a Health Care Clearinghouse, shall not store eligibility information received on behalf of a request by a subscriber except to the extent confirmation of delivery is necessary. In no event shall Procuring Party store eligibility information beyond a reasonable threshold period defined by TennCare as a maximum of thirty (30) days, unless otherwise required by law, nor shall Procuring Party retain TennCare-related data for independent third-party documentation without prior approval and written authorization from TennCare.
- A.11. The Procuring Party is prohibited from any and all automated extraction of predictive information from data for the purpose of finding patterns of behavior and trends or anomalies that may otherwise escape detection, the advanced statistical analysis and modeling of the data to find useful patterns and relationships, and the use of computational techniques involving statistics, machine learning and pattern recognition to analyze the data. To the extent data sharing or electronic data interchange (EDI) is utilized between the Parties for the purposes of provision, coordination or management of a treatment relationship, such use or disclosure shall be governed by strict compliance with return and destruction of PHI as defined in 45 C.F.R. pts. 160 and 164.
- A.12. Minimum Acceptable Encryption Requirements: All data transmitted by the use of the Internet must be protected. SSC Secure transaction, data encryption per State, HIPAA and ARRA HITECH encryption standards. Levels of data security must be reviewed to ensure that security levels are upgraded as newer technology is developed and security standards are increased. All data security standards must follow the Centers for Medicare and Medicaid Services (CMS) acceptable guidelines as well as meet HIPAA and HITECH regulations.
- A.13. Network Connection: All information access will come through a dedicated network connection that must be furnished by the Procuring Party or a virtual private network (VPN) connection with access information provided by TennCare. The Procuring Party will be responsible for any cost associated with the installation and operation of this connection.
- A.14. Acceptable Authentication Approaches: Authentication (This function is accomplished by the use of the Internet, and is referred to as an "in-band" process)
 - a. Formal Certificate Authority-based use of digital certificates is acceptable.
 - b. Locally-managed digital certificates are acceptable, providing all parties to the communication are covered by the certificates.
 - c. Token or "smart cards" are acceptable for authentication. In-band tokens overall network control of the token database for all parties.



- A.15. CMS Audit: In addition to the auditing requirements stipulated in this contract, CMS reserves the right to audit any organization implementation of, and/or adherence to these requirements. This includes the right to require that any organizations utilizing the Internet for transmission of CMS Privacy Act-protected, Medicaid confidential information and/or other sensitive information submit documentation to demonstrate that they meet these requirements.
- A.16. The State agrees to provide, through the TennCare SFTP or other method approved by TennCare, current TennCare Eligibility Information on its eligible members as specified in the relevant HIPAA implementation guide and TennCare companion guide for the eligibility inquiry response transaction, including any subsequent amendments or revisions.
- A.17. In the course of daily operations the State shall update the eligibility information specified in A.16 and shall provide this information to the Procuring Party through on-line or batch access to the State's TennCare Management Information System (TCMIS).
- A.18. Access Suspension: TennCare reserves the right to suspend Procuring Party's access in the event of Procuring Party's inappropriate use or access as determined by TennCare, including, but not limited to, in the event fifty percent (50%) of Procuring Party's requests received are not matched. TennCare may evaluate such patterns for indications of inappropriate use, including inquiry outside of the context of immediate treatment, payment or healthcare operations, or where the Procuring Party has no reasonable cause to believe that information requested was for individuals eligible for TennCare.

B. CONTRACT PERIOD:

This Contract shall be effective for the period beginning Date, and ending on Date.

C. PAYMENT TERMS AND CONDITIONS:

Payment Structure Options for Procuring Agency Selection:

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

_____ **Realtime Access:** access to TennCare's Eligibility Information may be achieved through a socket connection. The user is charged a Ten Thousand Dollar (\$10,000.00) setup fee (for socket-related software and hardware, socket testing and directory, security, and scripting costs) and Four Cents (\$.04) per transaction. Due to the cost to the state to conduct the testing, VPN setup and directory, security, and scripting, the set up fee is due upon receipt of executed contract. Without sufficient timely payment, no testing will begin.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).



- D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.3. Termination for Convenience. The Contract may be terminated by either party by giving written notice to the other, at least thirty (30) days before the effective date of termination. Said termination shall not be deemed a breach of contract by the State. Should the State exercise this provision, the State shall have no liability to the Procuring Party. Should either the State or the Procuring Party exercise this provision, the Procuring Party shall be required to compensate the State for satisfactory, authorized services completed as of the termination date and shall have no liability to the State except for those units of service which can be effectively used by the Procuring Party. The final decision, as to what these units of service are, shall be determined by the State. In the event of disagreement, the Procuring Party may file a claim with the Tennessee Claims Commission in order to seek redress.
- Upon such termination, the Procuring Party shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If either party fails to properly perform or fulfill its obligations under this Contract in a timely or proper manner or violates any terms of this Contract, the other party shall have the right to immediately terminate the Contract. The Procuring Party shall compensate the State for completed services.
- D.5. Subcontracting. Neither the Procuring Party nor the State shall assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the other. If such subcontracts are approved, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings).
- D.6. Conflicts of Interest. The Procuring Party warrants that no amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Procuring Party in connection with any work contemplated or performed relative to this Contract other than as required by section A. of this Contract.
- D.7. Nondiscrimination. The State and the Procuring Party hereby agree, warrant, and assure that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the State or the Procuring Party on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law.
- D.8. Records. The Procuring Party shall maintain documentation for its transactions with the State under this Contract. The books, records, and documents of the Procuring Party, insofar as they relate to work performed or money paid under this Contract, shall be maintained for a period of three (3) full years from the final date of this Contract and shall be subject to audit, at any reasonable time and upon reasonable notice, by the state agency, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.9. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or



provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.

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

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

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

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier



service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Deputy Commissioner
Department of Finance and Administration
Division of Health Care Finance and Administration
Bureau of TennCare
310 Great Circle Road
Nashville, TN 37243
darin.j.gordon@tn.gov
Telephone # (615) 507-6443
FAX # (615) 532-5236

The Procuring Party:

Procuring Party Contact Name & Title
Procuring Party Name
Address
Email Address
Telephone # Number
FAX # Number

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

- E.3 Tennessee Department of Revenue Registration. The Contractor shall be registered with the Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material requirement of this Contract.
- E.4 State Furnished Property. The Procuring Party shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the State for the Procuring Party's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the State in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Procuring Party shall be responsible to the State for the residual value of the property at the time of loss.
- E.5 Prohibited Advertising. The Procuring Party shall not refer to this Contract or the Procuring Party's relationship with the State hereunder in commercial advertising in such a manner as to state or imply an endorsement by the State. It is expressly understood and agreed that the obligations set forth in this section shall survive the termination of this Contract in perpetuity.
- E.6 Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Procuring Party by the State or acquired by the Procuring Party on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Procuring Party to safeguard the confidentiality of such material or information in conformance with applicable state and federal



law, state and federal rules and regulations, departmental policy, and ethical standards.

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

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

- E.7. HIPAA and HITECH Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Health Information Technology for Economic and Clinical Health Act (HITECH) under the American Recovery and Reinvestment Act of 2009 (ARRA) and their accompanying regulations, and as amended.

Contractor warrants to the State that it is familiar with the requirements of HIPAA and HITECH and their accompanying regulations, and shall comply with all applicable HIPAA and HITECH requirements in the course of this Contract including but not limited to the following:

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

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

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

- E.8. TCMIS Related Requirements. The Procuring Party must provide HCFA representatives with direct access to all available services via a test account. TCMIS' designated security officer must be permitted to conduct tests of the Procuring Party's Internet services and its security features prior to transmitting any Tennessee Medicaid eligibility data or information via the World-Wide Web or internet. Additional requirements include:

- a. Procuring Party must maintain logs of Internet access activity to TCMIS for a period of five (5) years.
- b. Logs must be made available for inspection upon demand by TennCare representatives.
- c. Where passwords are utilized, they must be changed at least every six (6) months.
- d. A properly configured server firewall must be installed and maintained at the Procuring Party's site to prevent potential access by hackers. The Procuring Party shall immediately notify the State should the Procuring Party have notice of a data security breach



whenever unencrypted personal information was obtained, or is reasonably believed to have been obtained, by an unauthorized user.

- e. Physical access to client and server systems must be limited to authorized Procuring Party personnel.

E.9. Breach. The Procuring Party shall be deemed to have breached the Contract if any of the following occurs:

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

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

Procuring Party Breach— The State shall notify Procuring Party in writing of a Breach.

In event of a Breach by Procuring party, the State shall have available the remedy of Actual Damages and any other remedy available at law or equity. The State may avail itself of this remedy, even if the contract is not being terminated. This remedy may be used by the State to recover the costs associated with remedying any violation of the HIPAA or HITECH by the Procuring Party.

E.10. Lobbying. The Procuring Party certifies, to the best of its knowledge and belief, that:

- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Procuring Party shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The Procuring Party shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

E.11. Debarment and Suspension. The Procuring Party certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;



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

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

- E.12. Hold Harmless. The Procuring Party 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 Procuring Party, its employees, or any person acting for or on its or their behalf relating to this Contract. The Procuring Party further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Procuring Party to the State.

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

- E.13. Partial Takeover. The State may, at its convenience and without cause, exercise a partial takeover of any service which the Procuring Party is obligated to perform under this Contract, including but not limited to any service which is the subject of a subcontract between Procuring Party and a third party, although the Procuring Party is not in Breach (hereinafter referred to as "Partial Takeover"). Said Partial Takeover shall not be deemed a Breach of Contract by the State. Procuring Party shall be given at least 30 days prior written notice of said Partial Takeover with said notice to specify the area(s) of service the State will assume and the date of said assumption. Any Partial Takeover by the State shall not alter in any way Procuring Party's other obligations under this Contract. The State may withhold from amounts due the Procuring Party the amount the Procuring Party would have been paid to deliver the service as determined by the State. The amounts shall be withheld effective as of the date the State assumes the service. Upon Partial Takeover, the Procuring Party shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.14. Disclosure of Protected Health Information. The Procuring Party shall report to the HCFA Privacy Office any suspected or actual incident of unauthorized use and disclosure of Protected Health Information of which the Procuring Party is aware. Any such report shall be made by the Procuring Party to the HCFA Privacy Office immediately upon becoming aware of the suspected



or actual incident. The Procuring Party, at the sole discretion of the HCFA Privacy Office, shall provide no cost credit monitoring services for members that are deemed to be part of a disclosure. The Procuring Party shall bear the cost of notification to members having protected health information involved in a disclosure event, including member letters and/or public notice.

- E.15. Notification in the Case of Breach of Unsecured Protected Health Information. In the event of a breach of unsecured PHI by the Procuring Party, when the Procuring Party is both a business associate AND a covered entity, the HCFA Privacy Office shall have full discretion regarding whether the State or the Procuring Party shall exercise and assume the obligation to provide notification as required under HITECH. If the Procuring Party provides notification, the HCFA Privacy Office shall have plenary oversight authority regarding decisions relative to the notification regulatory requirements that directly impact the State's benefit recipients.
- E. 16. Social Security Administration (SSA) Required Provisions for Data Security. Procuring Party shall comply with limitations on use, treatment, and safeguarding of data under the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, related Office of Management and Budget guidelines, the Federal Information Security Management Act of 2002 (44 U.S.C. § 3541, et seq.), and related National Institute of Standards and Technology guidelines. In addition, Procuring Party shall have in place administrative, physical, and technical safeguards for data.
- (a) Procuring Party shall not duplicate in a separate file or disseminate, without prior written permission from HCFA, the data governed by the Agreement for any purpose other than that set forth in this Agreement. Should Procuring Party propose a redisclosure of said data, Procuring Party must specify in writing to HCFA the data the Procuring Party 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) Procuring Party agrees to abide by all relevant federal laws, restrictions on access, use, and disclosure, and security requirements in this Agreement.
 - (c) Procuring Party shall provide a current list of the employees of such Procuring Party with access to SSA data and provide such lists to HCFA upon request.
 - (d) Procuring Party 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 Agreement. Procuring Party shall not further duplicate, disseminate, or disclose such data without obtaining HCFA's prior written approval.
 - (e) Procuring Party shall ensure that its employees:
 - (1) properly safeguard PHI/PII furnished by HCFA under this Agreement 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 Procuring Party 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.

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



- (f) Loss or Suspected Loss of Data – If an employee of Procuring Party 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. Procuring Party will use the Loss Worksheet, which can be found at http://www.tn.gov/tenncare/forms/phi_piiworksheet.pdf to quickly gather and organize information about the incident. Procuring Party must provide HCFA with timely updates as any additional information about the loss of PHI/PII becomes available.

If Procuring Party 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 Procuring Party shall bear any costs associated with the notice or any mitigation.

- (g) HCFA may immediately and unilaterally suspend the data flow under this Agreement, or cause Procuring Party to terminate this Agreement, if HCFA, in its sole discretion, determines that Procuring Party 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 Agreement.
- (h) In order to meet certain requirements set forth in HCFA's Computer Matching and Privacy Protection Act Agreement (CMPPA) with the SSA, the Parties acknowledge that this Section shall be included in all agreements executed by or on behalf of HCFA. HCFA and Procuring Party further agree that FISMA and NIST do not apply in the context of data use and disclosure under this Agreement as Procuring Party and Procuring Party shall neither use nor operate a federal information system on behalf of a federal executive agency. Further, NIST is applicable to federal information systems; therefore, although encouraged to do so, HCFA, its contractors, agents and providers are not required to abide by the NIST guidelines.
- (i) This Section further carries out Section 1106(a) of the Act (42 U.S.C. 1306), the regulations promulgated pursuant to that section (20 C.F.R. Part 401), the Privacy of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, related Office of Management and Budget ("OMB") guidelines, the Federal Information Security Management Act of 2002 ("FISMA") (44 U.S.C. 3541 et seq.), and related National Institute of Standards and Technology ("NIST") guidelines, which provide the requirements that the SSA stipulates that Procuring Party 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.

IN WITNESS WHEREOF,

PROCURING PARTY LEGAL ENTITY NAME:

PROCURING PARTY SIGNATURE

DATE

PRINTED NAME AND TITLE OF PROCURING PARTY SIGNATORY (above)

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

LARRY B. MARTIN, COMMISSIONER

DATE



DELEGATED REVENUE CONTRACT AUTHORITY

Agency Tracking # 31865-00347	Edison ID 30593	Begin July 1, 2012	End June 30, 2013
Edison Record ID of Prior Year, Similar DR (if any) 29081		Last Possible End Date of Authorized Contracts June 30, 2016	
Subject Service Provision of TennCare Eligibility Information through the TennCare Database			
<i>OCR USE - DR</i>			
DR1338059			

DELEGATED REVENUE CONTRACT AUTHORITY



This application for delegated authority, if approved as required by professional service contacting regulations, shall authorize the applicant state agency (referenced herein as the "Contracting Agency") to enter multiple Revenue Contracts without individual, independent approval review, PROVIDED THAT all such contracts are within the limits, guidelines, and conditions specified herein.

Contracting Agency:	Department of Finance and Administration Bureau of TennCare	
Subject Program:	TennCare Eligibility Data Access	
A. What is the specific purpose of the delegated authority?	<p>This Authority is for the provision of TennCare Eligibility Information on Eligible Recipients through the TennCare Database. The eligibility information shall be restricted to the specific purposes of verification and reporting of eligibility for Medicaid benefits specific to individuals and dates of service where a medical assistance recipient is requesting payment for medical services and a treatment relationship exists to support and justify the authorized party's request. The subscriber shall be an approved Medicaid provider and must include its valid TennCare provider number and NPI in the Procuring Party's contract. The Eligibility Verification Service provided to subscribers by the Procuring Party shall allow subscribers access to eligibility information only by the input of required data elements as specified in the relevant HIPAA implementation guide and TennCare companion guide for the eligibility inquiry request transaction as published on the TennCare Internet site, including any subsequent amendments or revisions. Procuring Party and subscribers are responsible for adherence to directions, guidance and conditions contained within amendments and revisions to both the HIPAA Implementation Guide AND TennCare Companion Guide. Required data elements shall include appropriate identifying information for the individual and relevant date(s) of service(s). A span of service dates cannot exceed ninety (90) calendar days. If a specific date of service is requested, the date cannot be more than twelve (12) months prior to the query date. The Procuring Party shall forward eligibility inquiry request transactions received from subscribers to TennCare in the format specified in the published TennCare companion guide.</p>	
B. What are the responsibilities of the state under the subject contracts and how will they impact current state operations and public service?	<p>The State agrees to provide current TennCare Eligibility Information on its eligible recipients as specified in the relevant HIPAA implementation guide and TennCare companion guide for the eligibility inquiry response transaction as published on the TennCare Internet site, including any subsequent amendments or revisions. In the course of daily operations the State shall update the eligibility information and shall provide this information to the Procuring Party through on-line access to the State's TCMIS system. Federal regulations related to TPO require healthcare payers (TennCare) to provide access to data via standard transactions as outlined in HIPAA laws. There is a large volume of Federal and State regulations that govern data access, transfer, storage and sharing. TennCare complies with ALL of these regulations and we have multiple staff positions that monitor this compliance.</p>	
C. What will be the maximum period for each contract?		48 months
D. Will the anticipated total revenue from all contracts pursuant to the delegated authority cover all associated state costs?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
E. What is the anticipated total revenue to the state from ALL contracts pursuant to the delegated authority <u>in excess of costs</u>?		\$ See Below



The projected dollar amount of this Revenue Authority is determined based both on the actual number of revenue contracts that are put in place throughout the term of this Authority as well as which of the two (2) payment structures below that the Contractor chooses. At a minimum each contract would pay a minimum set up fee of \$2,500 plus \$.02 per transaction up to \$10,000 set up plus \$.04 each time a transaction is accessed.

Secure File Transfer Protocol (SFTP) Batch: access to TennCare's Eligibility Information may be achieved through a Virtual Private Network (VPN) connection to TennCare's SFTP server. The user is charged a Two Thousand Five Hundred Dollar (\$2,500.00) setup fee (for transaction testing, VPN setup and directory, security, and scripting costs) and Two Cents (\$.02) per transaction.

Realtime Access: access to TennCare's Eligibility Information may be achieved through a socket connection. The user is charged a Ten Thousand Dollar (\$10,000.00) setup fee (for socket-related software and hardware, socket testing and directory, security, and scripting costs) and Four Cents (\$.04) per transaction.

F. CONTRACTING AGENCY DECLARATION:

1. The summary cover correctly records the requested delegated authority period in which every contract must begin.
2. The Contracting Agency will make each agreement in accordance with
 - a) the pre-defined, competitive process or impartial process (e.g., awarding the same contract to all applicants in a pre-defined class in order of receipt) detailed at Attachment 1; and
 - b) by means of a contract drafted in compliance with the model agreement detailed at Attachment 2 (and including a summary cover completed and attached to the face of each copy).
3. The Contracting Agency will ensure that every contract entered pursuant to the delegated authority is compliant with the following requirements.
 - a) Resources necessary to meet state responsibilities shall be budgeted and available.
 - b) Each shall be an agreement under which the other contracting party has a specified monetary obligation to the state, but the state has NO monetary obligation to the other contracting party.
 - c) Each shall be consistent with state of Tennessee and program policy, rules, and regulations, including all applicable federal laws, rules, regulations, and requirements.
 - d) Each shall be assigned a unique number for tracking purposes.
 - e) NONE shall create an employer/employee relationship as prohibited by the Rules of the Department of Finance and Administration, Chapter 0620-3-3.
 - f) NONE shall procure goods, materials, supplies, equipment, or services EXCEPT as provided herein and for the program specified.
 - g) NONE shall provide for monetary payment(s) of any type or amount by the state to any party.
4. The Contracting Agency will retain records to document that each contract pursuant to the delegated authority has been made in accordance with the limits, guidelines, and conditions specified herein.
5. The Contracting Agency will provide all such reports and information relating to the execution of this delegated authority as may be requested by the state officials who approve the delegated authority.



IN WITNESS WHEREOF, and by signature below, I affirm, certify, and assure that all information detailed herein is, to the best of my knowledge, accurate and represents the limits, guidelines, conditions, and procedures that the Contracting Agency staff shall follow in making each contract hereunder.

Mark A. Emkes

March 6, 2012

Mark A. Emkes, Commissioner

Date



PRE-DEFINED PROCURING PARTY SELECTION PROCEDURES

A non-competitive contracting party selection shall NOT be made pursuant to this delegated authority. If it is not possible to complete a competitive selection as described below, the contracting agency may follow applicable regulations to enter a non-competitive, revenue contract.

The contracting agency shall retain records to show the clearly competitive basis of each contract pursuant to this delegated authority including documentation that each was entered in accordance with the contracting party selection procedures below.

The State will contract with any agency that agrees to the language stipulated in the contract as well as privacy documents required. Federal regulations related to TPO require healthcare payers (TennCare) to provide access to data via standard transactions as outlined in HIPAA laws.



REVENUE CONTRACT TEMPLATE

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE
AND
PROCURING PARTY NAME**

This Contract, by and between the State of Tennessee, Department of Finance and Administration, Division of Health Care Finance and Administration, Bureau of TennCare, hereinafter referred to as the "State" and/or "TennCare" and Procuring Party Legal Entity Name, hereinafter referred to as the "Procuring Party," is for the provision of TennCare eligibility information on its eligible members through the TennCare database, as further defined in the "SCOPE OF SERVICES."

The Procuring Party is a/an Individual, For-Profit Corporation, Non-Profit Corporation, Special Purpose Corporation Or Association, Partnership, Joint Venture, Or Limited Liability Company.
Procuring Party Place of Incorporation or Organization: Location

A. SCOPE OF SERVICES:

- A.1. Purpose. The purpose of this contract is to provide Eligibility Verification Services to the Procuring Party. Procuring Party shall send requests to the State for verification of eligibility (HIPAA 270) and the State shall send a response (HIPAA 271) to the Procuring Party regarding verification of eligibility.

The Procuring Party agrees that it shall maintain a list of its subscribing providers (subscriber) and upon written request by the State shall furnish a copy of its contracts with each subscriber to the State within thirty (30) business days of the request.

- A.2. The Procuring Party agrees that it shall only release to subscribers information contained in the eligibility response transaction provided by TennCare and with whom the subscriber has a treatment relationship. The Procuring Party shall not supplement eligibility information, including subscriber or coverage data, except to decode coded values or otherwise format the response for readability.
- A.3. The Eligibility Verification Service provided to subscribers by the Procuring Party shall allow subscribers access to eligibility information only by the input of required data elements as specified in the relevant Health Insurance Portability and Accountability Act of 1996 (HIPAA) implementation guide and TennCare companion guide for the eligibility inquiry request transaction as published on the TennCare Internet site, including any subsequent amendments or revisions. Procuring Party and subscribers are responsible for adherence to directions, guidance and conditions contained within amendments and revisions to both the HIPAA Implementation Guide and TennCare Companion Guide. Required data elements shall include appropriate identifying information for the member and relevant date(s) of service(s). A span of service dates cannot exceed ninety (90) calendar days. If a specific date of service is requested, the date cannot be more than twelve (12) months prior to the query date. The Procuring Party shall forward eligibility inquiry request transactions received from subscribers to TennCare in the format specified in the published TennCare companion guide.
- A.4. To the extent Procuring Party is classified as a Health Care Clearinghouse, the Procuring Party shall not inquire *en masse* (data matching of less than fifty percent (50%)) for eligibility data for an entire subscriber roster where the inquiry is not in the context of immediate treatment, payment or health care operations. To the extent the Procuring Party is classified as a Health Care



Clearinghouse, the Procuring Party may forward requests on behalf of and on the explicit request of health care subscribers who in turn can request the eligibility data only to support a direct patient treatment relationship and verification of eligibility to support treatment, payment or health care operations for a member who represents that he/she is covered by Medicaid or whom the health care provider reasonably believes to be covered by Medicaid.

- A.5. It shall be the responsibility of the Procuring Party to ensure satisfaction of all its responsibilities as specified in this Contract. No subscriber contract terminates or reduces the legal responsibility of the Procuring Party to TennCare to ensure that all activities under this Contract are carried out.

The Procuring Party shall not execute subscriber contracts with providers who have been excluded from participation in the Medicare, Medicaid, CHIP program, and/or any other federal health care program and/or who are otherwise not in good standing with the TennCare program.

The Procuring Party agrees that all contracts with Subscribers shall, at a minimum, be in writing and contain the following requirements:

- a. That access to eligibility information shall be restricted to the specific purposes of verification and reporting of eligibility for Medicaid benefits specific to members and dates of service where a member is requesting payment for medical services and a treatment relationship exists to support and justify the subscriber's request.
- b. That verification of eligibility under the system is not an assurance of payment by the State and that the records of the State as to a recipient's eligibility status shall be the final authority.
- c. That the subscriber indemnifies and holds harmless the State, its agents and employees, from any and all claims by such subscriber or any recipient who is aggrieved by the actions of any party under this Contract.
- d. That the subscriber must be an approved Medicaid Provider and must include its valid TennCare Provider number and National Provider Identifier (NPI) in the Procuring Party's contract.
- e. That fees charged subscribers must be consistent with the market rate for similar subscription services.
- f. The Procuring Party shall maintain records for three (3) years showing subscriber name, member name and I.D. number. The Procuring Party shall submit to random auditing by the State, and shall, if requested, provide a service auditor's report attesting to the condition of the Procuring Party's activities, including controls over information technology and related processes, as well as privacy, security and confidentiality safeguards.
- g. All proprietary information, including but not limited to, provider reimbursement information provided to TennCare, shall be deemed confidential and not subject to disclosure under the Tennessee Public Records Act, Tenn. Code Ann. § 10-7-501, *et seq.*
- h. The private, confidential, and individually identifying data collected, maintained, or used in the course of performance of this Contract shall neither be disseminated, used nor disclosed in violation of any federal and/or State laws, including, but not limited to, the Medicaid Safeguarding Information on Individuals regulations, 42 CFR 431.300 *et seq.*; the Privacy Act of 1974, 5 U.S.C. § 552a; the Tennessee Public Records Act, Tenn. Code Ann. § 10-7-501, *et seq.*; the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C.A. § 1320d *et seq.*, 45 C.F.R. §§ 164.508, 510, 512(e); the Identity Theft Victims' Rights Act of 2004, Tenn. Code Ann. § 39-14-150; Tennessee Identity Theft Deterrence Act of 1999, Tenn. Code Ann. § 47-18-2101 *et seq.*; the Financial Privacy and the Safeguards Rules located in Title V of the Gramm-Leach Bliley



Act of 1999 (GLB), PL 106–102, 113 Stat 1338 (November 12, 1999) (when in the course of performance the Procuring Party causes data to have GLB Financial Privacy Rule or Safeguard Rule implication); American Recovery and Reinvestment Act of 2009 (ARRA), Health Information Technology for Economic and Clinical Health Act (HITECH Act), (Pub. L. 111–5), § 13001, *et seq.* (Feb. 17, 2009); Identity Theft Red Flags and Address Discrepancies Under the Fair and Accurate Credit Transactions Act of 2003, 72 FR 63718-01 (November 9, 2007) (the “Red Flag Rules”); and the Substance Abuse and Mental Health Services confidentiality regulations.

- i. For training of and information to subscriber’s employees about the subscriber’s obligations to the TennCare Program; accountability for the actions of employees; and acceptance of the requirements of the TennCare Program.
 - j. That information made available pursuant to this Contract is confidential in nature and is protected as such pursuant to State and Federal laws, rules, regulations, and policies. Therefore, it is expressly agreed by all parties to this Contract that information relating to members and providers obtained pursuant to this Contract shall be treated as confidential information by all agents, employees, representatives or others acting on behalf of the parties, to the extent and manner that confidential treatment is provided under State or Federal Laws, and the information shall not be used in any manner except as necessary for the proper discharge of the parties rights and obligations under this Contract.
 - k. Assurance that reasonable efforts are made by the State to ensure that the information made available to the Procuring Party pursuant to this Contract is complete, accurate, and current. However, it is expressly agreed by all parties to this Contract that the State does not warrant that the information is complete, accurate, or current and the State expressly disclaims any liability as a result of reliance by any party on the contents of the information. The parties further agree to hold the State harmless from any claims arising, directly or indirectly, out of reliance on the completeness, accuracy, or timeliness of the information provided by the State.
 - l. All subscriber contracts shall include the effective date of the contract, a signature page which contains the Procuring Party and subscriber names which are typed or legibly written, subscriber’s business name with titles, if applicable, contact information, and dated signatures of all appropriate parties;
- A.6. The Procuring party agrees to comply with all State and Federal laws, rules, regulations, policies and court orders as they exist or as amended that are or may be applicable to this Contract, including, but not limited to, those laws, rules, regulations, and policies contained in ancillary contracts/agreements such as the Trading Partner Agreement and Business Associate Agreement, where applicable.
- A.7. Confidential Information (i) shall be held by the Procuring Party in strictest confidence at all times; (ii) shall not be disclosed or divulged by the Procuring Party to any person or entity, except those employees and agents of the Procuring Party who require access to such information, and only after those employees and agents have been instructed that the information is subject to the confidentiality and safeguarding obligations set forth herein; and (iii) shall not be used by the Procuring Party for any purpose not set forth herein or otherwise authorized in writing by TennCare. The Parties shall diligently exercise the highest degree of care to preserve privacy, security and integrity of, and prevent unauthorized access to, the Confidential Information. By executing this Contract, the Procuring Party assures that it has established written policies and procedures relating to confidentiality, including the confidentiality of protected health information (PHI) and eligibility information. The Procuring Party further assures, by executing this Contract, that its organization has implemented administrative, technical and physical safeguards and mechanisms that protect against the unauthorized or inadvertent disclosure of confidential information to any person or entity outside its organization.
- A.8. Any information obtained by TennCare Parties, intermediaries or carriers in the course of carrying TennCare contracts/agreements shall not be disclosed and remain confidential; furthermore, such



requests which have been made pursuant to the Tennessee Public Records Act, Tenn. Code Ann. § 10-7-501, *et seq.* shall be denied under authority of an appropriate statutory exemption.

- A.9. TennCare contemplates data sharing within the ambit of HIPAA to include, but not be limited to, specific testing environments for the purpose of establishing a treatment relationship or to respond to Medicare Advantage plan finder file eligibility inquiries for the purpose of identifying dual eligibles enrolled in the Medicare Advantage plan. Such transactions shall be implemented under the health care operations permitted use set forth in HIPAA and for payment purposes, respectively.
- A.10. The Procuring Party, if a Health Care Clearinghouse, shall not store eligibility information received on behalf of a request by a subscriber except to the extent confirmation of delivery is necessary. In no event shall Procuring Party store eligibility information beyond a reasonable threshold period defined by TennCare as a maximum of thirty (30) days, unless otherwise required by law, nor shall Procuring Party retain TennCare-related data for independent third-party documentation without prior approval and written authorization from TennCare.
- A.11. The Procuring Party is prohibited from any and all automated extraction of predictive information from data for the purpose of finding patterns of behavior and trends or anomalies that may otherwise escape detection, the advanced statistical analysis and modeling of the data to find useful patterns and relationships, and the use of computational techniques involving statistics, machine learning and pattern recognition to analyze the data. To the extent data sharing or electronic data interchange (EDI) is utilized between the Parties for the purposes of provision, coordination or management of a treatment relationship, such use or disclosure shall be governed by strict compliance with return and destruction of PHI as defined in 45 C.F.R. pts. 160 and 164.
- A.12. Minimum Acceptable Encryption Requirements: All data transmitted by the use of the Internet must be protected. SSC Secure transaction, data encryption per State, HIPAA and ARRA HITECH encryption standards. Levels of data security must be reviewed to ensure that security levels are upgraded as newer technology is developed and security standards are increased. All data security standards must follow the Centers for Medicare and Medicaid Services (CMS) acceptable guidelines as well as meet HIPAA and HITECH regulations.
- A.13. Network Connection: All information access will come through a dedicated network connection that must be furnished by the Procuring Party or a virtual private network (VPN) connection with access information provided by TennCare. The Procuring Party will be responsible for any cost associated with the installation and operation of this connection.
- A.14. Acceptable Authentication Approaches: Authentication (This function is accomplished by the use of the Internet, and is referred to as an "in-band" process)
- a. Formal Certificate Authority-based use of digital certificates is acceptable.
 - b. Locally-managed digital certificates are acceptable, providing all parties to the communication are covered by the certificates.
 - c. Token or "smart cards" are acceptable for authentication. In-band tokens overall network control of the token database for all parties.
- A.15. CMS Audit: In addition to the auditing requirements stipulated in this contract, CMS reserves the right to audit any organization implementation of, and/or adherence to these requirements. This includes the right to require that any organizations utilizing the Internet for transmission of CMS Privacy Act-protected, Medicaid confidential information and/or other sensitive information submit documentation to demonstrate that they meet these requirements.
- A.16. The State agrees to provide current TennCare Eligibility Information on its eligible members as specified in the relevant HIPAA implementation guide and TennCare companion guide for the eligibility inquiry response transaction as published on the TennCare Internet site, including any subsequent amendments or revisions.



- A.17. In the course of daily operations the State shall update the eligibility information specified in A.16 and shall provide this information to the Procuring Party through on-line or batch access to the State's TennCare Management Information System (TCMIS).
- A.18. Access Suspension: TennCare reserves the right to suspend Procuring Party's access in the event of Procuring Party's inappropriate use or access as determined by TennCare, including, but not limited to, in the event fifty percent (50%) of Procuring Party's requests received are not matched. TennCare may evaluate such patterns for indications of inappropriate use, including inquiry outside of the context of immediate treatment, payment or healthcare operations, or where the Procuring Party has no reasonable cause to believe that information requested was for individuals eligible for TennCare.

B. CONTRACT PERIOD:

This Contract shall be effective for the period beginning _____, and ending on _____.

C. PAYMENT TERMS AND CONDITIONS:

Payment Structure Options for Procuring Agency Selection:

_____ **Secure File Transfer Protocol (SFTP) Batch**: access to TennCare's Eligibility Information may be achieved through a Virtual Private Network (VPN) connection to TennCare's SFTP server. The user is charged a Two Thousand Five Hundred Dollar (\$2,500.00) setup fee (for transaction testing, VPN setup and directory, security, and scripting costs) and Two Cents (\$.02) per transaction.

_____ **Realtime Access**: access to TennCare's Eligibility Information may be achieved through a socket connection. The user is charged a Ten Thousand Dollar (\$10,000.00) setup fee (for socket-related software and hardware, socket testing and directory, security, and scripting costs) and Four Cents (\$.04) per transaction.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.3. Termination for Convenience. The Contract may be terminated by either party by giving written notice to the other, at least thirty (30) days before the effective date of termination. Said termination shall not be deemed a breach of contract by the State. Should the State exercise this provision, the State shall have no liability to the Procuring Party. Should either the State or the Procuring Party exercise this provision, the Procuring Party shall be required to compensate the State for satisfactory, authorized services completed as of the termination date and shall have no liability to the State except for those units of service which can be effectively used by the Procuring Party. The final decision, as to what these units of service are, shall be determined by the State. In the event of disagreement, the Procuring Party may file a claim with the Tennessee Claims Commission in order to seek redress.



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

- D.4. Termination for Cause. If either party fails to properly perform or fulfill its obligations under this Contract in a timely or proper manner or violates any terms of this Contract, the other party shall have the right to immediately terminate the Contract. The Procuring Party shall compensate the State for completed services.
- D.5. Subcontracting. Neither the Procuring Party nor the State shall assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the other. If such subcontracts are approved, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings).
- D.6. Conflicts of Interest. The Procuring Party warrants that no amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Procuring Party in connection with any work contemplated or performed relative to this Contract other than as required by section A. of this Contract.
- D.7. Nondiscrimination. The State and the Procuring Party hereby agree, warrant, and assure that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the State or the Procuring Party on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law.
- D.8. Records. The Procuring Party shall maintain documentation for its transactions with the State under this Contract. The books, records, and documents of the Procuring Party, insofar as they relate to work performed or money paid under this Contract, shall be maintained for a period of three (3) full years from the final date of this Contract and shall be subject to audit, at any reasonable time and upon reasonable notice, by the state agency, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.9. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.10. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

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

- D.11. State Liability. The State shall have no liability except as specifically provided in this Contract.



- D.12. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.13. State and Federal Compliance. The Procuring Party and the State shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.14. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Procuring Party agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Procuring Party acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.15. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.16. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.17. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

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

The State:

Deputy Commissioner
Department of Finance and Administration
Division of Health Care Finance and Administration
Bureau of TennCare
310 Great Circle Road
Nashville, TN 37243
darin.j.gordon@tn.gov Telephone # (615) 507-6443
FAX # (615) 532-5236
The Procuring Party:

Procuring Party Contact Name & Title
Procuring Party Name
Address
Email Address



Telephone # Number
FAX # Number

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

- E.3. State Furnished Property. The Procuring Party shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the State for the Procuring Party's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the State in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Procuring Party shall be responsible to the State for the residual value of the property at the time of loss.
- E.4. Prohibited Advertising. The Procuring Party shall not refer to this Contract or the Procuring Party's relationship with the State hereunder in commercial advertising in such a manner as to state or imply an endorsement by the State. It is expressly understood and agreed that the obligations set forth in this section shall survive the termination of this Contract in perpetuity.
- E.5. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Procuring Party by the State or acquired by the Procuring Party on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Procuring Party to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

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

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

- E.6. HIPAA and HITECH Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Health Information Technology for Economic and Clinical Health Act (HITECH) under the American Recovery and Reinvestment Act of 2009 (ARRA) and their accompanying regulations, and as amended.

Contractor warrants to the State that it is familiar with the requirements of HIPAA and HITECH and their accompanying regulations, and shall comply with all applicable HIPAA and HITECH requirements in the course of this Contract including but not limited to the following:

- a. Compliance with the Privacy Rule, Security Rule, Notification Rule;
- b. The creation of and adherence to sufficient Privacy and Security Safeguards and Policies;
- c. Timely Reporting of Violations in the Access, Use and Disclosure of PHI; and
- d. Timely Reporting of Privacy and/or Security Incidents.



Contractor warrants that it shall cooperate with the State, including the execution of trading partner agreements and business associate agreements ancillary to this contract; and, in cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and HITECH and their accompanying regulations, in the course of performance of the Contract so that both parties will be in compliance with HIPAA and HITECH.

- E.7. TCMIS Related Requirements. The Procuring Party must provide TennCare representatives with direct access to all available services via a test account. TCMIS' designated security officer must be permitted to conduct tests of the Procuring Party's Internet services and its security features prior to transmitting any Tennessee Medicaid eligibility data or information via the World-Wide Web or internet. Additional requirements include:
- a. Procuring Party must maintain logs of Internet access activity to TCMIS for a period of five (5) years.
 - b. Logs must be made available for inspection upon demand by TennCare representatives.
 - c. Where passwords are utilized, they must be changed at least every six (6) months.
 - d. A properly configured server firewall must be installed and maintained at the Procuring Party's site to prevent potential access by hackers. The Procuring Party shall immediately notify the State should the Procuring Party have notice of a data security breach whenever unencrypted personal information was obtained, or is reasonably believed to have been obtained, by an unauthorized user.
 - e. Physical access to client and server systems must be limited to authorized Procuring Party personnel.

- E.8. Breach. The Procuring Party shall be deemed to have breached the Contract if any of the following occurs:

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

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

Procuring Party Breach— The State shall notify Procuring Party in writing of a Breach.

In event of a Breach by Procuring party, the State shall have available the remedy of Actual Damages and any other remedy available at law or equity. The State may avail itself of this remedy, even if the contract is not being terminated. This remedy may be used by the State to recover the costs associated with remedying any violation of the HIPAA or HITECH by the Procuring Party.

- E.9. Lobbying. The Procuring Party certifies, to the best of its knowledge and belief, that:

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



of Congress in connection with this contract, grant, loan, or cooperative agreement, the Procuring Party shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

E.10. Debarment and Suspension. The Procuring Party certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

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

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

E.11. Hold Harmless. The Procuring Party 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 Procuring Party, its employees, or any person acting for or on its or their behalf relating to this Contract. The Procuring Party further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Procuring Party to the State.

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

E.12. Partial Takeover. The State may, at its convenience and without cause, exercise a partial takeover of any service which the Procuring Party is obligated to perform under this Contract, including but not limited to any service which is the subject of a subcontract between Procuring



Party and a third party, although the Procuring Party is not in Breach (hereinafter referred to as "Partial Takeover"). Said Partial Takeover shall not be deemed a Breach of Contract by the State. Procuring Party shall be given at least 30 days prior written notice of said Partial Takeover with said notice to specify the area(s) of service the State will assume and the date of said assumption. Any Partial Takeover by the State shall not alter in any way Procuring Party's other obligations under this Contract. The State may withhold from amounts due the Procuring Party the amount the Procuring Party would have been paid to deliver the service as determined by the State. The amounts shall be withheld effective as of the date the State assumes the service. Upon Partial Takeover, the Procuring Party shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- E.13. Disclosure of Protected Health Information. The Procuring Party shall report to the State any provisional or actual incident of unauthorized use and disclosure of confidential Protected Health Information of which the Procuring Party is aware. Any such report shall be made by the Procuring Party to the State immediately upon becoming aware of the incident. The Procuring Party, at the sole discretion of the State, shall provide no cost credit monitoring services for members that are deemed to be part of a disclosure. The Procuring Party shall bear the cost of notification to members having protected health information involved in a disclosure event, including member letters and/or public notice.
- E.14. Notification in the Case of Breach of Unsecured Protected Health Information. In the event of a breach of unsecured PHI by the Procuring Party, when the Procuring Party is both a business associate AND a covered entity, the State shall have full discretion regarding whether the State or the Procuring Party shall exercise and assume the obligation to provide notification as required under HITECH. If the Procuring Party provides notification, the State shall have plenary oversight authority regarding decisions relative to the notification regulatory requirements that directly impact the State's benefit recipients.

IN WITNESS WHEREOF,

PROCURING PARTY LEGAL ENTITY NAME:

PROCURING PARTY SIGNATURE **DATE**

PRINTED NAME AND TITLE OF PROCURING PARTY SIGNATORY (above)

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

Mark A. Emkes, Commissioner **DATE**