## CONTRACT AMENDMENT COVER SHEET

<table>
<thead>
<tr>
<th>Agency Tracking #</th>
<th>Edison ID</th>
<th>Contract #</th>
<th>Amendment #</th>
</tr>
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<tbody>
<tr>
<td>31865-00460</td>
<td>NV-52580</td>
<td></td>
<td>02</td>
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</tbody>
</table>

### Contractor Legal Entity Name
Mercer Health & Benefits, LLC.

### Edison Vendor ID
0000005829

### Amendment Purpose & Effect(s)
Increases Maximum Liability for Pharmacy Cost of Dispensing Survey

### Amendment Changes Contract End Date:
- **YES**
- **NO**
  - End Date: November 30, 2020

### TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A):
$110,000.00

### Funding — FY

<table>
<thead>
<tr>
<th></th>
<th>State</th>
<th>Federal</th>
<th>Interdepartmental</th>
<th>Other</th>
<th>TOTAL Contract Amount</th>
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<tr>
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<td>$248,000.00</td>
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</table>

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

CPO USE

### Budget Chart (optional)
- TN000000318

### Account Code (optional)
- 70803000
This Amendment is made and entered by and between the State of Tennessee, Department of Finance and Administration, Division of TennCare, hereinafter referred to as the “State” and Mercer health & benefits LLC, hereinafter referred to as the “Contractor.” For good and valuable consideration, the sufficiency of which is hereby acknowledged, it is mutually understood and agreed by and between said undersigned contracting parties that the subject contract is hereby amended as follows:

1. The following are added as Contract sections New Sections A.5.e. and A.5.f.

A.5.e. Milestone #5: Re-Survey of TennCare Provider Network Pharmacies: The Contractor shall conduct a Cost of Dispensing (COD) Survey to determine the current costs of dispensing a prescription in the State of Tennessee, for the purposes of assigning updated Professional Dispensing Fees to network provider pharmacies. The Survey Project shall include:

1. Notification to pharmacy providers of the impending survey;
2. Stakeholder meetings (webinars) to inform the survey population on how to complete the survey;
3. Three options for survey response, including an online option, a standard MS Excel template, and an Excel template designed for owners of more than eight (8) locations;
4. Toll-free phone and email support
5. Reminder phone calls, email, or direct mail halfway, and three-quarters of the way through the survey period, which will begin on or before April 30, 2019;
6. Desk review of survey submissions for reasonability and completeness;
7. Compilation of survey response data, including a report to the Division of TennCare of the pharmacy total annual prescription volume reported by each of the responding pharmacies, as well as any recommendations for panel or tier changes for pharmacy placement on November 1, 2019.

A.5.f. Cost of Dispensing Fee Timeline. Contractor shall comply with the following requirements and deadlines:

<table>
<thead>
<tr>
<th>Task</th>
<th>Description</th>
<th>Deliverable</th>
<th>Completion Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kick-Off Meeting (Onsite)</td>
<td>TennCare and Mercer meet to kick-off COD engagement</td>
<td>Draft Survey and Instructions</td>
<td>4/15/2019</td>
</tr>
<tr>
<td>Data Request</td>
<td>Mercer works with TennCare to obtain provider data</td>
<td>Data Request</td>
<td>4/15/2019</td>
</tr>
<tr>
<td>Help Desk and Web Portal Set-Up</td>
<td>Mercer initiates TennCare specific toll-free number, email support and web portal</td>
<td></td>
<td>4/22/2019</td>
</tr>
<tr>
<td>I.D. Pharmacies Included in Survey</td>
<td>Mercer determines population and best contact method for each provider</td>
<td>Survey Population</td>
<td>4/23/2019</td>
</tr>
<tr>
<td>General Project Management</td>
<td>Tracking the project plan and ensuring all deliverable and resources are available when needed</td>
<td></td>
<td>Ongoing</td>
</tr>
<tr>
<td>Task</td>
<td>Description</td>
<td>Deliverable</td>
<td>Completion Date</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------</td>
<td>-----------------------------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>Survey and Instructions Development and Refinement, as Collaborated with TennCare</td>
<td>Develop the survey and instructions.</td>
<td>Survey and Instructions</td>
<td>5/20/2019</td>
</tr>
<tr>
<td>Stakeholder Meetings</td>
<td>Share the draft survey tool and instructions with TennCare Pharmacy associations and providers for stakeholder input and review</td>
<td>Survey and Instructions</td>
<td>6/4/2019</td>
</tr>
<tr>
<td>Online Tool Development Database Development</td>
<td>Develop online tool questions to match updates provided by stakeholders and TennCare.</td>
<td></td>
<td>6/5/2019</td>
</tr>
<tr>
<td>Present Final Survey Template, Instructions, Communications and Database for Approval</td>
<td>TennCare to approve the survey tool instructions, communications and database</td>
<td></td>
<td>6/5/2019</td>
</tr>
<tr>
<td>Bi-Weekly Updates</td>
<td>Project management and progress updates.</td>
<td>Bi-Weekly Updates</td>
<td>Ongoing</td>
</tr>
<tr>
<td>Distribution of Survey Packets</td>
<td>Email or direct mail surveys.</td>
<td>Survey Distribution</td>
<td>6/7/2019</td>
</tr>
<tr>
<td>Survey Period, Online Tool Enabled</td>
<td>Enable Mercer's online survey tool.</td>
<td></td>
<td>6/7/2019</td>
</tr>
<tr>
<td>Technical Assistance Webinar</td>
<td>WebEx (recorded) to explain the survey process and answer questions.</td>
<td>WebEx Content</td>
<td>6/12/2019</td>
</tr>
<tr>
<td>Send Reminder Notices (1/2)</td>
<td>Email or direct mail non-respondents.</td>
<td>Reminder Notices</td>
<td>6/19/2019</td>
</tr>
<tr>
<td>Initiate Reminder Phone Call to Non-Respondent Providers (3/4)</td>
<td>Call non-respondents.</td>
<td></td>
<td>6/25/2019</td>
</tr>
<tr>
<td>Completeness Check and Follow-Up Questions</td>
<td>Mercer to review responses to verify data is complete and reasonable.</td>
<td></td>
<td>7/22/2019</td>
</tr>
<tr>
<td>Last Day to Submit Survey</td>
<td>Mercer to compile online Excel templates and faxes into survey database.</td>
<td></td>
<td>7/2/2019</td>
</tr>
<tr>
<td>Compile Data From All Sources</td>
<td>Mercer to perform desk reviews on responses, comparing to data provided by the pharmacies such as financial statements or tax returns</td>
<td></td>
<td>7/23/2019</td>
</tr>
<tr>
<td>Survey Data Validation</td>
<td>Mercer to review survey data for dispensing and ancillary costs with three respondents.</td>
<td></td>
<td>7/30/2019</td>
</tr>
<tr>
<td>Onsite Survey Data Validation with Specialty Pharmacies</td>
<td>Mercer to review survey data for dispensing and ancillary costs with three respondents.</td>
<td></td>
<td>7/30/2019</td>
</tr>
</tbody>
</table>
Mercer shall determine an average dispensing fee by various pharmacy characteristics. Mercer shall apply a multivariable linear regression model to the data to examine the relationship between pharmacy characteristics and the average dispensing fee for all pharmacies, weighted by the number of respondents and response probability.

<table>
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<tr>
<th>Task</th>
<th>Description</th>
<th>Deliverable</th>
<th>Completion Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Analysis of Validated Data</td>
<td>Mercer shall determine an average dispensing fee by various pharmacy characteristics. Mercer shall apply a multivariable linear regression model to the data to examine the relationship between pharmacy characteristics and the average dispensing fee for all pharmacies, weighted by the number of respondents and response probability.</td>
<td></td>
<td>9/4/2019</td>
</tr>
<tr>
<td>Discussion of Preliminary Results</td>
<td>Mercer shall share preliminary results with TennCare to discuss any issues with the data and possible strategies for reimbursement.</td>
<td></td>
<td>9/18/2019</td>
</tr>
<tr>
<td>Draft Report Submitted to TennCare</td>
<td>Mercer shall present the draft report to TennCare for review and proposed edits.</td>
<td>Draft Report</td>
<td>9/24/2019</td>
</tr>
<tr>
<td>Last Day for TennCare Comments/Changes</td>
<td>Mercer shall incorporate TennCare's concerns and edits into the final report.</td>
<td></td>
<td>9/30/2019</td>
</tr>
<tr>
<td>Final Report</td>
<td>Mercer shall present the final report to TennCare.</td>
<td>Final Report</td>
<td>10/4/2019</td>
</tr>
<tr>
<td>Final Report Presentation</td>
<td>Mercer shall present the final report to TennCare.</td>
<td></td>
<td>10/9/2019</td>
</tr>
</tbody>
</table>

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

   **C.1. Maximum Liability.** In no event shall the maximum liability of the State under this Contract exceed Two Hundred Forty Eight Thousand Dollars ($248,000.00) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

3. **Contract section C.3.** is deleted in its entirety and replaced with the following:

   **C.3. Payment Methodology.** The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.

   a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.

   b. The Contractor shall be compensated based upon the following payment methodology:
Monthly Administration Fee

<table>
<thead>
<tr>
<th>Monthly Administration Fee</th>
<th>Amount (per compensable increment)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Milestones 1 - 3 Required to Complete Cost of Dispensing survey if Paid According to Percentage Increments Associated with Deliverables Listed Below</td>
<td></td>
</tr>
</tbody>
</table>

Completion of Milestone #1 - A.5.a. $27,000.00 (25% of Total Cost)  
Completion of Milestone #2 - A.5.b. $43,200.00 (40% of Total Cost)  
Completion of Milestone #3 - A.5.c. $37,800.00 (35% of Total Cost)  
Milestone #4 - A.5.d.  
$30,000 Fixed Fee  
$15,000 payable upon notification of impending survey and stakeholder meeting  
$15,000 payable upon Delivery of Final Report  
Milestone #5 - A.5.e - A.5.f  
$108,000 Fixed Fee  
$35,000 payable upon notification of impending survey and stakeholder meeting  
$40,000 payable upon distribution of surveys to each network pharmacy located in Tennessee  
$33,000 payable upon Delivery of Final Report  

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

Amendment Effective Date. The revisions set forth herein shall be effective April 15, 2019. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.
IN WITNESS WHEREOF,

MERCER HEALTH BENEFITS LLC:

SIGNATURE: Shaun Kittridge

DATE: 4/3/2019

PRINTED NAME AND TITLE OF SIGNATORY (above):

Shauna Kittridge, Principal

DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF TENNCARE:

STUART C. MCWHORTER, COMMISSIONER

DATE: 4/4/19
CONTRACT AMENDMENT COVER SHEET

<table>
<thead>
<tr>
<th>Agency Tracking #</th>
<th>Edison ID</th>
<th>Contract #</th>
<th>Amendment #</th>
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<tbody>
<tr>
<td>31865-00460</td>
<td>NV - 52580</td>
<td></td>
<td>01</td>
</tr>
</tbody>
</table>

Contractor Legal Entity Name
Mercer Health & Benefits, LLC

Edison Vendor ID
0000005829

Amendment Purpose & Effect(s)
Increases Maximum Liability for Pharmacy Cost of Dispensing Survey

Amendment Changes Contract End Date: [ ] YES [ ] NO
End Date: November 30, 2020

TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A): $ 30,000.00

<table>
<thead>
<tr>
<th>Funding</th>
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<th></th>
<th>TOTAL Contract Amount</th>
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<td>FY</td>
<td>State</td>
<td>Federal</td>
<td>Interdepartmental</td>
<td>Other</td>
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</tr>
<tr>
<td>2017</td>
<td>$69,000.00</td>
<td>$69,000.00</td>
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<td>$138,000.00</td>
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<tr>
<td>2018</td>
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<td>$69,000.00</td>
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<td></td>
<td>$138,000.00</td>
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</tbody>
</table>

American Recovery and Reinvestment Act (ARRA) Funding: [ ] YES [ ] NO

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

Speed Chart (optional) | Account Code (optional)
-----------------------|-----------------------
TN00000318              | 70803000

CPO USE
AMENDMENT #1 TO NV-52580
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE
AND
MERCER HEALTH & BENEFITS LLC

This Amendment is made and entered by and between the State of Tennessee, Department of Finance and Administration, Division of Health Care Finance and Administration (HCFA), hereinafter referred to as the "State" or "TennCare," or "HCFA" and Mercer Health & Benefits LLC, hereinafter referred to as the "Contractor." For good and valuable consideration, the sufficiency of which is hereby acknowledged, it is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

1. The following language is added as new Section A.5.d.:

   A.5.d. Milestone #4: Survey of Non-Respondent Pharmacies: The Contractor shall survey TennCare pharmacies that did not respond to the Cost of Dispensing (COD) Survey completed in January 2016. The Non Respondent Survey Project shall include:

   1. Notification of the impending survey;
   2. Stakeholder meeting (webinar) to inform the survey population on how to complete the survey;
   3. Three options for survey response, including an online option, a standard Excel template, and an Excel template designed for owners of more than eight locations (one tab);
   4. Toll-free phone and email support;
   5. Reminder phone calls, email, or direct mail half way, and three-quarters of the way through the survey period, which will begin on June 12, 2017;
   6. Desk review of survey submissions for reasonable and completeness; and
   7. Compilation of survey response data, including a report to HCFA of the pharmacy total annual prescription volume reported by each of the responding pharmacies, as well any panel changes with recommendations for tier placement on July 20, 2017.

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

   C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed One Hundred Thirty-Eight Thousand Dollars ($138,000.00) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

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

   C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.

   a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.

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

<table>
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<tr>
<th>Monthly Administration Fee</th>
<th>Amount (per compensable increment)</th>
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</tbody>
</table>
Milestones 1 - 3 Required to Complete Cost of Dispensing Survey Paid According to Percentage Increments Associated with Deliverables Listed below

<table>
<thead>
<tr>
<th>Milestone #1 - A.5.a.</th>
<th>$27,000.00 (25% of Total Cost)</th>
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<td>Milestone #2 - A.5.b.</td>
<td>$43,200.00 (40% of Total Cost)</td>
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<td>Milestone #3 - A.5.c.</td>
<td>$37,800.00 (35% of Total Cost)</td>
</tr>
</tbody>
</table>

Milestone #4 - A.5.d.
$30,000 Fixed Fee
$16,000 payable upon notification of impending survey and stakeholder meeting
$15,000 payable upon Delivery of Final Report

$108,000.00 Total Cost for Milestones #1 - #3

$30,000.00 Total Fee for Milestone #4

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

Amendment Effective Date. The revisions set forth herein shall be effective June 12, 2017. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

MERCER HEALTH & BENEFITS LLC

CHRISTIAN JENSRUD, PRINCIPAL

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

LARRY B. MARTIN, COMMISSIONER
CONTRACT
(fee-for-goods or services contract with an individual, business, non-profit, or governmental entity of another state)

<table>
<thead>
<tr>
<th>Begin Date</th>
<th>End Date</th>
<th>Agency Tracking #</th>
<th>Edison Record ID</th>
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<tbody>
<tr>
<td>December 1, 2016</td>
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<td>31865-00460</td>
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</table>

Contractor Legal Entity Name
Mercer Health & Benefits, LLC

Edison Vendor ID
0000005829

Goods or Services Caption (one line only)
Pharmacy Cost of Dispensing Survey

Contractor CFDA #
93.778 Dept of Health & Human Services/Title XIX

<table>
<thead>
<tr>
<th>Funding Year</th>
<th>State</th>
<th>Federal</th>
<th>Interdepartmental</th>
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<tr>
<td>2017</td>
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<td></td>
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<tr>
<td>2018</td>
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</tr>
</tbody>
</table>

Contractor Ownership Characteristics:
- ☐ Minority Business Enterprise (MBE): African American, Asian American, Hispanic American, Native American
- ☐ Woman Business Enterprise (WBE)
- ☐ Tennessee Service Disabled Veteran Enterprise (SDVBE)
- ☐ Tennessee Small Business Enterprise (SBE): $10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees.
- ☒ Other: LLC

Selection Method & Process Summary (mark the correct response to confirm the associated summary)
- ☒ Competitive Selection
  RFP
- ☐ Other

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

Speed Chart (optional)  | Account Code (optional)
-----------------------|-----------------------
TN00000318              | 70803000
**CONTRACT**

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

<table>
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<td>52580</td>
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</tbody>
</table>

**Contractor Legal Entity Name**

Mercer Health & Benefits, LLC

**Edison Vendor ID**

0000125797

**Goods or Services Caption**

Pharmacy Cost of Dispensing Survey

**Contractor CFDA#**

93.778 Dept of Health & Human Services/Title XIX

**Funding — State Federal Interdepartmental Other TOTAL Contract Amount**

<table>
<thead>
<tr>
<th>FY</th>
<th>State</th>
<th>Federal</th>
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**Contractor Ownership Characteristics:**

- Minority Business Enterprise (MBE): African American, Asian American, Hispanic American, Native American
- Woman Business Enterprise (WBE)
- Tennessee Service Disabled Veteran Enterprise (SDVBE)
- Tennessee Small Business Enterprise (SBE): $10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees.
- Other: LLC

**Selection Method & Process Summary**

- Competitive Selection: RFP
- Other

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

**Account Code (optional)**

70803000

**Speed Chart (optional)**

TN00000318
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, ("State" or "TennCare") and Mercer health & Benefits LLC (Contractor), is for the provision of a Cost of Dispensing (COD) Survey, as further defined in the "SCOPE." The State and the Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is a Limited Liability Company.
Contractor Place of Incorporation or Organization: Arizona
Contractor Edison Registration ID # 0000125797

A. SCOPE:

A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.

A.2. The State of Tennessee, Department of Finance and Administration, Division of Health Care Finance and Administration operates the Medicaid Program in Tennessee, known as "TennCare", pursuant to a waiver (State Plan) from the Centers for Medicare and Medicaid Services (CMS). Pursuant to 42 C.F.R. §447.518, TennCare is now required to consider two (2) components when proposing changes to the pharmacy reimbursement methodology set forth in its State Plan. The first component is a reasonable professional dispensing fee (PDF) defined in 42 C.F.R. §447.502 as being determined by those pharmacy costs associated with ensuring that possession of the appropriate covered outpatient drug is transferred to a Medicaid beneficiary, including, but not limited to, reasonable costs associated with a pharmacist's time in checking the computer for information about an individual's coverage, performing drug utilization review and preferred drug list review activities, measurement or mixing of the covered outpatient drug, filling the container, beneficiary counseling, physically providing the completed prescription to the Medicaid beneficiary, and delivery, special packaging, and overhead associated with maintaining the facility and equipment necessary to operate the pharmacy. The second component is the actual acquisition cost (AAC) of TennCare's pharmaceutical ingredients. The Contractor shall not be responsible for determining AAC since these services are being handled through a separate State contract. The State will make the AAC information available to the Contractor, as needed, for purposes of assisting with drafting the State Plan amendment (SPA) revising TennCare's current pharmaceutical reimbursement methodology. Both components (PDF and AAC) are mentioned here because consideration of both is required to ensure that the total reimbursement to the TennCare pharmacy provider is in accordance with the following requirements of section 1902(a)(30)(A) of the Social Security Act: to assure that the payments are consistent with efficiency, economy and quality of care and are sufficient to enlist enough providers so that care and services are available under the State Plan to at least the extent that such care and services are available to the general population in the geographic area.

To implement this new PDF requirement, CMS is requiring TennCare to submit a SPA with an effective date no later than April 1, 2017, setting forth TennCare's proposed PDF, the applicable AAC information, and the TennCare revised pharmacy reimbursement methodology. CMS will review the SPA and supporting documentation and make the final decision regarding the appropriate PDF to be included in the TennCare pharmacy reimbursement methodology. The Contractor shall conduct a COD Survey to determine the proposed PDF and shall assist
TennCare, as requested, with the submission to CMS of the COD Survey, SPA and related data and documentation, including assisting with any revisions or adjustments to the COD Survey, SPA, or proposed PDF required to obtain CMS approval of the SPA. The COD Survey shall determine the actual cost of dispensing a TennCare pharmaceutical prescription by surveying the entire TennCare pharmacy provider network ("Providers" or "Provider"), consisting of approximately sixteen hundred (1,600) pharmacies located in Tennessee, as well as some out-of-state pharmacies. Due to the CMS requirement that the SPA have an effective date no later than April 1, 2017, the COD Survey and all related data and materials shall be completed by the Contractor and submitted to TennCare for approval on or before March 15, 2017.

A.3 The descriptions of Contractor deliverables in this Contract do not include every possible duty, task, or intermediate deliverable necessary to achieve success on this Contract. The Contractor understands and agrees that any perceived lack of detail in a specific area does not indicate that the Contractor will have no duties in that area. The Contractor shall fulfill the State's Contract goals and requirements in a cost-effective manner. This includes all intermediate steps, deliverables or processes reasonably necessary to achieve the desired outcome described in each Section of the Contract. Intermediate steps, processes or deliverables may, at the State's discretion, be described in greater detail in a Control Memorandum, developed by the parties at the inception of each phase of the Contract, using the Control Memorandum process described below. Many objectives described here only describe the end result, thus allowing Contractor flexibility in proposing the details of how their solution meets the State's goals.

A.4 The Contractor shall perform the COD Survey in compliance with the requirements contained herein, and in compliance with the State Plan requirements, findings and assurances set forth in 42 C.F.R. § 447.502, the definition of PDF and the appropriate costs to be included in the PDF calculation described in 42 C.F.R. § 447.516, the guidance regarding PDFs set forth in section 1902(a)(30)(A) of the Social Security Act, and all other applicable state and federal laws and regulations.

A.5 Deliverable Milestones. The services to be performed by the Contractor and the deliverables required to be provided to TennCare are divided into the separate phases as described below, with payment for each such phase contingent upon Contractor providing timely and acceptable services and deliverables in compliance with the Contract requirements. The successful completion, as determined in the State's sole discretion, of each phase and its associated deliverables, is identified as a deliverable milestone (Deliverable Milestone) which triggers partial payment to the Contractor as set forth in contract Section C.3 of this Contract. Each phase of the services Contractor is to provide and the associated deliverables shall be identified by its corresponding deliverables Milestone designation described below:

a Milestone 1: Pre-Survey Submission Services. This phase of the Contract includes the following services and deliverables:

1. Development by Contractor for approval by TennCare of the COD Survey to be sent to each Provider covering that Provider's most recently completed fiscal year. For the various types of pharmacy practices identified in Section A.5.a.1.b. below, the survey questions shall be designed to determine: (i) a sufficient PDF provider reimbursement to encourage statewide access to prescribed medications by TennCare recipients, (ii) to ensure that the pharmacy provider reimbursements are based upon reasonable and accurate prescription dispensing costs, and (iii) whether separate reimbursement methodologies are desirable for different types of pharmacy providers. The Contractor is encouraged to include cost-finding methods and procedures in the COD Survey that yield fair and reasonable allocations to pharmacy dispensing functions. The Contractor shall adequately justify any such methods or procedure that deviate from generally accepted accounting principles and obtain approval from TennCare before including these in the COD Survey. The COD Survey shall be
developed by the Contractor, with assistance from TennCare, and shall be
designed to elicit responses relating to all applicable topics, information and
elements necessary to determine the appropriate PDF, and shall, at a minimum,
include the following:

(a) Questions covering the operations, professional services, expenses,
overhead and profit areas of each pharmacy operation, including, but not
limited to, the following:

(1) Sales and Floor Space
   (i) Sales – prescription drug sales and total sales,
   (ii) Cost of goods sold – prescription drugs and total cost of
goods sold, and
   (iii) Floor space – prescription drug department and total
   floor space.

(2) Allowable expenses and fixed and variable overhead (prorated
where appropriate between prescription sales and nonprescription sales)

(3) Depreciation

(4) Taxes
   (i) Personal property taxes,
   (ii) Real estate taxes,
   (iii) Payroll taxes,
   (iv) Sales taxes,
   (v) State Franchise Tax (Corporations), and
   (vi) Other taxes, as applicable.

(5) Rent or mortgage
   (i) Building rent
   (ii) Equipment rent, and
   (iii) Mortgage expenses.

(6) Repairs

(7) Insurance
   (i) Worker’s compensation,
   (ii) Employee medical premiums, and
   (iii) Other, as applicable.

(8) Interest – General (no interest on prescription drug purchases)

(9) Legal and professional fee (excluding litigation or litigation-type
costs and fees)

(10) Dues and publications
    (i) Prescription department, and
    (ii) Other, as applicable.
(11) Bad debts (most recent, complete fiscal year only)

(12) Charitable contributions (must be directly related to the operation of the pharmacy)

(13) Telephone/internet

(14) Utilities
   (i) Heating,
   (ii) Water/wastewater,
   (iii) Electricity,
   (iv) Garbage disposal, and
   (v) Other, as applicable

(15) Operating and office supplies:
   (i) Advertising (only to convey participation in the TennCare Program),
   (ii) Prescription computer expenses,
   (iii) Prescription delivery expenses,
   (iv) Claim transmission charges,
   (v) Prescription containers and labels, and
   (vi) Other, as applicable.

(16) Personnel costs
   (i) Salaries and percent of time spent by areas of responsibility for sole proprietors, partners, or stockholders,
   (ii) Salaries and percent of time spent by areas of responsibility for employee and relief pharmacists,
   (iii) Salaries and percent of time spent by areas of responsibility for interns,
   (iv) Salaries and percent of time spent by areas of responsibility for prescription delivery persons and prescription technicians, and
   (v) Salaries and percent of time spent by areas of responsibility for other employees

(b) Questions requesting information regarding each of the following types of pharmacy operations designed to identify differences affecting PDF for each pharmacy type:

   (1) Retail chain pharmacies (defined as 4 or more pharmacy locations with corporate or common ownership),
   (2) Independent pharmacies (identified as 1-3 pharmacy locations),
   (3) Urban pharmacies,
   (4) Rural pharmacies
   (5) Long term care (LTC) pharmacies (including those providing less than 28 day supplies of medications and those providing equal to or greater than 28 day supplies of medications),
   (6) Specialty pharmacies,
   (7) 340B pharmacies,
   (8) Pharmacies providing compounded prescriptions (including dispensing fee based on Levels of Effort 1-3 determined by
approximate time and technical requirements for compounding), and:

(9) Physician dispensaries.

(c) For each of the types of pharmacy operations identified in Section A.5.a.1.(b) above, request the Provider include the following information, as applicable, in its response:

(1) Actual cost of dispensing each of the following

(i) Brand prescriptions,
(ii) Generic prescriptions,
(iii) Provision of unit dose dispensing services,
(iv) Less than 28 day supply of LTC prescriptions,
(v) LTC prescriptions equal to or greater than 28 day supply,
(vi) Specialty medications,
(vii) 304B pharmacy medications,
(viii) Compounded prescriptions, including Levels of Effort 1-3 charges,
(ix) Prescriptions filled through physician dispensaries,

(2) Provider's Medicaid prescription volume (both total prescription volume and as a percentage of pharmacy's total prescription volume)

(3) Provider's LTC prescription volume (both total prescription volume and as a percentage of pharmacy's total prescription volume)

(4) Number of prescriptions dispensed by Provider during the indicated time period, including new prescriptions, refill prescriptions, and total prescriptions.

(5) Type of ownership of Provider's pharmacy (such as sole proprietor, partnership, limited partnership, corporation, or other)

(6) Pharmacy type (based on the various types of pharmacies identified in A.5.1.b)

(7) Building ownership (such as owned by unrelated third-party, self-owned or owned by a related party)

(8) Prescriptions hand delivered to TennCare enrollees' and other customers' residences (show both total prescriptions delivered and Medicaid prescriptions delivered)

(9) Prescriptions dispensed for Home IV or infusion therapies

(10) Specialty prescriptions shipped or otherwise distributed or dispensed

(11) Hours per week Provider is open for business

(12) Years pharmacy operated at this location
Prescriptions dispensed to residents in LTC facilities, and

Whether the Provider offers 24-hour emergency service for pharmaceuticals.

Any additional requests for information from the Providers deemed necessary by the Contractor to be able to make a reasonable and fair determination of the appropriate PDF to be included in TennCare's pharmacy reimbursement methodology.

2. Development by the Contractor for approval by TennCare of Contractor’s proposed deliverables and procedures to prepare for and conduct the COD Survey, analyze COD Survey results to determine a proposed PDF, provide all documentation required by CMS to be included with the SPA submission, and assist TennCare with the CMS submission process, including, as requested, providing proposed SPA language, calculating the federal budget impact by federal fiscal year, and determining the potential impact on TennCare enrollee access to pharmacy services. These deliverables and procedures shall include, but are not limited to, the following:

(a) The Contractor shall submit for TennCare approval, a comprehensive calendar of proposed deliverable due dates and implementation activities dates (Deliverable and Implementation Calendar) which shall, at a minimum, include:

(1) Date for submission of proposed COD Survey questionnaire to TennCare,

(2) Date for submission of proposal to TennCare regarding database, system and/or other tools identified in Section A.5.a.3 below

(3) Date for completion of TennCare-approved Section A.5.a.3 Deliverables, including any necessary testing of such deliverables.

(4) Dates proposed for training TennCare staff regarding use of Section A.5.a.3 Deliverables and for providing TennCare unrestricted access to such deliverables.

(5) Date for submission of Contractor’s proposed COD Survey procedures (Contractor Procedures) for TennCare approval, covering, at a minimum, the following topics:

(i) Procedures for communicating with Providers and providing instructions and assistance to Providers with completing COD Surveys, informational and education procedures and materials to be used with Providers, pharmacy associations and other stakeholders regarding the COD Survey, which may be done through phone/conference calls, memos, letters, or face-to-face meetings. All presentations and written information shared with Providers, pharmacy associations, and other stakeholders shall be submitted to and approved by TennCare prior to use.
Method of distribution of COD Surveys, including providing prepaid return envelope to facilitate response by Providers, and method of verification of receipt of COD Survey by each Provider,

Required steps Contractor is to follow to ensure an adequate Provider response to the COD Survey to be able to provide statistically validity for the PDF to be included in TennCare SPA,

Procedures for verification of the validity of self-reported data contained in COD Survey response from each Provider, including desk reviews and all other methods for verification of Provider documentation, including, but not limited to, on-site field work to be performed at no less than twenty (20) pharmacies to verify the data in Providers’ COD Survey responses and to assess the effectiveness of the Contractor’s desk review procedures, and any other actions the Contractor deems necessary to ensure that each COD Survey contains valid information,

Providing TennCare unrestricted access to all Contractor communications with Providers, including COD Survey responses and related documentation, as well as access to all Contractor’s workpapers, calculation methods, and all other material related to this COD Survey and the services to be performed under this Contract.

Procedures to assist TennCare in providing all documentation required by CMS to be included with SPA submission to support proposed PDF and revised pharmacy reimbursement methodology, and assistance with other aspects of the CMS submission process, including providing proposed SPA language, calculating the federal budget impact by federal fiscal year, and determining the potential impact on TennCare enrollee access to pharmacy services.

Date for distribution of the TennCare-approved COD Survey to the Providers

Date(s) for outreach and education of Providers, pharmacy associations and other stakeholders regarding COD Survey

Date(s) for follow up with Providers to ensure enough COD Survey responses are received by Contractor to provide a statistically valid PDF determination

Dates for on-site field work at no less than twenty (20) pharmacies to verify data in Providers’ COD Survey responses and the validity of Contractor’s desk review procedures

Date for completion of verification of all information provided in Providers’ COD Survey responses
(11) Date for delivery to TennCare of the final COD Survey results, Final Report, as defined in Section A.5.b.10 below, and the proposed PDF amount for use in SPA. Pursuant to Contract Section A.4, this must occur on or before March 15, 2017.

(b) Submission by Contractor for TennCare approval of Contractor Procedures, and revision of such procedures, if requested by TennCare.

(c) Submission by Contractor for TennCare approval of all proposed COD Survey instructions, outreach and education materials and other anticipated communications to be used with Providers, pharmacy associations and other stakeholders

3. Development by Contractor for approval by TennCare of an acceptable database, system and/or other tool(s) (collectively, the “Section A.5.a.3 Deliverables”) that shall allow the State to have access to all Contractor communications with the Providers, all COD Survey responses and related Provider information, and all information and data required by CMS to be included in the SPA submission process and/or used to determine the appropriate PDF for the TennCare program.

4. Providing adequate training to TennCare staff regarding the use of the Section A.5.a.3 Deliverables, and providing TennCare unrestricted access to such Section A.5.a.3 Deliverables.

b. Milestone 2: Distribution of Approved Survey to Providers, Provider Follow-up and Verification of COD Survey Responses, Evaluation of Completed COD Survey Results, Determination of Proposed PDF, and SPA Preparation. This phase of the Contract includes the following services and deliverables, which shall comply with all requirements of this Contract, the Contractor Procedures approved by TennCare, and shall be performed in compliance with the approved Deliverable and Implementation Calendar:

1. Distribute the approved COD Survey to each Provider with complete instructions to obtain the necessary dispensing cost data.

2. Provide outreach and education regarding the COD Survey and assistance for Providers requiring assistance to complete the survey forms.

3. Contact and assist those Providers who have not submitted COD Survey responses, and Providers who have submitted inaccurate or incomplete forms. The Contractor acknowledges that it is responsible for obtaining a sufficient number of completed and acceptable COD Survey responses to ensure statistical validity of the COD Survey findings, and that this requirement constitutes a deliverable under this Contract.

4. Perform quality control measures, including desk review audits and other forms of verification of Provider COD Survey responses to check for consistency and completeness and to ensure an accurate data base from which all analyses are derived.

5. Perform on-site field work procedures at no less than twenty (20) pharmacies to verify the data on submitted cod survey responses. The field work procedures will be designed to assess the effectiveness of the Contractor's desk review procedures.

6. Complete COD Survey database required in Section A.5.a.3 Deliverables using
7. Develop COD Survey findings and make appropriate recommendations to TennCare concerning the reasonableness of the Contractor's proposed PDF and its impact on TennCare's pharmacy reimbursement methodology.

8. If requested, perform targeted analysis of specialty pharmacy cost of dispensing.

9. If requested, perform targeted analysis of 340B pharmacy cost of dispensing.

10. Prepare the Contractor's final report containing the proposed PDF based on its analysis of the COD Survey responses (final report) and submit it to TennCare for approval. The final report shall contain, at a minimum, the following sections:

   (a) An executive summary providing an overview of the survey and its findings and conclusions;
   
   (b) A dispensing cost survey section containing a description of the survey participants, the survey instrument, the data collection and processing techniques, the cost-finding methods and procedures used to assign and allocate costs to prescription dispensing functions including any and all statistical and analytical techniques utilized, and the detailed findings and conclusions of the analysis of the costs of dispensing prescriptions. This section shall also include the Contractor's analysis and recommendations concerning the reasonableness of the current prescription dispensing fee vis-a-vis the costs incurred by surveyed pharmacies;
   
   (c) A section of appendices containing detailed data upon which findings and conclusions for the survey were drawn.

11. The Contractor shall be available, as requested by TennCare, to make a formal presentation of the Final Report and its findings, in a format acceptable to TennCare. The Contractor shall also be available for clarification and/or justification of the Final Report results.

c. Milestone 3: Submission of TennCare SPA to CMS and Approval of SPA by CMS. This phase of the Contract includes the following services and deliverables which shall be performed in compliance with the Contractor Procedures and approval from TennCare:

1. Assist TennCare with providing all documentation required by CMS to be included with SPA submission to support proposed PDF and revised pharmacy reimbursement methodology.

2. Provide assistance in preparing TennCare SPA, including providing proposed language, as requested by TennCare.

3. Provide assistance with calculating the federal budget impact by federal fiscal year, and determining the potential impact on TennCare enrollee access to pharmacy services.

4. The Contractor shall be available, as requested by TennCare, to make a formal presentation of the Final Report and its findings to CMS, which shall include, as needed, clarification and/or justification of the Final Report results to CMS. Any follow up or revisions to the Final Report required by TennCare and/or CMS in order to obtain approval of the TennCare SPA containing the PDF and revised
pharmacy reimbursement methodology, shall be promptly completed by Contractor, at no additional cost to TennCare.

5. Provide assistance with all other aspects of the CMS submission process, including preparing responses to CMS questions, and revising SPA language, the Final Report, COD Survey results and the proposed PDF, as needed to obtain CMS approval.

6. Contractor's Milestone 3 services and deliverables shall be deemed to be satisfactorily completed upon TennCare's receipt of unconditional, written approval of the TennCare SPA by CMS, with a copy of such approval to be provided with Contractor's invoice for payment of its Milestone 3 services.

A.6. **Coordination and Collaboration Responsibilities.** The Contractor shall, as directed by the State and at no additional cost to the State, coordinate with, facilitate the prompt exchange of information between, and work collaboratively with any and all other State Contractors, Providers and CMS as required to complete the COD Survey and obtain final unconditional approval from CMS of the SPA revising the TennCare pharmacy reimbursement methodology. If required in order for the Contractor to proceed with any part of the Scope of Services which involves sharing or obtaining information of a confidential, proprietary, or otherwise valuable nature with or from another State contractor or a Provider, the Contractor may be requested, should the need arise, to sign mutually agreeable documents, including but not limited to Non-Disclosure Agreements (Non-Disclosure Documents), which are reasonably necessary to maintain cooperation and collaboration among and with such other State contractor and Providers in the performance of the Contract. A signed Non-Disclosure Agreement is not a requirement of this contact and shall only be signed at the request of the State.

A.7. TennCare shall provide Contractor with the following information and assistance with the COD Survey and related services:

a. The following Provider demographic information for the then-current Tennessee pharmacy provider network will be provided to Contractor in electronic format no later than five (5) business days following the Effective Date of the Contract:

1. The names of all in-state and out-of-state Providers
2. Each Provider's identification number (NPI and NCPDP)
3. Records of each Provider's volume of Medicaid prescriptions and Medicaid reimbursements covering the last twelve (12) months including:
   
   (a) Total payments to provider during specified calendar year
   (b) Total number of prescriptions paid during specified calendar year
   (c) Each Provider's complete street address and telephone number (if available)
   (d) For each Provider, any internally maintained pharmacy demographics that identify any of the following:

   (1) Chain affiliation of the pharmacy
   (2) Institutional pharmacies (e.g., LTC)
   (3) Exclusive dispensing of intravenous/home infusion products
   (4) Specialty pharmacy
   (5) Closed date of pharmacy, if applicable

b. TennCare Pharmacy Provider data provided by TennCare shall be provided in a text, MS-Excel format. Preferable media is a PC format such as email, floppy disk,
compressed is necessary or CD-ROM, including a data file layout.

c. TennCare shall provide the Contractor with a Pharmacy Claims File from the past twelve (12) months, including:

1. Prescription Number
2. Pharmacy Provider Number
3. Enrollee Age and Gender
4. NDC
5. Quantity Dispensed and Days' Supply
6. Paid Date
7. Dispense Date
8. Amount Billed
9. Amount Paid
10. Co-pay Amount
11. TPL Amount
12. Dispensing Fee
13. Other fields relevant for claims adjudication
14. Data dictionary of pharmacy claims file to define what information the fields contains.

d. TennCare shall provide the Contractor a draft letter to be sent with the COD Survey forms when distributed to the Providers explaining the purpose of the survey and that completion of the survey is required by TennCare to meet federal regulations and to obtain CMS approval of the new PDF pharmacy reimbursement component in Tennessee. Sample letters may be requested of the Contractor that were utilized by the Contractor in previous states.

e. TennCare will review the progress of the project on a regular basis through meetings, phone, and/or email with the Contractor and will review the acceptability of the draft and final reports. TennCare shall also ascertain availability of the Contractor for resolutions of post-survey issues or requests by documenting such requests and outcomes.

A.8. Optional Services. Optional Second COD Survey. At the option of the State, the Contractor shall provide a second COD Survey (Second COD Survey) to be performed prior to the end of the term of this Contract. If the State exercises this option, then the Contractor shall (unless otherwise directed in writing by the State) provide for the Second COD Survey the identical COD Survey and related services described in this Contract and used by the Contractor to provide the initial COD Survey. The State has sole discretion in determining whether or not to implement this Section A.8 or any part thereof, and the State's decision shall not be subject to appeal. This determination will result in an amendment to add additional funding for second COD Survey. Compensation for the optional Second COD Survey, if requested by TennCare, shall be paid under the same methodology as compensation for the initial COD Survey, and is shown in contract Section C.3.

A.9. Control Memorandum Process,
a. The Control Memorandum ("CM") process shall be utilized by the State to clarify Contract requirements, issue instruction to the Contractor, document action required of the Contractor, or request information from the Contractor. In addition, the CM process shall be used by the State to impose assessments of damages, either actual or liquidated. This process will be used to address issues or matters that do not require a contract amendment. Each CM must be in writing and indicate the date on which it was issued. CMs may provide relevant history, background, and other pertinent information regarding the issue(s) being addressed in the CM. Each CM will establish a deadline or timeframe for the Contractor's reply or other action. All CMs submitted to the Contractor must be signed and approved by the State's Project Director (or his/her designee). When the CM pertains to damages, either actual or liquidated, the State may issue consecutive CMs, as may be necessary or appropriate.

b. A CM may include one (1) or more of the five (5) components of the CM process described below:

(1) On Request Report – a request directing the Contractor to provide information by the time and date set out in the CM.

(2) Control Directive (CD) – instructions that require the Contractor to complete, within a designated timeframe, one (1) or more deliverables or to perform any other request from the State that is within the scope of the Contract. The CD may include a Corrective Action Plan. A CD may also provide clarification of certain Contract terms. Once a CM/CD has been issued, it shall be considered to be incorporated into this Contract.

(3) Notice of Potential Damages (Actual or Liquidated) (NPD) – notification to the Contractor that the State has determined that a potential Contract performance or compliance failure exists and that the State is contemplating assessing damages. The NPD shall identify the Contract provision(s) on which the State determination rests.

(4) Notice of Calculation of Potential Damages (Actual or Liquidated) (NCPD) – notification to the Contractor that provides a calculation of the amount of potential damage that the State is contemplating assessing against the Contractor. NPDs and NPCDs may be issued consecutively or simultaneously.

(5) Notice of Intent to Assess Damages (Actual or Liquidated) (NIAD) – notification to the Contractor that the State is assessing damages and specifying whether the damages, due to a performance or compliance failure are actual damages or Liquidated Damages, and setting out the performance or compliance failure underlying each intended damage assessment. The NIAD shall identify the NPD and NCPD upon which it is based. The NIAD shall specify the total amount and type of damages, whether actual or liquidated, the State intends to assess. Following the issuance of an NIAD, the State may elect to withhold damages from payments due to Contractor. The State may not issue a NIAD without first issuing a NPD and a NPCD. The State may not obtain both Liquidated Damages and Actual Damages for the same occurrence of a Contract performance or compliance failure.

c. Damages for failure to comply with CM. The Contractor shall fully comply with all CMs. Failure to do so may result in the State pursuing recovery of damages, as defined in Section E.10, including Liquidated Damages as listed in Contract Attachment B, a corrective action plan, and/or termination of the Contract.
d. Appeal of Damages by Contractor. Contractor may appeal either the basis for NPD or calculation of NCPD potential damages, either actual or liquidated. To do so, the Contractor shall submit to the State’s Project Director (or his/her designee) a written response to the NPD and/or NCPD within ten (10) business days of receipt of a CM which includes a NPD or a NCPD. The State’s Project Director (or his/her designee) shall review the appeal and provide notice of his/her determination to the Contractor through a CM. If the Contractor disagrees with the State’s Project Director’s (or his/her designee) initial appeal determination or the State’s Project Director (or his/her designee) is unable to resolve the appeal, the Contractor may submit a written request to the State’s Project Director (or his/her designee) that the matter be escalated to senior management of the Agency. Contractor shall submit such a request for escalation within ten (10) business days of its receipt of the initial appeal determination from the State’s Project Director (or his/her designee) or of notification by the State’s Project Director that he/she is unable to resolve the appeal. The State’s senior management shall provide written notice of its final determination to the Contractor within (10) days of the receipt of the appeal from the Contractor. Upon appeal or escalation, the State shall not increase the amount of the potential damages.

A.10. Nondiscrimination Compliance Requirements. The Contractor shall comply with all applicable federal and state civil rights laws, regulations, rules, and policies and Contract Section D.9 of this Contract.

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

The Contractor’s Nondiscrimination Compliance Coordinator ("NCC") shall be responsible for compliance with the nondiscrimination requirements set forth in this Contract. The Contractor does not have to require that civil rights compliance be the sole function of the designated NCC staff member. However, the Contractor shall identify the designated NCC staff member to HCFA by name.

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

(1) On an annual basis, The Contractor’s staff and subcontractors assigned to perform duties under the terms of this Contract shall receive nondiscrimination training. The Contractor shall be able to show documented proof that the training was made available to the Contractor’s staff and to its subcontractors that are considered to be performing duties under this contract.

(2) Prior to implementation of this Contract, Contractor shall provide its written policies and procedures that demonstrate nondiscrimination in the provision of services provided under this Contract to HCFA. These policies shall include topics, such as, the provision of language services to individuals with Limited English Proficiency and individuals requiring communication assistance in alternative formats and providing other forms of assistance to individuals with disabilities. These nondiscrimination policies and procedures shall be approved in writing by HCFA.
The Contractor shall keep such records as may be necessary in order to submit timely, complete and accurate compliance reports that may be requested by the U.S. Department of Health and Human Services ("HHS"), the U.S. Department of Justice ("DOJ"), HCFA, and the Tennessee Human Rights Commission ("THRC") or their designees. If requested, the information shall be provided in a format and timeframe specified by HHS, DOJ, HCFA, or THRC. The requested information may be necessary to enable HHS, DOJ, HCFA, or THRC to ascertain whether the Contractor is complying with the applicable civil rights laws. For example, the Contractor should have available data showing the manner in which services are or will be provided by the program in question, and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination. Further examples of data that could be requested can be found at 45 C.F.R. § 80.6 and 28 C.F.R. § 42.406.

(4) The Contractor shall permit access as set forth in the applicable civil rights laws, such as, 45 C.F.R. § 80.6 to HHS, DOJ, HCFA, and THRC or their designees during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain whether the Contractor is complying with the applicable civil rights laws.

(5) The Contractor shall make available to beneficiaries and participants in HCFA's programs and other interested persons information regarding the provisions of the applicable civil rights laws as set forth in the implementing regulations, including 45 C.F.R. § 80.6 and 45 C.F.R. § 84.8. For example, a notification shall state, where appropriate, that the Contractor does not discriminate in admission or access to, or treatment or employment in, its programs or activities. The notification shall also include an identification of the responsible employee designated for its nondiscrimination compliance. This notice shall be considered a vital document and shall be available at a minimum in the English and Spanish languages.

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

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

(7) Written materials provided pursuant to this Contract shall be in plain language and ensure effective communication with Limited English Proficiency ("LEP") individuals and individuals with disabilities at no expense to these individuals and/or their representatives and shall meet the standards set forth in the applicable civil rights laws and guidance. Effective Communication may be achieved by providing interpretation and translation services and other forms of auxiliary aids or services, including, Braille and large print and shall be based on the needs of the individual and/or the individual’s representative. Written materials specific to HCFA’s programs’ members shall be prior approved in writing by HCFA prior to the materials being sent to these individuals.

(8) Written materials provided pursuant to this Contract shall include a number individuals can call free of charge for language assistance services. This information shall be considered a vital document and shall be available at a minimum in the English and Spanish languages.

(9) In addition, written materials shall include information and a toll free number for individuals with disabilities to use in order to request assistance with accessing services or other program
benefits that these individuals are entitled to under the applicable federal and state civil rights laws including, but not limited to, Section 504 of the Rehabilitation Act of 1973 and Titles II and III of the Americans with Disabilities Act of 1990. This information shall be considered a vital document and shall be available at a minimum in the English and Spanish languages.

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

Annually, HCFA shall provide the Contractor with a Nondiscrimination Compliance Questionnaire. The Contractor shall answer the questions contained in the Compliance Questionnaire and submit the completed Questionnaire to HCFA within sixty (60) days of receipt of the Questionnaire with any requested documentation, which shall include, the Contractor’s Assurance of Nondiscrimination. The signature date of the Contractor’s Nondiscrimination Compliance Questionnaire shall be the same as the signature date of the Contractor’s Assurance of Nondiscrimination. The Nondiscrimination Compliance Questionnaire deliverables shall be in a format specified by HCFA.

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

Also as part of the requested documentation for the Nondiscrimination Compliance Questionnaire the Contractor shall include reports that capture data for all language and communication assistance services used and provided by the Contractor under this Contract. One report shall contain the names of the Contractor’s language and communication assistance service providers, the languages that interpretation and translation services are available in, the auxiliary aids or services that were provided and that are available, the hours the language assistance services are available, and the numbers individuals call to access language and communication assistance services. A separate report that captures a listing of language and communication assistance services that were requested by members (i.e. Arabic; Braille) and the methods used to provide the language and alternative communication service to the members (i.e. interpretation; translation). Upon request the Contractor shall provide a more detailed report that contains the requestor’s name and identification number, the requested service, the date of the request, the date the service was provided, and the name of the service provider.

c) Discrimination Complaint Investigations. Should a discrimination complaint be filed by an individual alleging an incident claimed to be caused by either the Contractor’s staff or one of its subcontractors who are considered to be performing duties under this contract, the Contractor shall work with HCFA to investigate and resolve the allegation. HCFA reserves the right to determine the complaint resolution and corrective action.

d) Electronic and Information Technology Accessibility Requirements. To the extent that the Contractor is using electronic and information technology to fulfill its obligations under this Contract, the Contractor agrees to comply with the electronic and information technology accessibility requirements under the federal civil rights laws including Section 504 and Section 508 of the Rehabilitation Act of 1973 ("Section 508") and the Americans with Disabilities Act. To comply with the accessibility requirements for Web content and non-Web electronic documents and software, the Contractor shall use W3C’s Web Content Accessibility Guidelines ("WCAG") 2.0 AA (For the W3C’s guidelines see: http://www.w3.org/TR/WCAG20/) (Two core linked resources are Understanding WCAG 2.0 http://www.w3.org/TR/UNDERSTANDING-WCAG20/ and Techniques for WCAG 2.0 http://www.w3.org/TR/WCAG20-TECHS/).
Contractor agrees to perform regularly scheduled (i.e., automatic) scans and manual testing for WCAG 2.0 AA compliance for all user content and applications in order to meet the standards for compliance. The Contractor must ensure that any system additions, updates, changes or modifications comply with WCAG 2.0 AA. Commercial Off-the-shelf ("COTS") products may be used to verify aspects of WCAG 2.0 AA compliance.

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

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

B. TERM OF CONTRACT:

This Contract shall be effective for the period beginning December 1, 2016 ("Effective Date") and ending on November 30, 2020 ("Term"). The State shall have no obligation for goods delivered or services provided by the Contractor prior to the Effective Date.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed One Hundred Eight Thousand Dollars ($108,000.00) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.

a. The Contractor’s compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.

b. The Contractor shall be compensated based upon the following payment methodology:
Monthly Administration Fee

<table>
<thead>
<tr>
<th>All Tasks Required to Complete Cost of Dispensing Survey Paid According to Percentage Increments Associated with Deliverables Listed below</th>
</tr>
</thead>
<tbody>
<tr>
<td>Completion of Milestone #1 – A.5.a.</td>
</tr>
<tr>
<td>$ 27,000.00 (25% of Total Cost)</td>
</tr>
<tr>
<td>Completion of Milestone #2 – A.5.b.</td>
</tr>
<tr>
<td>$ 43,200.00 (40% of Total Cost)</td>
</tr>
<tr>
<td>Completion of Milestone #3 – A.5.c.</td>
</tr>
<tr>
<td>$ 37,800.00 (36% of Total Cost)</td>
</tr>
</tbody>
</table>

Amount (per compensable increment)

$ 108,000.00

Total Cost for All Tasks

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

C.5. **Invoice Requirements.** The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:

Division of Health Care Finance and Administration
310 Great Circle Road
Nashville, TN 37243

a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):

1. Invoice number (assigned by the Contractor);
2. Invoice date;
3. Contract number (assigned by the State);
4. Customer account name: Department of Finance and Administration, Division of Health Care Finance and Administration
5. Customer account number (assigned by the Contractor to the above-referenced Customer);
6. Contractor name;
7. Contractor Tennessee Edison registration ID number;
8. Contractor contact for invoice questions (name, phone, or email);
9. Contractor remittance address;
10. Description of delivered goods or services provided and invoiced, including identifying information as applicable;
11. Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
12. Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
13. Amount due for each compensable unit of good or service; and
14. Total amount due for the invoice period.
b. Contractor’s invoices shall:

(1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
(2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
(3) Not include Contractor’s taxes, which includes without limitation Contractor’s sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
(4) Include shipping or delivery charges only as authorized in this Contract.

c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.

C.6. Payment of Invoice. A payment by the State shall not prejudice the State’s right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.

C.7. Invoice Reductions. The Contractor’s invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.

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

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

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

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

D. MANDATORY TERMS AND CONDITIONS:

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

The State:

Deputy Commissioner
Department of Finance and Administration
Division of Health Care Finance and Administration
Bureau of TennCare
310 Great Circle Road
Nashville TN 37243
Telephone # (615) 507-6443
FAX # (615) 253-5607

The Contractor:

Shawna Kittridge, MHS, RPh, Principal
Mercer Health and Benefits LLC
2325 E. Camelback Road, Suite 600
Phoenix, AZ. 85016
Shawna.kittridge@mercer.com
Telephone # 602-522-6582
FAX # 602-522-6499

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

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

D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.

D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State’s exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
5. **Termination for Convenience.** The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State’s exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.

D.6. **Termination for Cause.** If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.

D.7. **Assignment and Subcontracting.** The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor’s obligations under this Contract.

D.8. **Conflicts of Interest.** The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

D.9. **Nondiscrimination.** The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination. In addition, the Contractor shall comply with the provisions of Contract Section A.21 (Nondiscrimination Compliance Requirements) and this Section D.9 shall not be deemed to limit or abridge any requirement set forth in Section A.21.

D.10. **Prohibition of Illegal Immigrants.** The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the State of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by
submitting to the State a completed and signed copy of the document at Attachment A, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.

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

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

d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.

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

D.11. **Records.** The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

D.12. **Monitoring.** The Contractor’s activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.

D.13. **Progress Reports.** The Contractor shall submit brief, periodic, progress reports to the State as requested.

D.14. **Strict Performance.** Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.

D.15. **Independent Contractor.** The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall not exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.

D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.

D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.

a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.

b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.

d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, et seq., the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, et seq., accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.

D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601-608. Compliance with applicable registration requirements is a material requirement of this Contract.

D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

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

b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and

d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.
Force Majeure. “Force Majeure Event” means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor’s representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor’s performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.

State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract. In addition, the Contractor shall comply with the provisions of Contract Section E.16, (Applicable Laws, Rules, Policies and Court Orders), and this Section D.25 shall not be deemed to limit or abridge any requirement set forth in Section E.16, Applicable Laws, Rules, Policies and Court Orders.

Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 407.

Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties’ agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.

Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.

Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor’s duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes Attachment A, Attestation RE: Personnel Used in Contract Performance and Attachment B, Liquidated Damages
c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
e. any technical specifications provided to proposers during the procurement process to award this Contract; and
f. the Contractor's response seeking this Contract.

D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101 et.seq., addressing contracting with persons with investment activities in Iran, shall be a material provision of this Contract. The Contractor agrees, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.

E. SPECIAL TERMS AND CONDITIONS:

E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.

E.2. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. The Contractor shall only use Confidential information for activities pursuant to and related to the performance of the Contract. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

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

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

E.4 Ownership of Software and Work Products.

a. Definitions.

(1) "Contractor-Owned Software," shall mean commercially available software the rights to which are owned by Contractor, including but not limited to commercial "off-the-shelf" software which is not developed using State's money or resources.

(2) "Custom-Developed Application Software," shall mean customized application software developed by Contractor solely for State.

(3) "Rights Transfer Application Software," shall mean any pre-existing application software owned by Contractor or a third party, provided to State and to which
Contractor will grant and assign, or will facilitate the granting and assignment of, all rights, including the source code, to State.

(4) "Third-Party Software," shall mean software not owned by the State or the Contractor.

(5) "Work Product," shall mean all deliverables exclusive of hardware, such as software, software source code, documentation, planning, etc., that are created, designed, developed, or documented by the Contractor exclusively for the State during the course of the project using State’s money or resources, including Custom-Developed Application Software. If the deliverables under this Contract include Rights Transfer Application Software, the definition of Work Product shall also include such software. Work Product shall not include Contractor-Owned Software or Third-Party Software.

b. Rights and Title to the Software

(1) All right, title and interest in and to the Contractor-Owned Software shall at all times remain with Contractor, subject to any license granted under this Contract.

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

(3) All right, title and interest in and to the Third-Party Software shall at all times remain with the third party, subject to any license granted under this Contract.

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

E.5 State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible personal property furnished by the State for the Contractor's use under this Contract. Upon termination of this Contract, all property furnished by the State shall be returned to the State in the same condition as when received, less reasonable wear and tear. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the fair market value of the property at the time of loss.

E.6 Work Papers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis work papers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.

E.7 Prohibited Advertising or Marketing. The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The
restrictions on Contractor advertising or marketing materials under this Section shall survive the
termination of this Contract.

E.8. **Lobbying.** The Contractor certifies, to the best of its knowledge and belief, that:

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

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

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

This certification is a material representation of fact upon which reliance was placed when this
transaction was made or entered into and is a prerequisite for making or entering into this

E.9 **Intellectual Property.** The Contractor agrees to indemnify and hold harmless the State of
Tennessee as well as its officers, agents, and employees from and against any and all claims or
suits which may be brought against the State concerning or arising out of any claim of an alleged
patent, copyright, trade secret or other intellectual property infringement. In any such claim or
action brought against the State, the Contractor shall satisfy and indemnify the State for the
amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or
other fees or expenses incurred by the State arising from any such claim. The State shall give the
Contractor notice of any such claim or suit, however, the failure of the State to give such notice
shall only relieve Contractor of its obligations under this Section to the extent Contractor can
demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not
grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any
legal matter, as provided in Tenn. Code Ann. § 8-6-106.

E.10. **Liquidated Damages.**

In the event of a Contract performance or compliance failure by the Contractor, the State may,
but is not obligated to address such Contract performance or compliance failure and/or assess
damages ("Liquidated Damages") in accordance with Attachment B of the Contract. The State
shall notify the Contractor of any amounts to be assessed as Liquidated Damages via the Control
Memorandum process specified in Contract section A.9. The Parties agree that due to the
complicated nature of the Contractor's obligations under this Contract it would be difficult to
specifically designate a monetary amount for a Contract performance or compliance failure, as
these amounts are likely to be uncertain and not easily proven. Contractor has carefully reviewed
the Liquidated Damages contained in Contract Attachment B and agrees that these amounts
represent a reasonable relationship between the amount and what might reasonably be expected
in the event of a Contract performance or compliance failure, are a reasonable estimate of the
damages that would occur from a Contract performance or compliance failure, and are not
Punitive. The Parties agree that although the Liquidated Damages represent the reasonable estimate of the damages and injuries sustained by the State due to the Contract performance or compliance failure, they do not include any injury or damage sustained by a third party. The Contractor agrees that the Liquidated Damages are in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or any other sections of this Contract.

The State is not obligated to assess Liquidated Damages as a result of a Contract performance or compliance failure before availing itself of any other remedy. In the event of multiple Contract performance or compliance failures, the Parties recognize that the cumulative effect of these Contract performance failures may exceed the compensation provided by Liquidated Damages. The State may choose to avail itself of any other remedy available under this Contract or at law or equity. The Parties further recognize that the State may not obtain both Liquidated Damages and Actual Damages for the same occurrence of a Contract performance or compliance failure.

Without regard to whether the State has imposed Liquidated Damages or pursued any other remedy due to any action or inaction by the Contractor, the State may impose a corrective action plan or similar measure through a Control Memorandum. Such measure is neither punitive nor related to any damages the State might suffer.

E.11 Partial Takeover of Contract. The State may, at its convenience and without cause, exercise a partial takeover of any service that the Contractor is obligated to perform under this Contract, including any service which is the subject of a subcontract between Contractor and a third party (a “Partial Takeover”). A Partial Takeover of this Contract by the State shall not be deemed a breach of contract. The Contractor shall be given at least thirty (30) days prior written notice of a Partial Takeover. The notice shall specify the areas of service the State will assume and the date the State will be assuming. The State’s exercise of a Partial Takeover shall not alter the Contractor’s other duties and responsibilities under this Contract. The State reserves the right to withhold from the Contractor any amounts the Contractor would have been paid but for the State’s exercise of a Partial Takeover. The amounts shall be withheld effective as of the date the State exercises its right to a Partial Takeover. The State’s exercise of its right to a Partial Takeover of this Contract shall not entitle the Contractor to any actual, general, special, incidental, consequential, or any other damages irrespective of any description or amount.

E.12 Unencumbered Personnel. The Contractor shall not restrict its employees, agents, subcontractors or principals who perform services for the State under this Contract from performing the same or similar services for the State after the termination of this Contract, either as a State employee, an independent contractor, or an employee, agent, subcontractor or principal of another contractor with the State.

E.13. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State (“PII”). For the purposes of this Contract, “PII” includes “Nonpublic Personal Information” as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time (“GLBA”) and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information (“Privacy Laws”). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or
any of its employees, agents and representatives in breach of this Contract; and (2) of any
disclosure of any PII to Contractor or its employees, agents and representatives where the
purpose of such disclosure is not known to Contractor or its employees, agents and
representatives. The State reserves the right to review Contractor’s policies and procedures
used to maintain the security and confidentiality of PII and Contractor shall, and cause its
employees, agents and representatives to, comply with all reasonable requests or directions from
the State to enable the State to verify and/or procure that Contractor is in full compliance with its
obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or
at the State’s direction at any time in its sole discretion, whichever is earlier, Contractor shall
immediately return to the State any and all PII which it has received under this Contract and shall
destroy all records of such PII.

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

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

The Contractor shall comply with the following:

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

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

i. 60 percent or more of the Contractor’s annual gross revenues from
federal procurement contracts and federal financial assistance subject to
the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

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

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

As defined in 2 C.F.R. § 170.315, “Executive” means officers, managing
partners, or any other employees in management positions.
Total compensation means the cash and noncash dollar value earned by the executive during the Contractor’s preceding fiscal year and includes the following (for more information see 17 C.F.R. § 229.402(c)(2)):

i. Salary and bonus.

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

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

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

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

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

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

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

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

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

E.15 Survival. The terms, provisions, representations, and warranties contained in Sections D.11 (Records), D.19 (Hold Harmless), D.20 (HIPAA Compliance), E.2 (Confidentiality of Records), E.7 (Prohibited Advertising), E.9 (Intellectual Property), E.13 (Personally Identifiable Information), E.19 (Notification of Breach), E.21 (SSA Data), and E.25 (IRS Data) of this Contract shall survive the completion of performance, termination or expiration of this Contract.

E.16 Applicable Laws, Rules, Policies and Court Orders. The Contractor agrees to comply with all applicable federal and State laws, rules, regulations, sub-regulatory guidance, executive orders, HCFA waivers, and all current, modified or future Court decrees, orders or judgments applicable to the State’s TennCare program. Such compliance shall be performed at no additional cost to the State.

E.17 Business Associate. Contractor hereby acknowledges its designation as a business associate under HIPAA and agrees to comply with all applicable HIPAA regulations. In accordance with the HIPAA regulations, the Contractor shall, at a minimum:
a. Comply with requirements of the HIPAA, including, but not limited to, the transactions and code sets, privacy, security, and identifier regulations. Compliance includes meeting all required transaction formats and code sets with the specified data sharing agreements required under the regulations;

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

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

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

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

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

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

h. Create and adopt policies and procedures to periodically audit adherence to all HIPAA regulations;

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

j. If feasible, return or destroy all PHI, in whatever form or medium (including any electronic medium) and all copies of any data or compilations derived from and allowing identification of any individual who is a subject of that PHI upon termination, cancellation, expiration or other conclusion of the Agreement, and in accordance with this Section of this Contract. The Contractor shall complete such return or destruction as promptly as possible, but no later than thirty (30) days after the effective date of the termination, cancellation, expiration or other conclusion of the Agreement. The Contractor shall identify any PHI that cannot feasibly be returned or destroyed. Within such thirty (30) days after the effective date of the termination, cancellation, expiration or other conclusion of the Agreement, the Contractor shall: (1) certify an oath in writing that such return or destruction has been completed; (2) identify any PHI which cannot feasibly be returned or destroyed; and (3) certify that it will only use or disclose such PHI for those purposes that make its return or destruction infeasible;
k. Implement all appropriate administrative, physical and technical safeguards to prevent the use or disclosure of PHI other than pursuant to the terms and conditions of this Contract and, including, but not limited to, privacy, security and confidentiality requirements in 45 CFR Parts 160 and 164;

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

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

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

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

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

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

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

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

t. Track all security incidents as defined by HIPAA and periodically report such incidents to HCFA in summary fashion.

E.18. Information Holders. HCFA and the Contractor are "information holders" as defined in TCA 47-18-2107. In the event of a breach of the security of Contractor's information system, as defined by TCA 47-18-2107, the Contractor shall indemnify and hold HCFA harmless for expenses and/or damages related to the breach. Such obligations shall include, but not be limited to, mailing notifications to affected enrollees. Substitute notice to written notice, as defined by TCA 47-18-2107(e)(2) and (3), shall only be permitted with HCFA's express written approval. The Contractor shall notify HCFA'S Privacy Office immediately upon becoming aware of any security incident that would constitute a "breach of the security of the system" as defined in TCA 47-18-2107.
19. **Notification of Breach and Notification of Suspected Breach.** The Contractor shall notify HCFA's Privacy Office immediately upon becoming aware of any incident, either confirmed or suspected, that represents or may represent unauthorized access, use or disclosure of encrypted or unencrypted computerized data that materially compromises the security, confidentiality, or integrity of enrollee PHI maintained or held by the Contractor, including any unauthorized acquisition of enrollee PHI by an employee or otherwise authorized user of the Contractor's system. This includes, but is not limited to, loss or suspected loss of remote computing or telework devices such as laptops, PDAs, Blackberrys or other Smartphones, USB drives, thumb drives, flash drives, CDs, and/or disks.

E.20. **Transmission of Contract Deliverables.** All information or data that is necessary for one or more deliverable set forth in this Contract shall be transmitted between HCFA and Contractor via the data transfer method specified in advance by HCFA. This may include, but shall not be limited to, transfer through HCFA's SFTP system. Failure by the Contractor to transmit information or data that is necessary for a deliverable in the manner specified by HCFA, may, at the option of HCFA, result in liquidated damages as set forth on Contract Attachment B, hereto.


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

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

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

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

e. The Contractor shall ensure that its employees:

1. properly safeguard PHI/PII furnished by HCFA under this Contract from loss, theft or inadvertent disclosure;

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

3. ensure that laptops and other electronic devices/ media containing PHI/PII are encrypted and/or password protected;
(4) send emails containing PHI/PII only if encrypted or if to and from addresses that are secure; and,

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

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

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

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

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

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

i. Definitions

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

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

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

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

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

a) Purposes directly related to the administration of Medicaid and CHIP include:

1) establishing eligibility;

2) determining the amount of medical assistance;

3) providing services for beneficiaries; and,

4) conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to Medicaid or CHIP administration.

b) The Contractor must have adequate safeguards to assure that:

1) Information is made available only to the extent necessary to assist in the valid administrative purposes of those receiving the information, and information received under 26 USC is exchanged only with parties authorized to receive that information under that section of the Code; and, the information is adequately stored and processed so that it is protected against unauthorized disclosure for other purposes.

c) The Contractor must have criteria that govern the types of information about applicants and beneficiaries that are safeguarded. This information must include at least--

1) Names and addresses;

2) Medical services provided;

3) Social and economic conditions or circumstances;

4) Contractor evaluation of personal information;

5) Medical data, including diagnosis and past history of disease or disability

6) Any information received for verifying income eligibility and amount of medical assistance payments, including income information received from SSA or the Internal Revenue Service;
7) Income information received from SSA or the Internal Revenue Service must be safeguarded according to Medicaid and CHIP requirements;

8) Any information received in connection with the identification of legally liable third party resources; and.

9) Social Security Numbers.

d) The Contractor must have criteria approved by HCFA specifying:

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

2) Access to information concerning applicants or beneficiaries must be restricted to persons or Contractor representatives who are subject to standards of confidentiality that are comparable to those of HCFA;

3) The Contractor shall not publish names of applicants or beneficiaries;

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

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

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

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

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

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

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

E.24. Offer of Gratuities. By signing this contract, the Contractor signifies that no member of or a delegate of Congress, or any elected or appointed official or employee of the State of Tennessee, the federal General Accounting Office, federal Department of Health and Human Services, the Center for Medicare and Medicaid Services, or any other state or federal agency has or will benefit financially or materially from this Contract. This Contract may be terminated by HCFA as provided in Section D.6, if it is determined that gratuities of any kind were offered to or
received by any of the aforementioned officials or employees from the Contractor, its agent, or employees.

E.25. Internal Revenue Service (IRS) Safeguarding Of Return Information:

a) Performance - In performance of this contract, the contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

(1) This provision shall not apply if information received or delivered by the Parties under this Contract is NOT "federal tax returns or return information" as defined by IRS Publication 1075 and IRC 6103.

(2) All work will be done under the supervision of the contractor or the contractor's employees. The contractor and the contractor's employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.

(3) Any Federal tax returns or return information (hereafter referred to as returns or return information) made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Disclosure to anyone other than an officer or employee of the contractor will be prohibited.

(4) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.

(5) The contractor certifies that the data processed during the performance of this contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.

(6) Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.

(7) All computer systems receiving, processing, storing, or transmitting Federal tax information must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal tax information.

(8) No work involving Federal tax information furnished under this contract will be subcontracted without prior written approval of the IRS.

(9) The contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.
(10) The agency will have the right to void the contract if the contractor fails to provide the safeguards described above.

b) Criminal/Civil Sanctions

(1) Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as $5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than $1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

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

(3) Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

(4) Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency’s security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, contractors should be advised of the provisions of IRC Sections 7431, 7213, and 7213A. The training provided before the initial certification and
annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. For both the initial certification and the annual certification, the contractor should sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

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

E.26. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor’s Response to RFP 31865-00460 (Attachment 6.2, Section B.15) and resulting in this Contract.

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

IN WITNESS WHEREOF,

MERCER HEALTH & BENEFITS LLC

Shawna Kittridge, Principal

CONTRACTOR SIGNATURE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

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

November 16, 2016

DATE

GARRY B. MARTIN, COMMISSIONER

DATE
ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

<table>
<thead>
<tr>
<th>SUBJECT CONTRACT NUMBER:</th>
<th>52580</th>
</tr>
</thead>
<tbody>
<tr>
<td>CONTRACTOR LEGAL ENTITY NAME:</td>
<td>Mercer Health &amp; Benefits LLC</td>
</tr>
<tr>
<td>EDISON VENDOR IDENTIFICATION NUMBER:</td>
<td>0000125797</td>
</tr>
</tbody>
</table>

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

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. Attach evidence documenting the individual’s authority to contractually bind the Contractor, unless the signatory is the Contractor's chief executive or president.

Shawna Kittridge, Principal

PRINTED NAME AND TITLE OF SIGNATORY

November 17, 2016

DATE OF ATTESTATION
**LIQUIDATED DAMAGES**

In the event of a Contract performance or compliance failure by Contractor and such Contract performance or compliance failure is not included in the following table with an associated Liquidated Damage amount, the parties hereby agree that the State may choose one of the following courses of action in order to obtain redressability for such Contract performance or compliance failure: (1) the State may assess actual damages resulting from the Contract performance or compliance failure against the Contractor in the event that such actual damages are known or are reasonably ascertainable at the time of discovery of such Contract performance or compliance failure or (2) if such actual damages are unknown or are not reasonably ascertainable at the time of discovery of the Contract performance or compliance failure, the State may (a) require the Contractor to submit a corrective action plan to address any such Contract performance or compliance failure and (b) assess liquidated damages against Contractor for an amount that is reasonable in relation to the Contract performance or compliance failure as measured at the time of discovery of the Contract performance or compliance failure. In the event that the State chooses to assess a Liquidated Damage for a Contract performance or compliance failure according to the immediately preceding sentence, in no event shall such Liquidated Damage be in excess of $1,000 for any single Contract performance or compliance failure. HCFA may elect to apply the following liquidated damages remedies in the event the Contractor fails to perform its obligations under this Contract in a proper and/or timely manner. Upon determination by HCFA that the Contractor has failed to meet any of the requirements of this Contract in a proper and/or timely manner, HCFA will notify the Contractor in writing of the performance or compliance failure and of the potential liquidated damages to be assessed. Should the performance or compliance failure remain uncorrected for more than thirty (30) calendar days from the date of the original notification of the performance or compliance failure by HCFA, HCFA may impose an additional liquidated damage of Five Hundred Dollars ($500) per day from the date of the original notification to Contractor until said performance or compliance failure is resolved.

All liquidated damages remedies set forth in the following table may, at HCFA’s election, be retroactive to the date of the initial occurrence of the failure to comply with the terms of the Contract as set forth in the notice of performance or compliance failure from HCFA and may continue until such time as the HCFA Deputy Commissioner, or the Deputy Commissioner’s representative, determines the performance or compliance failure has been cured.

If liquidated damages are assessed, HCFA shall reduce the amount of any payment due to the Contractor in the next invoice by the amount of damages. In the event that damages due exceed the amount HCFA is to pay to Contractor in a given payment, HCFA shall invoice Contractor for the amount exceeding the amount payable to Contractor, and such excess amount shall be paid by Contractor within thirty (30) calendar days of the invoice date. In situations where the Contractor wishes to dispute any liquidated damages assessed by HCFA, the Contractor must submit a written notice of dispute, including the reasons for disputing the liquidated damages to the HCFA Deputy Commissioner or the Deputy Commissioner’s representative, within thirty (30) calendar days of receipt of the notice from HCFA containing the total amount of damages assessed against the Contractor. If the Contractor fails to timely dispute a liquidated damages assessment as set forth herein, such failure shall constitute a bar to the Contractor seeking to have the assessment amount overturned in a forum or court of competent jurisdiction.

Liquidated damages will apply to the Contract performance or compliance failures listed below. Contractor acknowledges that the actual damages likely to result from Contract performance or compliance failures are difficult to estimate and may be difficult for the State to prove. The parties intend that the Contractor’s payment of assessed liquidated damages will compensate the State for breach of the Contractor obligations under this Contract. Liquidated damages do not serve as punishment for any breach by the Contractor.
<table>
<thead>
<tr>
<th>PROGRAM ISSUES</th>
<th>DAMAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Failure by the Contractor to meet the standards for privacy, security, and confidentiality of individual data as evidenced by a breach of the security per Section E. 2. and E.19</td>
<td>$1,000 per affected member per occurrence.</td>
</tr>
<tr>
<td>Failure by the Contractor to execute the appropriate agreements to effectuate transfer and exchange of enrollee PHI or HCFA confidential information including, but not limited to, a data use agreement, trading partner agreement, business associate agreement or qualified protective order prior to the use or disclosure of PHI to a third party. (See E.17. and Business Associate Agreement between the parties)</td>
<td>$1,000 per affected member per occurrence.</td>
</tr>
<tr>
<td>Failure by the Contractor to seek express written approval from HCFA prior to the use or disclosure of enrollee data or HCFA confidential information in any form via any medium with any third party beyond the boundaries and jurisdiction of the United States. (See E.13 and Business Associate Agreement between the parties)</td>
<td>$1,000 per affected member per occurrence.</td>
</tr>
<tr>
<td>Failure by the Contractor to timely report violations in the access, use and disclosure of PHI or timely report a security incident or timely make a notification of breach or notification of suspected breach per Sections (See E.19 and Business Associate Agreement between the parties)</td>
<td>$1,000 per affected member per occurrence.</td>
</tr>
</tbody>
</table>