



CONTRACT AMENDMENT COVER SHEET

Agency Tracking # 31865-00611	Edison ID	Contract # 67250	Amendment # 1		
Contractor Legal Entity Name Qsource			Edison Vendor ID 76873		
Amendment Purpose & Effect(s) Exercising Renewal Option					
Amendment Changes Contract End Date: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		End Date: September 30, 2024			
TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A):			\$ 1,783,464.00		
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2021	\$300,469.50	\$901,408.50			\$1,201,878.00
2022	\$411,486.75	\$1,234,460.25			\$1,645,947.00
2023	\$424,865.25	\$1,274,595.75			\$1,699,461.00
2024	\$478,584.50	\$1,435,753.50			\$1,914,338.00
2025	\$74,311.00	\$222,933.00			\$297,244.00
TOTAL:	\$1,689,717.00	\$5,069,151.00			\$6,758,868.00
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.				<i>CPO USE</i>	
Speed Chart (optional) TN0000000064		Account Code (optional) 70803000			

**AMENDMENT #1
OF CONTRACT 67250
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF TENNCARE
AND
QSOURCE**

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 Qsource, hereinafter referred to as the "Contractor." For good and valuable consideration, the sufficiency of which is hereby acknowledged, it is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

1. Contract section B.1. is deleted in its entirety and replaced with the following:
 - B.1 This Contract shall be effective for the period beginning on September 1, 2020 ("Effective Date") and ending on September 30, 2024 ("Term"). The State shall have no obligation for goods delivered or services provided by the Contractor prior to the Effective Date.

2. Contract section B.2. is deleted in its entirety and replaced with the following:
 - B.2. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to one (1) renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

3. 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 Six Million Seven Hundred Fifty-Eight Thousand Eight Hundred Sixty-Eight Dollars and Zero Cents (\$6,758,868.00) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

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

Amendment Effective Date. The revisions set forth herein shall be effective once all required approvals are obtained. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

QSOURCE:

Mary Lyn Baldauf

08/23/2023

SIGNATURE

DATE

Mary-Lyn Baldauf, Chief Executive Officer

PRINTED NAME AND TITLE OF SIGNATORY (above)
DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF TENNCARE:

Jim Bryson / JB

8/24/2023

JIM BRYSON, COMMISSIONER

DATE



CONTRACT

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

Begin Date September 1, 2020	End Date September 30, 2023	Agency Tracking # 31865-00611	Edison Record ID 67250
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Contractor Legal Entity Name Qsource	Edison Vendor ID 0000076873
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Goods or Services Caption (one line only)
External Quality Review for MCOs, DBM and CoverKids

Contractor <input checked="" type="checkbox"/> Contractor	CFDA #
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Funding ---					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2021	\$300,469.50	\$901,408.50	\$0.00	\$0.00	\$1,201,878.00
2022	\$411,486.75	\$1,234,460.25	\$0.00	\$0.00	\$1,645,947.00
2023	\$424,865.25	\$1,274,595.75	\$0.00	\$0.00	\$1,699,461.00
2024	\$107,029.50	\$321,088.50	\$0.00	\$0.00	\$428,118.00
	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
TOTAL:	\$1,243,851.00	\$3,731,553.00	\$0.00	\$0.00	\$4,975,404.00

Contractor Ownership Characteristics:

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

Woman Business Enterprise (WBE)

Tennessee Service Disabled Veteran Enterprise (SDVBE)

Disabled Owned Business (DSBE)

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


Government Non-Minority/Disadvantaged Other : Non Profit Corporation

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

Competitive Selection Request for Proposal

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.



CPO Use - FA

Speed Code (optional) TN0000000064	Account Code (optional) 70803000
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**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF TENNCARE
QSOURCE**

This Contract, by and between the State of Tennessee, Department of Finance and Administration, Division of TennCare, hereinafter referred to as the "State" or "TennCare" and Qsource, hereinafter referred to as the "Contractor," is for provision of External Quality Review (EQR) to assist the State in reaching its goal of ensuring that each enrollee has access to timely, high quality, medically necessary, covered healthcare services as defined in the "SCOPE OF SERVICES."

The Contractor is a Non-Profit Corporation
Contractor Place of Incorporation or Organization: Tennessee
Contractor Edison Registration ID # 76873

A. SCOPE OF SERVICES:

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Contract.
- A.2. Definitions. For purposes of this Contract, definitions shall be as follows and as set forth in the Contract: See **Attachment A**.
- A.3. The Contractor shall perform all tasks and functions identified in the Contract according to specified levels of quality and comprehensiveness as determined by the State.

Capitalized terms used in this Contract are either defined herein or in Attachment A hereto, or are deemed to have the meanings ascribed to them in the applicable TennCare CRAs, CoverKids State contract, or the respective PBM and DBM contracts.

- A.4. The Contractor shall, under the direction of the State, conduct the TennCare program External Quality Review Organization (EQRO) functions during the term of this Contract and provide for an orderly transition of the EQRO functions to any new Contractor, or the State, at the end of the Contract period, if applicable. The Contractor shall continue to meet the EQRO requirements for competence and independence requirements as set forth in 42 CFR §438.354 and perform external quality review and other EQR-related activities as set forth in 42 CFR §438.358. The Contractor shall provide services in accordance with the TennCare Waiver and related amendments which can be found on the Division of TennCare's website at <http://www.tn.gov/tenncare/> or CoverKids website at <https://www.tn.gov/tenncare/policy-guidelines/waiver-and-state-plan-public-notice.html>. The Contractor shall provide assistance during the final month of the Contract with the transition of TennCare EQRO functions, if applicable.
- A.5. The Contractor shall, as directed by the State and at no additional cost to the State, coordinate with, facilitate the prompt exchange of information between, and work collaboratively with any and all other State contractors and State Agencies for the purpose of fulfilling the obligations set forth in this Contract. If required in order for the Contractor to proceed with any part of the Scope of Services which involves sharing or obtaining information of a confidential, proprietary, or otherwise valuable nature with or from another State contractor, the Contractor may be requested to sign mutually agreeable documents, including but not limited to Non-Disclosure Agreements (Non-Disclosure Documents), which are reasonably necessary to maintain cooperation and collaboration among and with any and all other State contractors and State agencies in the performance of the Contract.

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

Nothing in this Section, including failure to negotiate and enter into a Non-Disclosure Document acceptable to Contractor with another State contractor or State entity, shall be construed to relieve the Contractor of its duty to perform any requirements or deliverables under this Contract. Other than as permitted in Section C. of this Contract, Payment Terms and Conditions, the Contractor shall not invoice the State for any such coordination services, and the State shall not be liable to the Contractor for payment of any such coordination services, without the prior written consent of the State.

- A.6. The Contractor shall be responsible for conducting all reviews scheduled effective October 1, 2020, and producing all regularly scheduled monthly, quarterly and annual reports. Key Personnel shall be the individuals assigned to accomplish the work required by this Contract as identified in the Contractor's proposal. At no additional cost to the State, Key Personnel shall be available on site at the TennCare offices located at 310 Great Circle Road, Nashville, Tennessee at times designated by TennCare during the month of September 2020 to receive documents and orientation from the previous EQRO Contractor, if applicable including, but not limited to:
- a. the procedures for the EQRO periodic and special reviews of TennCare MCOs, participation in various committees, ad hoc report generation and analysis, and the operation and maintenance of EQRO Systems;
 - b. review operating procedures and receive training on all software used to support the EQRO functions; and
 - c. receive and review files, data, and other materials from the previous EQRO Contractor.
- A.7. The Contractor shall perform the following EQRO functions in accordance with all Federal, State, and TennCare requirements:
- a. The Contractor shall develop a comprehensive work plan, including complete staffing allocations in Full Time Equivalent (FTE) units, that is due to the State no later than September 15th, of each year of the Contract, with the submission of a detailed work plan due annually thereafter. The Contractor's comprehensive work plan shall outline key tasks and sub-tasks, with associated timeframes for completion and delivery assigned to each task, as deemed necessary to deliver the required work product to the State. The Contractor shall provide a summary report that consists of detailed monthly progress towards the work plan and staffing updates. The summary report must be submitted to TennCare, with an accompanying invoice, by the 15th of each month of the Contract.
 - b. Operate and maintain a system of internal controls (manual and automated), approved by the State in writing, to safeguard access to data and ensure the integrity, completeness, and accuracy of the data, the processing, and the output products;
 - c. By January 1st of each year, perform analysis and submit a report of existing and new Federal and State policies, procedures, and regulations to determine their impact on the EQRO components of the TennCare program and related State and Contractor-performed functions. The analysis shall include a review of portions of the Federal Register that would impact the Division of TennCare.
 - d. Conduct training for Contractor personnel on a continuing basis to maintain satisfactory levels of proficiency relative to all Contractor functions and report to TennCare regarding ongoing Contractor training;

- e. Operate and maintain an internal control program approved by the State in writing to ensure accuracy of all EQRO functions and processing that meets the State's requirements; internal quality control program shall encompass all annual special reviews, studies, reports, and any other outputs that are produced;
 - f. Develop the External Quality Review (EQR), as defined in Attachment A, survey tools for surveying the MCC based on current contractual procedures, applicable court orders, the TennCare 1115 Waiver, CHIP, State and Federal regulations. The Contractor shall ensure that the tools include specific compliance monitoring activities, a mechanism for obtaining background information from the State, MCC document review, conducting MCC interviews, the collection of accessory information, analyzing and compiling of findings by MCC and reporting evaluation results to the State. The Contractor shall advise the State on an ongoing basis of changes to improve and enhance the audits;
 - g. Conduct periodic and special quality reviews of the MCC in a form or manner as prescribed by the State and provide written reports of findings and recommendations for corrective action within the predefined time frame;
 - h. Maintain internal records in order to provide complete audit trails of activities, account for all transactions, and document all charges;
 - i. Implement and maintain processes and policies compliant with Health Insurance Portability and Accountability Act (HIPAA) regulations;
 - j. Ensure the proper handling of Protected Health Information (PHI);
 - k. Within fifteen (15) days of the start date of the Contract, submit to TennCare a detailed proposal regarding Contractor's plans for ensuring Inter-rater Reliability in the analyses performed under this Contract.
- A.8. The Contractor shall perform its TennCare EQRO functions in accordance with Federal and State laws, regulations and policies pertaining to Medicaid, including the Tennessee State Medicaid Plan, and policies and procedures pertaining to TennCare including the terms and conditions of the TennCare Section 1115 Waiver. In the event the Contractor has need of an interpretation of any laws, regulations and/or policies, the request will be made to the State. The State shall provide timely notification to the Contractor of all changes and/or amendments in the MCC CRAs, DBM contract and PBM contract which can reasonably be expected to affect the Contractor's performance of this Contract. The Contractor shall maintain, on a current and ongoing basis, a full and detailed knowledge of applicable Federal and State laws, regulations, policies, the State Medicaid Plan, State CHIP Plan, federal External Quality Review (EQR) regulations (42 CFR Part 438.310, subpart E) and protocols for Medicaid MCOs, specific TennCare requirements related to Federal court orders, the MCC CRAs, DBM contract, PBM contract and the TennCare Waiver.
- A.9. The Contractor's responsibilities as the EQRO for TennCare shall include providing and maintaining an administrative structure, including personnel of sufficient background, training, number, scope and authority to perform its contractual responsibilities to the satisfaction of the State. The Contractor shall provide the State with the names and resumes of individuals who are authorized to act on behalf of the Contractor, together with a description of their responsibilities, authorities, and the amount of time each employee will devote to this Contract in Full Time Equivalents (FTEs). The State shall have final approval of FTEs on TennCare projects. The Contractor's key personnel shall include a full-time Physician Consultant, licensed in the State of Tennessee, a full-time Contract Manager, and sufficient resources to fulfill contractual obligations. The Contractor must provide access to a biostatistician and epidemiologist on a timely basis that is adequate to meet TennCare's requirements under its Contract. Resumes for all key personnel must be current.

The Contractor shall possess sufficient physical, technological and financial resources to conduct EQRO and EQR related activities as well as other clinical and non-clinical skills necessary to carry out the EQRO and EQR related activities and to oversee the work of any subcontractor.

The Contractor shall demonstrate experience with Medicaid recipients, policies, data systems and processes, MCC delivery systems and financing, Quality Assurance and Quality Integrity, research design and methodology throughout the life of this contract and at the request of TennCare.

- A.10. The Contractor shall maintain sufficient professional and technical staff to carry out the duties and responsibilities of the EQRO function and agree to the following requirements:
- a. The Contractor warrants and represents that all persons assigned by it to the performance of this Contract shall be employees of the Contractor and shall be fully qualified to perform the work required herein. The Contractor shall include a similar provision in any contract with any subcontractor selected to perform work hereunder.
 - b. The State shall have the absolute right to approve or disapprove the Contractor's and any subcontractor's key personnel assigned to this Contract, to approve or disapprove any proposed changes in Key Personnel, or to require the removal or reassignment of any key Contractor employee or subcontractor personnel found unacceptable by the State.
 - c. To the extent possible the Contractor shall notify the State in writing of any change in key personnel at least thirty (30) days prior to the change. The Contractor shall upon request, provide the State with a resume of any members of its staff or a subcontractor's staff assigned to or proposed to be assigned to any aspect of the performance of this Contract.
 - d. Personnel commitments made in the Contractor's proposal that resulted in award of this Contract shall not be changed except as herein above provided, or due to the resignation of any named individual. Key personnel shall be replaced within thirty (30) days of departure of existing staff, unless exception is granted in writing by TennCare.
- A.11. The Contractor shall provide and maintain a staff of qualified health professionals on-site in Nashville, Tennessee sufficient to complete all regularly scheduled and specially requested quality reviews as described in this Contract. At a minimum, the Contractor shall provide and maintain an on-site staff of sufficient professionals at all times, meeting the following requirements:
- a. The combined experience of the Contractor's staff shall include previous experience in healthcare quality assurance, management and improvement; knowledge and understanding of the NCQA Standards for Accreditation of Managed Care Organizations and Behavioral Health Organizations and the accreditation process; in-depth expertise of HEDIS coding and current technical specifications; familiarity with ICD, CPT and hospital revenue codes; practical or clinical health care experience; understanding of managed care plans; and knowledge of Medicaid, Medicare, or similar program, and understanding of the managed care organizations systems
 - b. The EQRO shall have experience and expertise in the epidemiological and statistical measurement of health and service status indicators in defined populations. At a minimum access to a biostatistician and an epidemiologist is required.
 - c. At least two-thirds (2/3) of the staff shall have five (5) or more years of relevant experience.
 - d. The review staff shall be supervised by individuals with five (5) or more years of experience in quality assurance management or review and at least three (3) years of management experience.

- A.12. The Contractor shall provide sufficient analysis and technical staff, in addition to the professional staff, for the reviews, with experience and expertise in the epidemiological and statistical measurement of health and service indicators, including behavioral health, in defined populations to support the requirements in this Contract. The Contractor's staff shall have an in-depth understanding of the scope and methodologies of data collection, the interpretation of data, and the social and economic factors that affect the interpretation of the data (See A.9.-A.11. above). The Contractor shall ensure that all EQR activities are conducted in accordance with generally accepted principles of research design and statistical analysis in order to produce valid, reliable, and generalizable information. At a minimum, the Contractor shall provide the following functions, as requested by TennCare:
- a. An ongoing analysis of Encounter and other data, including but limited to, claims data, data from TN's immunization registry, the Controlled Substance Monitoring Database (CSMD) data, and custom quality metrics calculated by the MCOs for the purpose of providing the State with written reports of patterns of utilization, areas of potential over/under utilization, target for special reviews or investigation, and recommendations for improving the efficiency and quality of the TennCare program.
 - b. Provide technical recommendations to TennCare regarding identified opportunities for improvement within the Managed Care Organizations assessed performance and methodology of reporting.
 - c. Provide the State with current information on the development and implementation of quality assurance programs in other states, national standards and measures, industry practices and other information pertinent to the EQRO functions.
 - d. Provide ad hoc and special reports as requested by the State.
- A.13. The Contractor shall develop review criteria for the Annual Quality Survey (AQS), as defined in Attachment A, with input from TennCare to assess contract compliance and compliance with current industry, Federal, and State requirements for Medicaid managed care. The Contractor shall ensure that criteria includes a review of enrollee rights and protections, quality assessment and performance improvement, structure and operation standards, measurement and improvement standards and compliance with the appeal process. The Contractor shall ensure that the survey process (See a-s. below) shall include document review, in person interviews with key MCC personnel, and an assessment of the adequacy of information management systems. The Contractor shall obtain written approval of TennCare for any deletions from the survey. The Contractor shall ensure that review, analysis, and recommendations for improvement of the MCC Structure and overall integration of the health care delivery system includes a review and assessment of the following components below:
- a. MCC Structure
 - (1) Quality Improvement Program Description (QIPD)
 - (2) Utilization Management Program Description (UMPD)
 - (3) The associated work plans for the QIPD and UMPD
 - (4) The annual evaluation of the MCC Quality Improvement Program
 - (5) Adequacy of MCC's material resources and staffing
 - (6) Oversight of Quality Program by the MCC's governing body
 - b. Appropriate documentation of all committee meetings, i.e., Quality, Credentialing, and Peer Review
 - c. Oversight of all MCC's, not reviewed by a Medicare or private organization, initial and recredentialing processes to include:
 - (1) Onsite credentialing and recredentialing file review
 - (2) Review of committee minutes
 - (3) Timeliness of credentialing/recredentialing process

- (4) Incorporation of quality assessment (site visit and medical record documentation practices)
 - (5) Assessment of quality of care and service issues which may include but not be limited to physician/provider specific confirmed and trended quality of care and service concerns, appeals data, over/under utilization data, and pharmacy utilization data
 - (6) MCC's process for medical record review of primary care physicians and high-volume specialists
- d. MCO Clinical Practice Guidelines
- (1) Adoption, annual review, and dissemination of Clinical Practice Guidelines (CPG) to all appropriate network providers.
 - (2) The review shall indicate whether each CPG is a nationally recognized one or if they were developed by the MCO. If developed by the MCO indicate if they are based on national guidelines and if so, which ones.
- e. Audited HealthCare Effectiveness Data and Information Systems (HEDIS) and Consumer Assessment of Health Plan Surveys (CAHPS) data by MCO to validate opportunities for improvement and areas where meaningful improvement has been achieved. In lieu of prior requirements, the Contractor shall review and analyze the customer satisfaction survey required of the DBM.
- f. MCO Population Health (PH) for the following components:
- (1) Risk Stratification of MCO population and movement of populations between risk levels
 - (2) Outreach to the members stratified into PH programs Levels 0-2
 - (3) Screening for risk factors for high risk pregnancy program
 - (4) Screening for members' need for face-to-face visits
 - (5) Ongoing assessment of members transitioning into higher/lower levels of care
 - (6) Assessment of members' health by use of a health risk appraisal, that meets and/or exceeds the current National Committee for Quality Assurance (NCQA) Population Health Management standard for all new enrollees and annually thereafter
 - (7) Enrollment of CHOICES and ECF CHOICES members in PH programs
 - (8) Integration of appropriate elements of PH care plan into member's CHOICES care plan or ECF CHOICES person-centered support plan to facilitate better management of member's condition
 - (9) Stratification of CHOICES and ECF CHOICES members by risk factors and by type of facility where Long-term Care (LTC) services are delivered.
 - (10) Confirmation that CHOICES Care Coordinator or ECF CHOICES Support Coordinator has primary responsibility for coordination of all the member's physical, behavioral health and LTC services, including appropriate management of chronic conditions
 - (11) Evidence that the CHOICES member's care plan or ECF CHOICES member's person-centered support plan includes monitoring of member's condition, ensuring compliance with treatment protocols and life style changes
 - (12) Process for how the CHOICES Care Coordinator or ECF CHOICES Support Coordinator receives notification collected about the member through PH programs, and any educational materials given to the member through PH program
 - (13) Written description of how the CHOICES Care Coordinator or ECF CHOICES Support Coordinator verbally reviews member materials and coordinates necessary follow-up regarding the PH programs such as scheduling screenings or appointments
 - (14) MCO Case Management services are provided consistent with federal and state requirements
 - (15) Evidence that case management activities are being integrated throughout the operations of the MCO.
- g. MCC mechanism for identifying potential under/over utilization trends within provider network and actions taken when performance falls below established standards

- h. MCC process for review and update of medical necessity criteria
 - i. MCC process to ensure continuity and coordination of care
 - j. MCO case management services
 - (1) Selection criteria
 - (2) Available resources
 - (3) Penetration rate
 - (4) Turn-over rate (length of time in case management)
 - (5) Frequency of enrollee contact
 - (6) Evidence of network physician/provider participation
 - k. MCC Utilization Management denial files as designated by TennCare.
 - l. Adequacy of MCC provider networks
 - (1) Compliance with required access standards
 - (2) Compliance with required wait time standards
 - (3) Analysis of open/closed panels by MCC
 - (4) Compliance with established standards for appointment availability
 - m. Comparative analysis of MCC overall provider satisfaction survey results and CHOICES satisfaction survey results.
 - n. MCC operational and departmental policies and procedures
 - o. Analysis of MCC communication to enrollees and providers outlining member rights and responsibilities
 - p. Verification of MCC commitment to improve patient safety
 - q. Annual comparative analysis of MCC compliance with Early and Periodic Screening Diagnosis and Treatment (EPSDT) requirements to include:
 - (1) Identification of best practices
 - (2) Evidence of enrollee and provider educational outreach by individual MCC
 - r. Evaluation of the timeliness and appropriateness of triage and referrals for behavioral health to include a review of written protocols.
 - s. Evaluation of whether the MCCs are providing culturally and linguistically appropriate services ("CLAS") and are reducing health care disparities. The NCQA Multicultural Health Care ("MHC") standards program is a method that may be utilized to satisfy the U.S. Department of Health and Human Services, Office of Minority Health's CLAS standards. The MCCs' abilities to achieve compliance with the civil rights laws involves reducing health care disparities, which is part of the National Strategy for Quality Improvement and is a recognized quality improvement activity under medical loss ratios.
- A.14. Prior to the development of the AQS survey tool, the Contractor shall complete and submit a detailed comparison of MCO Contractual Requirements vs. the National Committee on Quality Assurance (NCQA) Health Plan Accreditation standards to TennCare for review. The Contractor shall include the contractual standards in the survey tool if the NCQA Health Plan Accreditation standards do not include all related contractual standards for a given topic. The Contractor shall obtain the written approval of TennCare for the comparison and the survey tool.

After a MCO is NCQA accredited, the AQS requirements will not have to be reviewed if the criteria for each area have been fully reviewed by NCQA. An AQS shall be done to include contractual

requirements that are not fully duplicated in the NCQA Health Plan Accreditation survey or the Annual Network Adequacy (ANA), and all criteria related to TennCare Court cases. Each MCO will provide the proof of accreditation to TennCare and the Contractor.

- A.15. The Contractor shall submit a draft of the Annual Quality Survey (AQS) within thirty (30) days following the completion of each MCC's onsite review with the final report due no later than sixty (60) days from the last review. The Contractor shall ensure that the report assesses MCC compliance with contractual requirements and all EQR-related mandatory and optional activities, including but not limited to the methodology of how data was collected, aggregated, and analyzed, as well as conclusions drawn as to the quality, timeliness, effectiveness and access to the care furnished by the MCC. The Contractor shall ensure that the report of the quality review includes, at minimum, the following components:
- a. A detailed assessment of the strengths and weaknesses of each MCC based on findings in each MCO's AQS report;
 - b. Recommendations for improving the quality of care by each MCC;
 - c. Comparative charts on all MCCs;
 - d. An assessment of the degree to which each MCC effectively addressed the recommendations for quality improvement made during the previous year's EQR;
 - e. An assessment of each MCC's compliance with EPSDT requirements as defined in the CRA;
 - f. The contractual element reviewed with the corresponding CRA citation; and
 - g. Scoring criteria used for each contractual element.
- A.16. The Contractor shall maintain the following timeline for the AQS:
- a. By November 30th of each calendar year, the Contractor shall submit the proposed review criteria to the State for approval.
 - b. By February 2nd of each calendar year, the Contractor shall present the proposed schedule for the AQS survey to the State for approval.
 - c. Appointments with the MCCs shall be scheduled thirty (30) days in advance of visit.
 - d. The State shall be notified in writing of any changes to the approved appointment schedule immediately.
 - e. An MCC specific draft report of the survey findings along with recommendations for improvement shall be provided to the State no later than thirty (30) days after each MCC onsite survey. The recommendations for improvement should include specific information the MCCs can utilize to make appropriate changes and, when appropriate, the MCC can adopt other state and national best practices. The final report shall be submitted to the State no later than sixty (60) days following the review of each MCC.
- A.17. The Contractor shall submit a separate summary report for the AQS Surveys and the Performance Improvement Projects. The Contractor shall ensure that each summary report includes results of the activity across MCCs as well as comparative charts and each shall be prepared with input from TennCare. The Contractor shall ensure that the report includes the methodology used for each type of activity. Upon final submission to TennCare, the Contractor shall ensure the summary reports are provided in an easy to read format, as approved by TennCare in writing.
- A.18. The Contractor shall perform an annual evaluation of each MCO and DBM's compliance with the EPSDT requirements set forth in the Contractor Risk Agreement. The Contractor shall ensure that evaluation includes a review and assessment of the following for each MCC:
- a. Timely provision of medically necessary care.
 - b. Proof the MCC has informed enrollees of the EPSDT program and services in accordance with their Contractual obligations.

- c. Network Adequacy Review.
 - d. MCC practices in regard to making decisions about medical necessity and identify any practices which are inconsistent with federal law.
 - e. the effectiveness of the MCC's practices and procedures in appropriately referring children from one level of screening or diagnoses to another as required to determine a child's physical health, behavioral health and developmental needs as to medically necessary services.
 - f. the definition of "medically necessary" treatment being used by the MCC and ensure it is the correct definition for the TennCare population as found in TennCare Rule 1200-13-16.
 - g. appropriate information to determine that absolute service limits are not used by the MCC in the determination of coverage for the EPSDT population, including but not limited to, reviewing for the inclusion of rehabilitation services and maintenance services.
 - h. MCC's contractual compliance in providing appropriate continuation of services.
 - i. MCC prior authorization and utilization review decision processes to ensure that no prior authorization is required for periodic EPSDT screenings or assessments, and determine if decisions are being made only by qualified personnel with education, training or experience in child and adolescent health.
 - j. documentation to determine if the MCC is in compliance with the reasonable and promptness requirements of providing services as required within the MCC Contractor Risk Agreement.
 - k. utilization management denial files to determine that MCCs provide all medically necessary covered services.
 - l. MCC policy and documentation as to how the MCC provides each primary care provider seeing EPSDT eligible members a quarterly supplemented listing of specialists to whom referrals may be made.
 - m. the adequacy and effectiveness of MCC's case management activities for the EPSDT population consistent with federal law.
 - n. the MCC's compliance with the requirement to provide transportation and non-emergent transportation for the EPSDT population.
 - o. the protocols and procedures in place within the MCC for handling transportation referrals and review necessary information to determine that the MCCs are not imposing blanket restrictions on the provision of transportation.
 - p. the MCC's coordination of children's health and education services and programs with other State agencies and assess MCC compliance with the current IEP process.
 - q. MCC's processes and ability to assist in scheduling appointments.
 - r. the MCC's processes and documentation of EPSDT services declined by enrollees.
 - s. the MCC's processes/efforts for identifying and reaching out to children who have missed appointments or failed to receive EPSDT screenings timely. Determine MCC compliance with all required outreach efforts.
 - t. the MCC's processes for identifying and reaching out to inform the illiterate, blind, deaf and Limited English Proficiency ("LEP") populations of EPSDT programs.
 - u. the MCC's processes/efforts for informing families of the costs of services.
 - v. the MCC's criteria and process for identifying "at-risk" populations and special processes/information used for outreach to this population.
 - w. the MCC's criteria and process for notifying pregnant women of available EPSDT services for the unborn child and pregnant women if under 21 years of age.
- A.19. The Contractor shall perform an Annual Network Adequacy (ANA) review pursuant to Tenn. Code Ann. § 56-32-131 and shall establish a procedure to verify that each MCC, including the DBM and PBM, is delivering the health benefits required by their Contract with the State, that each is delivering the benefits within the required time frames, and that each MCC has an adequate provider network to ensure the effective and efficient delivery of healthcare services to TennCare enrollees. The Contractor may use the NCQA standards or other nationally recognized standard, as approved in writing by the State that will produce a statistically valid review to evaluate the adequacy of each MCC network and benefit delivery compliance with the CRA. The Contractor shall ensure that the review includes the following specialties:
- a. Primary Care Providers

- b. Selected High Volume Specialty Providers
 - c. Dentists
 - d. Mental Health Providers
 - e. Pharmacy Providers
- A.20. The Contractor shall submit Annual Network Adequacy (ANA) review reports annually by June 1 each year of the Contract. The Contractor shall ensure that reports are submitted directly to the Commissioner of the Department of Commerce and Insurance, TennCare Oversight Division, the Comptroller of the Treasury, and the Division of TennCare.
- A.21. The Contractor shall submit an Annual EQR Technical Report utilizing the results of the Annual Network Adequacy report, the Annual Quality Survey, and information and results from the validation of Performance Improvement Projects (PIPs) and Validation of Performance Measures as required in accordance with 42 CFR 438.364. The Contractor shall include a summary of all other activities performed for TennCare in the Annual EQR Technical Report. The Contractor shall submit the Annual EQR Technical Report to TennCare by September 30th of each year. The Contractor shall ensure that the report complies with CMS protocols and, at a minimum, includes the following:
- a. A description of the manner in which the data from all activities conducted in accordance with 42 CFR 438.358 (validation of PIPs and performance measures and compliance with standards audit) were aggregated and analyzed and conclusions were drawn as to the quality, timeliness, and access to care furnished by the MCCs. The Contractor shall ensure that the report includes the following for each activity conducted in accordance with 42 CFR 438.364:
 - (1) Objectives;
 - (2) Technical methods of data collection and analysis;
 - (3) Description of the data obtained; and
 - (4) Conclusions drawn from the data.
 - b. An assessment of each MCC's strengths and weaknesses
 - c. Recommendations for improving quality of health care services
 - d. Comparative information as the State deems methodologically appropriate as approved in writing by the State
 - e. An assessment of the degree to which each MCC has addressed effectively the recommendations for quality improvement made by the EQRO during the previous year
- A.22. The Contractor shall perform a quarterly validation of the accuracy of the provider information reported by the MCCs. The Contractor shall develop a survey tool and reporting format and shall obtain the approval of the State in writing prior to implementation of the first quarterly telephonic survey and as necessary, as determined by the State, thereafter. The Contractor shall ensure that a random sample large enough to produce statistically valid MCC specific results is drawn from the most current TennCare provider enrollment file each quarter. The Contractor shall include the following in the survey:
- a. Providers included in the sample shall be active, in plan providers of the following specialty types:
 - (1) Primary care providers and physician extenders
 - (2) Specialty care providers including, but not limited to OB, Cardiology, Gastroenterology, Neurology, Neurosurgery, Oncology/Hematology, Ophthalmology, Orthopedics, Otolaryngology, and Urology
 - (3) All reported dental providers
 - (4) All vision providers

- (5) All behavioral health providers
- b. Elements to be validated shall include, but not limited to, the following:
- (1) Verification of provider address and specialty
 - (2) Status of contract with MCC
 - (3) Panel age restrictions
 - (4) Telephone number
 - (5) Provides EPSDT services (applies to all PCPs and OB/GYNs seeing children <21 years)
 - (6) Panel status (open/closed)
 - (7) Appointment availability for routine and urgent care
 - (8) Prenatal and delivery services (OB/GYN or prenatal providers)
- A.23. The Contractor shall perform annual validation of all PIPs, with a minimum of five (5) from each MCC and two (2) from the DBM and PBM. The Contractor shall provide a summary report for each MCC that includes a section for each region of the state and an analysis of each PIP within that region, if applicable. In addition to compliance or non-compliance with CMS protocols, the Contractor shall ensure the report includes an evaluation of appropriateness of the PIP, encompassing results of other surveys completed, and include recommendations for improvement based on the documents and processes reviewed. The Contractor shall also include an indication of whether the need for each PIP was supported by appropriate data. If an area of non-compliance is identified, the Contractor shall be responsible for monitoring the MCC's Corrective Action Plan (CAP) related to the PIPs.
- A.24. The Contractor shall submit the report of annual validation of Performance Improvement Projects to TennCare by September 1st each year of the Contract.
- A.25. The Contractor shall prepare an annual comparative analysis of HEDIS and CAHPS results that shall be presented in a variety of formats including written text, graphs, and charts. The Contractor shall include trending of all HEDIS data.
- A.26. The Contractor shall submit the annual comparative analysis of MCC HEDIS and CAHPS results to TennCare annually by August 1st each year of the Contract.
- A.27. The Contractor shall submit the annual comparative analysis of MCC HEDIS and CAHPS results including comparison to nationwide scores using the same year's Quality Compass data to TennCare annually by October 31st each year of the contract as needed and at the direction of TennCare.
- A.28. The Contractor shall perform an annual Medication Assisted Treatment (MAT), as defined in Attachment A, survey. A survey tool will be developed by the Contractor and approved by the State prior to implementation. The electronic survey will include all MAT contracted providers. TennCare shall provide the list of MAT providers and the provider email addresses. Providers included in the survey: Individual providers identified as a contracted MAT provider by the MCC on their Provider Enrollment File (PEF), as defined in Attachment A.
- A.29. The Contractor shall conduct performance measure validation for two HEDIS administrative measures for each MCC according to CMS protocols, and as designated by TennCare.
- A.30. The Contractor shall submit the report of annual validation MCO Performance Measures to TennCare annually by September 1st each year of the Contract.
- A.31. The Contractor shall, under the direction of TennCare, perform an annual review of Abortion, Sterilization, and Hysterectomy (ASH) documentation, at the MCC level, to assure compliance with state and federal regulations in accordance with the Contractor Risk Agreements (CRAs), as defined in Attachment A, and TennCare Select Agreement and with Title 42 of the CFR § 441, Subparts E and F. The Contractor shall ensure that the audit is overseen by a physician. The

timeframe for conducting the audit will be decided jointly between TennCare and the EQRO. The Contractor shall ensure that evaluation includes a review and assessment of the following for each MCC:

- a. The sample of medical records to be reviewed shall include the following for the identified time frame of the audit:
 - (1) Paid claims for all absolute abortions;
 - (2) A statistically valid random sample of the absolute sterilizations and hysterectomies;
 - (3) A statistically valid random sample of any possible abortions, sterilizations and hysterectomies, and;
 - (4) TennCare's Healthcare Informatics Division shall pull the sample.
 - b. The medical record review shall assess for medical documentation of the following Federal guidelines:
 - (1) *Certification of Medical Necessity for Abortion*, including documentation that pregnancy is the result of rape or incest or continuation of pregnancy would endanger mother's life;
 - (2) *Sterilization Consent Form*, including documentation that informed consent was given between thirty (30) days and one hundred eighty (180) days prior to the sterilization (72 hours in the case of premature delivery or emergency surgery), individual over 21 years of age at time consent obtained, and the individual is mentally competent and not institutionalized, and;
 - (3) *Statement of Receipt of Information Concerning Hysterectomy*, including documentation that the procedure is medically necessary, is not performed primarily for the purpose of sterilization and is not for cancer prophylaxis.
 - c. The Contractor shall validate and analyze the data and prepare an overall summary of findings report including deficiencies and recommendations to be submitted to TennCare within thirty (30) days of the audit. An overall summary of findings report shall be submitted within sixty (60) days following the last audit.
- A.32. The Contractor shall, at the direction of TennCare, assist TennCare in the analysis and reporting of data pertaining to customer experience and satisfaction with the TennCare CHOICES program.
- a. The Contractor shall perform the analysis and reporting annually, and in accordance with a schedule that will be provided to the Contractor by the State.
 - b. The Contractor shall provide a final written summary of the survey findings, including comparisons between CHOICES groups, service settings, and by MCO, as applicable.
 - c. TennCare shall have final review and approval of all reports and materials prior to their dissemination.
 - d. Presentations of the results will be made to the State and other groups as requested by TennCare.
- A.33. The Contractor shall utilize data files provided by the State to analyze and summarize enrollment, utilization, and health outcome data for routine and ad hoc reporting as requested by TennCare. Data files may include, but are not limited to, provider files and MCO claims data.
- A.34. The Contractor shall provide technical assistance to the MCCs as directed by the State regarding performance improvement.

- A.35. The Contractor shall host meetings three (3) times per year with MCCs and interrelated oversight agencies to inform them of pertinent/current issues. The Contractor shall provide a list of dates and places for the meetings for the upcoming year to TennCare no later than January 15th each year of the Contract. The Contractor shall be made to secure speakers, with TennCare's approval, to discuss pertinent topics. The Contractor shall offer continuing education credits to relevant health plan participants at each meeting, including but not limited to nurses and quality professionals.
- A.36. The Contractor shall identify a primary contact individual who shall maintain communication with the State in connection with the Contractor's specified contractual responsibilities.
- A.37. The Contractor shall provide the State with the documented costs in an annual cost allocation plan to be approved by CMS to support the claim for Federal Financial Participation including providing documentation to support wages, benefits and all other expenditure items. The Contractor shall ensure that report is submitted to the State annually no later than October 15th.
- A.38. The Contractor shall maintain office space and personnel sufficient to fulfill all contractual obligations in Nashville, Tennessee, at a location approved by the State in writing. The Contractor shall perform all EQRO operations activities and related systems maintenance/modifications on-site at the facilities in Nashville, Tennessee approved by the State.
- A.39. The Contractor shall identify and inform the State of any procedure which may reduce the cost and/or increase the effectiveness of administering the EQRO function to the TennCare Program.
- A.40. The Contractor shall participate in TennCare meetings as requested by TennCare.
- A.41. The Contractor shall perform all other EQRO activities not otherwise designated as State responsibilities, which are necessary for optimal operation of the EQRO functions.
- A.42. The Contractor shall, at the discretion of TennCare, conduct an in-depth focused analysis on network adequacy for provider specialists and subspecialists as requested by TennCare.
- A.43. The Contractor shall assist in the annual review of the Quality Strategy as requested by TennCare.
- A.44. The Contractor shall prepare for each written deliverable a draft report, an executive summary, and a full final written report detailing findings and recommendations for each MCC. For each report, the Contractor shall identify best practices and opportunities for improvement, as well as recommendations specific to each MCC program. Unless otherwise specified by the State, the Contractor shall submit all reports to the State in both hard copy and electronic format. The Parties shall determine the number of hard copy reports and the electronic format for each report and shall be mutually agreed upon in writing by the Contractor and the State.
- A.45. The Contractor shall ensure that all reports produced shall include an accurate description of the care delivered to TennCare enrollees. The Contractor shall conduct reviews of care in accordance with generally accepted principles of research design, statistical analysis, and other appropriate validation techniques in order to produce valid and reliable analysis. The Contractor shall ensure that the reports shall include information from the MCCs that indicates care is actually being delivered according to contractual requirements and the MCC's policies and procedures. The Contractor shall ensure that all information clearly identifies instances in which care can be improved and provides a baseline for future assessments to determine whether care actually has improved. In addition, the Contractor shall ensure that the reports include comparative information on all MCOs and an assessment of the degree to which the MCC effectively addressed the recommendation for quality improvement made during the previous year's EQR.

- A.46. The Contractor shall provide ad hoc reports as requested by the State for such purposes as assessing the health care needs of the TennCare population or subsets of the population, identification of best practices and/or opportunities for improvement within contracted MCCs, or achieving compliance with State or Federal Regulations. The Contractor shall be responsible for two levels of ad-hoc reports: rapid response and focus studies. The Contractor would prepare, at TennCare's request, up to four (4) rapid response reports on a TennCare provided topic/question. The Contractor shall ensure that rapid response reports shall be completed within a two to four-week timeframe, commensurate to the complexity of the report and shall be prepared at no additional cost to the State. The Contractor shall prepare, at TennCare's request, up to two (2) focus studies on a TennCare provided topic/question. The focus study reports shall be completed within a three to four-month timeframe, commensurate to the complexity of the report and shall be prepared at no additional cost to the State. The State and the Contractor shall develop and agree in writing to the specific reporting timeframes on a report-by-report basis.
- A.47. The Contractor shall submit a detailed report of activities performed during each month. The report should be submitted to TennCare, in a format designated by TennCare, along with the monthly invoice described in Section C.5.
- A.48. The Contractor shall develop and maintain a plan for quality control to be approved by the State including, but not limited to, reviewer training, Inter-rater Reliability testing, medical record Over-Read of ten (10) percent, and determination of sample sizes needed in order to produce results that can be extrapolated to the entire universe being examined. The Contractor shall ensure that the plan covers, at a minimum, the following areas:
- a. Annual Quality Reviews;
 - b. Special reviews;
 - c. Report development and generation;
 - d. Deliverable production; and
 - e. Provider Network analysis.
- A.49. The Contractor shall develop and maintain written detailed procedures and protocols for all reviews, audits, performance measurements, and surveys identifying all steps in each process. The Contractor shall ensure that the procedures and protocols are written in such detail that the Contractor's reviewers will approach all activities in the same manner and with the same interpretation of results. The Contractor shall provide a copy of these procedures and protocols to TennCare and obtain prior written approval from the State. The Contractor shall obtain the State's written approval prior to making any changes to the procedures and protocols.
- A.50. The Contractor shall quickly and accurately respond to requests for information from the State.
- A.51. The Contractor shall provide physical site and data security sufficient to safeguard the operation and integrity of all TennCare-related data as specified and approved by the State. The Contractor shall ensure that all of the information, data, forms, and files are confidential and may not be released or used for any purpose other than carrying out the duties and responsibilities as defined in this Contract without the express consent of the State. The Contractor shall ensure that all employees have access to information on a "need to know" basis and that all reasonable efforts are maintained to ensure confidentiality. Any subcontractors, vendors, and anyone other than an employee of the Contractor shall not have access to the data or information related to this Contract without explicit State approval. The Contractor shall ensure compliance with Federal and Tennessee State Law as related to confidentiality of information and security.
- A.52. The Contractor shall maintain historical records encounter data, reference files, and any other files as required for backup and recovery purposes to support the analysis and reporting processes and to support State and Federal audit trail requirements.
- A.53. The Contractor shall be subject to periodic review and audit by both State and Federal authorities and shall:

- a. Provide data, in a specified electronic media with State approved content and format, to the State within five (5) working days of receipt of request as required to support internal or external audits.
 - b. Produce the source or hardcopy documentation and records which will substantiate information in requested files, or which is missing from the above files, within ten (10) days of receipt of request from the State. Such documentation shall be made available to the State at the State's facility in Nashville, Tennessee.
 - c. Provide reasonable access to facilities and personnel used by the Contractor in delivery of services to the State.
 - d. Be responsible for responding to audit inquiries and findings.
- A.54. The Contractor shall execute and enforce the provisions of the TennCare Business Associate Agreement (Attachment D) and ensure that, at all times, EQRO Systems and all data contained therein shall continue to be protected against unauthorized access. The Contractor shall ensure that all systems and facilities include appropriate and reasonable access control measures to ensure security, including active monitoring and incident response. The Contractor shall:
- a. Maintain, in facilities used by the Contractor for the EQRO functions, system security software which prevents unauthorized access to the system and identifies any such attempts at access.
 - b. Require all Contractor employees and all subcontractor personnel to sign relevant TennCare and State agreements for access to systems and data, acknowledging their duties with regard to security, confidentiality, and acceptable use, with copies maintained in their personnel files.
 - c. Maintain complete confidentiality of all passwords and IDs used by Contractor employees and all subcontractor personnel. The Contractor's employees shall not be permitted to share passwords or IDs among themselves except as explicitly authorized by the State. The Contractor shall ensure that only authorized personnel are granted access to systems or data and will maintain appropriate policy and procedure to ensure that access is revoked when no longer needed or appropriate for the performance of EQRO functions.
 - d. Limit and control access to the facilities used for EQRO functions. The Contractor's security measures shall include, but not be limited to, entry logs or identification badges. In addition, all server and shared data storage equipment shall be housed in space with controlled access, with doors locked at all times.
 - e. Limit and appropriately protect data stored on personal computers, or other equipment not housed in locked space, with controlled access.
 - f. Secure all data files (i.e. magnetic tapes and disks) controlled by the Contractor in a fireproof vault when not in use.
 - g. Secure all reports, whether test or production, in printed or electronic format, which are not forwarded to the State and contain provider or enrollee information until properly disposed of. The Contractor shall ensure that disposition of the reports shall be in accordance with State requirements.
- A.55. The Contractor shall provide assistance in the turnover of the TennCare EQRO functions to the State or a new Contractor, if applicable, prior to the conclusion of the Contract, or in the event of a termination for any reason. The Contractor shall be responsible for all work in progress until the end date of this Contract as currently written or amended in Section B.1. The Contractor shall ensure that the work in progress includes report requests, analysis projects, special studies, and any other tasks which fall within the scope of work of this Contract and are currently in progress

at the time of Transition. The Contractor's responsibilities during the turnover phase shall include but are not limited to:

- a. Prepare and submit a detailed written turnover phase plan within thirty (30) days of written request by the State. The Contractor shall ensure that the plan shall define the turnover approach, define all tasks and subtasks, and provide a schedule for the turnover effort to achieve State requirements.
- b. Provide a current listing of all software used to support the EQRO functions.
- c. Transfer all files, data, and other materials of the TennCare EQRO function to the State or its designated agent, as requested.
- d. Provide copies of all procedures for performing the functions of the EQRO.
- e. Provide procedures used to the State or its designated agent in the performance of all contract-related functions including, but not limited to, the procedures for the EQRO, periodic reviews of managed care organizations, and ad hoc report generation and analysis.
- f. Provide an estimated inventory of all work in progress and its projected status at the end of the contract within one (1) week after the beginning of the turnover phase.
- g. Update the work in progress inventory estimates weekly throughout the turnover phase.
- h. Provide a final, detailed inventory and accounting of all work in progress and completed work.
- i. Prepare and submit a final report summarizing turnover task results and certifying the completion of all turnover responsibilities.
- j. Cooperate with the State and new Contractor throughout the turnover phase to ensure a smooth transition.

A.56. Control Memorandum Process. The Control Memorandum ("CM") process shall be utilized by the Contractor to clarify Contract requirements, issue instruction to the Contractor, document action required of the Contractor, or request information from the Contractor. This process will be used to address issues or matters that do not require a contract amendment. Each CM shall 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 shall be signed and approved by the State's Project Director (or his/her designee).

To the extent possible, the State and Contractor will discuss all potential CMs prior to issuance by the State and will work collaboratively to reach agreement regarding the subject matter of each CM. However, nothing in this Contract shall be deemed to be a delegation to the Contractor of the State's non-delegable duties relating to TennCare, as administered by the single state agency designated by the State and CMS pursuant to Title XIX of the Social Security Act (42 U.S.C § 1396 et seq.) and the Section 1115 research and demonstration waiver granted to the State and any successor programs.

- 1) A CM may include one (1) or more of the following components of the CM process described below:
 - a. On Request Report (ORR) – a request directing the Contractor to provide information by the time and date set out in the CM.
 - b. Control Directive (CD) – instructions that require the Contractor to complete, within a designated timeframe, one (1) or more deliverables or to perform any

other request from the State that is within the scope of the Contract. A CD may also provide clarification of certain Contract terms. Once a CM/CD has been issued, it shall be considered to be incorporated into this Contract.

- c. Notice of Potential Damages (Actual or Liquidated) (NPD) – notification to the Contractor that the State has determined that a potential Contract performance or compliance issue exists and that the State is contemplating assessing damages, actual and/or liquidated. The NPD shall identify the Contract provision(s) on which the State determination rests. The State shall issue a NPD within ninety (90) days of State's actual knowledge of a potential Contract performance failure or compliance issue.
- d. Notice of Calculation of Potential Damages (Actual or Liquidated) (NCPD) – notification to the Contractor that provides a calculation of the amount of potential damages, actual and/or liquidated, that the State is contemplating assessing against the Contractor. NPDs and NCPDs may be issued consecutively or simultaneously.
- e. Notice of Intent to Assess Damages (Actual or Liquidated) (NIAD) – notification to the Contractor that the State is assessing damages and specifying whether the damages are actual damages, Liquidated Damages, or both, and setting out the performance or compliance issue 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 NCPD. The State may not obtain both Liquidated Damages and Actual Damages for the same occurrence of a Contract performance failure.

A.57. 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.8, including Liquidated Damages as listed in Contract Attachment C, a corrective action plan, and/or termination of the Contract.

A.58. 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.

B. CONTRACT PERIOD:

B.1 This Contract shall be effective for the period beginning on September 1, 2020 ("Effective Date") and ending on September 30, 2023 ("Term"). The State shall have no obligation for goods delivered or services provided by the Contractor prior to the Effective Date.

B.2. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to two (2) renewal options under the same terms and

conditions for a period not to exceed twelve (12) months each by the State, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

- B.3. Term Extension. The State may extend the Term an additional period of time, not to exceed one hundred-eighty (180) days beyond the expiration date of this Contract, under the same terms and conditions, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Four Million, Nine Hundred Seventy-Five Thousand, Four Hundred Four Dollars (\$4,975,404.00) ("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:

- (1) Services performed from September 1, 2020 through September 30, 2020, shall be at no cost to the State.
- (2) For service performed from October 1, 2020, through September 30, 2021, the following rates shall apply:

Service Description	Amount (per compensable increment)
General Administration and Operations (including all scopes of services and deliverables included in the pro forma)	\$133,542.00 per month

- (3) For service performed from October 1, 2021, through September 30 2022, the following rates shall apply:

Service Description	Amount (per compensable increment)
General Administration and Operations (including all scopes of services and deliverables included in the pro forma)	\$138,369.00 per month

- (4) For service performed from October 1, 2022, through September 30 2023, the following rates shall apply:

Service Description	Amount (per compensable increment)
General Administration and Operations (including all scopes of services and deliverables included in the pro forma)	\$142,706.00 per month

- (5) Should term extension option be utilized, for services performed from October 1, 2023 through September 30, 2024, the following rates shall apply:

Service Description	Amount (per compensable increment)
General Administration and Operations (including all scopes of services and deliverables included in the pro forma)	\$148,622.00 per month

- (6) Should term extension option be utilized, for services performed from October 1, 2024 through September 30, 2025, the following rates shall apply:

Service Description	Amount (per compensable increment)
General Administration and Operations (including all scopes of services and deliverables included in the pro forma)	\$153,243.00 per month

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 TennCare
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 TennCare;
- (5) Customer account number (assigned by the Contractor to the above-referenced Customer);

- (6) Contractor name;
- (7) Contractor Tennessee Edison registration ID number;
- (8) Contractor contact for invoice questions (name, phone, or email);
- (9) Contractor remittance address;
- (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
- (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
- (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
- (13) Amount due for each compensable unit of good or service; and
- (14) Total amount due for the invoice period.

b. Contractor's invoices shall:

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

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

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

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

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

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

- a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
- b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

D. MANDATORY TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.
- D.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract 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 TennCare
310 Great Circle Road
Nashville, TN 37243
Telephone # (615) 507-6444
FAX # (615) 253-5607

The Contractor:

John Couzins, MPH, CHCA
EQRO Director/Epidemiologist
Qsource
jcouzins@qsource.org
Telephone # 615-244-2007

Dawn M. Fitzgerald, MS, MBA
Chief Executive Officer
Qsource
dfitzgerald@qsource.org
Telephone # 901-692-3539

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

- 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. The State's exercise of a valid Renewal Option or Term Extension does not constitute an amendment so long as there are no other changes to the Contract's terms and conditions.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor

shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.

- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.
- D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

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

- D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination. In addition, the Contractor shall comply with the provisions of Contract Section E.22. (Nondiscrimination Compliance Requirements), and this Section D.9 shall not be deemed to limit or abridge any requirement set forth in Section E.22.
- 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 B, 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 ten (10) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.

- D.16 Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act (“PPACA”) with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless from any costs to the State arising from Contractor’s failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State’s Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State’s total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor’s Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor’s liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death. For clarity, except as otherwise expressly set forth in this Section, Contractor’s indemnification obligations and other remedies available under this Contract are subject to the limitations on liability set forth in this Section.
- 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’ fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract.

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

- D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), Health Information Technology for Economic and Clinical Health (“HITECH”) Act and any other relevant laws and regulations regarding privacy (collectively the “Privacy Rules”). The obligations set forth in this Section shall survive the termination of this Contract.
- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
 - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the

Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.

- c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT “protected health information” as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
 - d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.
- D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System (“TCRS”), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member’s retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of “employee/employer” and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.
- D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
 - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded, disqualified, or presently fall under any of the prohibitions of sections a-d.

- D.24. Force Majeure. “Force Majeure Event” means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor’s representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor’s performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees for the affected obligations until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.
- D.25. State and Federal Compliance. The Contractor shall comply with all State and federal laws and regulations applicable to Contractor in the Contractor’s performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. 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 - 408.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties’ agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor’s duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
 - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes Attachments A, B, C, D, and E;

- 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 as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, 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.

D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible or self insured retention ("SIR") over fifty thousand dollars (\$50,000) must be approved by the State. The deductible or SIR and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an aggregate meeting or exceeding the required coverage amounts is acceptable. For example: If the required policy limit under this Contract is for two million dollars (\$2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars (\$1,000,000) combined with an umbrella policy for an additional one million dollars (\$1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers' Liability Accident), Contractor shall provide a copy of the umbrella insurance policy documents to ensure that no aggregate limit applies to the umbrella policy for that coverage area. In the event that an umbrella policy is being provided to achieve any required coverage amounts, the umbrella policy shall be accompanied by an endorsement at least as broad as the Insurance Services Office, Inc. (also known as "ISO") "Noncontributory—Other Insurance Condition" endorsement or shall be written on a policy form that addresses both the primary and noncontributory basis of the umbrella policy if the State is otherwise named as an additional insured.

Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer's National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) business days prior to the Effective Date and again thirty (30) calendar days before renewal or replacement of coverage. Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor's policy. At any time, the State may require Contractor to provide a valid COI. The Parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Contract. If Contractor self-insures, then a COI will not be required to prove

coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor's letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses. The State reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. 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 or its insurer, 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.

The insurance obligations under this Contract shall be: (1)—all the insurance coverage and policy limits carried by the Contractor; or (2)—the minimum insurance coverage requirements and policy limits shown in this Contract; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and minimum required policy limits, which are applicable to a given loss, shall be available to the State. No representation is made that the minimum insurance requirements of the Contract are sufficient to cover the obligations of the Contractor arising under this Contract. The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.

a. Commercial General Liability ("CGL") Insurance

- 1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises and operations products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The Contractor shall maintain single limits not less than one million dollars (\$1,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this policy or location of occurrence or the general aggregate limit shall be twice the required occurrence limit.

b. Workers' Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:
 - i. Workers' compensation in an amount not less than one million dollars (\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit by disease, and one million dollars (\$1,000,000) per employee for bodily injury by disease.
- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
 - i. The Contractor employs fewer than five (5) employees;
 - ii. The Contractor is a sole proprietor;

- iii. The Contractor is in the construction business or trades with no employees;
- iv. The Contractor is in the coal mining industry with no employees;
- v. The Contractor is a state or local government; or
- vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

c. Automobile Liability Insurance

- 1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).
- 2) The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars (\$1,000,000) per occurrence or combined single limit.

d. Technology Professional Liability (Errors & Omissions)/Cyber Liability Insurance

- 1) The Contractor shall maintain technology professional liability (errors & omissions)/cyber liability insurance appropriate to the Contractor's profession in an amount not less than ten million dollars (\$10,000,000) per occurrence or claim and ten million dollars (\$10,000,000) annual aggregate, covering all acts, claims, errors, omissions, negligence, infringement of intellectual property (including copyright, patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, information theft, damage to destruction of or alteration of electronic information, breach of privacy perils, wrongful disclosure and release of private information, collection, or other negligence in the handling of confidential information, and including coverage for related regulatory fines, defenses, and penalties.

Such coverage shall include data breach response expenses, in an amount not less than ten million dollars (\$10,000,000) and payable whether incurred by the State or Contractor, including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services and expenses in the performance of services for the State or on behalf of the State hereunder.

e. Crime Insurance

- 1) The Contractor shall maintain crime insurance, which shall be written on a "loss sustained form" or "loss discovered form" providing coverage for third party fidelity, including cyber theft and extortion. The policy must allow for reporting of circumstances or incidents that may give rise to future claims, include an extended reporting period of no less than two (2) years with respect to events which occurred but were not reported during the term of the policy, and not contain a condition requiring an arrest or conviction.

Any crime insurance policy shall have a limit not less than one million dollars (\$1,000,000) per claim and one million dollars (\$1,000,000) in the aggregate. Any crime insurance policy shall contain a Social Engineering Fraud Endorsement with a limit of not less than two hundred and fifty thousand dollars (\$250,000). This insurance may be written on a claims-made basis, but in the event that coverage is cancelled or non-renewed, the Contractor shall purchase an extended reporting or "tail coverage" of at least two (2) years after the Term.

- D.33. Major Procurement Contract Sales and Use Tax. Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Contractor and the Contractor's subcontractors shall remit sales and use taxes on the sales of goods or services that are made by the Contractor or the Contractor's subcontractors and that are subject to tax.
- D.34. 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.

- D.35. Equal Opportunity. The Contractor agrees as follows:
- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:
 - (1) Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising;
 - (2) Layoff or termination;
 - (3) Rates of pay or other forms of compensation; and
 - (4) Selection for training, including apprenticeship.
- The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
 - c. If the State approves any subcontract, the subcontract shall include paragraphs (a) and (b) above.
 - d. In addition, to the extent applicable the Contractor agrees to comply with 41 C.F. R. § 60-1.4, as that section is amended from time to time during the term.

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. 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.3. Intellectual Property Indemnity. 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.4. 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.5. 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.6. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:
- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

- E.7. 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 31865-00611 (Attachment E) 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 monthly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, service-disabled veterans, and persons with disabilities. Such reports shall be provided to the State of Tennessee Governor's Office of Diversity Business Enterprise in the TN Diversity Software available online at:
<https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810>.

- E.8. 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 Reference 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.56. 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 Reference 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.9. 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.10. 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.11. 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 or ensure 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. The obligations set forth in this Section shall survive the termination of this Contract.

E.12. Federal Funding Accountability and Transparency Act (FFATA). This Contract requires the Contractor to provide supplies or services that are funded in whole or in part by federal funds that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Contractor provides information to the State as required.

The Contractor shall comply with the following:

- a. Reporting of Total Compensation of the Contractor's Executives.
 - (1) The Contractor shall report the names and total compensation of each of its five most highly compensated executives for the Contractor's preceding completed fiscal year, if in the Contractor's preceding fiscal year it received:
 - i. 80 percent or more of the Contractor's annual gross revenues from federal procurement contracts and federal financial assistance subject to

- the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
- ii. \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts), and federal financial assistance subject to the Transparency Act (and subawards); and
- iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Securities and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

As defined in 2 C.F.R. § 170.315, “Executive” means officers, managing partners, or any other employees in management positions.

(2) Total compensation means the cash and noncash dollar value earned by the executive during the Contractor’s preceding fiscal year and includes the following (for more information see 17 C.F.R. § 229.402(c)(2)):

- i. Salary and bonus.
- ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- v. Above-market earnings on deferred compensation which is not tax qualified.
- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

- b. The Contractor must report executive total compensation described above to the State by the end of the month during which this Contract is awarded.
- c. If this Contract is amended to extend the Term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the term extension becomes effective.
- d. The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>

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

E.13. Survival. The terms, provisions, representations, and warranties contained in Sections D.11 (Records), D.19 (Hold Harmless), D.20 (HIPAA Compliance), D.34 (Confidentiality of Records), E.3 (Intellectual Property), E.5 (Prohibited Advertising), E.11 (Personally Identifiable Information),

E.16 (Notification of Breach), E.18 (SSA Data), and E.19 (IRS Data) of this Contract shall survive the completion of performance, termination or expiration of this Contract.

- E.14. 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, TENNCARE 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.15. Business Associate. As the Contractor will provide services to TENNCARE pursuant to which the Contractor will have access to, receive from, create, or receive on behalf of TENNCARE Protected Health Information, or Contractor will have access to, create, receive, maintain or transmit on behalf of TENNCARE Electronic Protected Health Information (as those terms are defined under HIPAA and HITECH), Contractor hereby acknowledges its designation as a business associate under HIPAA and agrees to comply with all applicable HIPAA regulations and the terms in the associated Business Associate Agreement (See Contract Attachment D).
- E.16. Notification of Breach and Notification of Suspected Breach. The Contractor shall notify TENNCARE's Privacy Office immediately upon becoming aware of and in no case later than 48 hours after discovery 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.17. 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 TENNCARE and Contractor via the data transfer method specified in advance by TENNCARE. This may include, but shall not be limited to, transfer through TENNCARE's SFTP system. Failure by the Contractor to transmit information or data that is necessary for a deliverable in the manner specified by TENNCARE, may, at the option of TENNCARE, result in liquidated damages as set forth on Contract Attachment C, hereto.
- E.18. Social Security Administration (SSA) Required Provisions for Data Security. The Contractor shall comply with limitations on use, treatment, and safeguarding of data under the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, related Office of Management and Budget guidelines, the Federal Information Security Management Act of 2002 (44 U.S.C. §3541, *et seq.*), and related National Institute of Standards and Technology guidelines. In addition, the Contractor shall have in place administrative, physical, and technical safeguards for data.
- a. The Contractor shall specify in its agreements with any agent or subcontractor that will have access to data 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;
 - b. The Contractor shall not duplicate in a separate file or disseminate, without prior written permission from TennCare, the data governed by the Contract for any purpose other than that set forth in this Contract for the administration of the TennCare program. Should the Contractor propose a redisclosure of said data, the Contractor must specify in writing to TennCare the data the Contractor proposes to redisclose, to whom, and the reasons that justify the redisclosure. TennCare will not give permission for such redisclosure unless the redisclosure is required by law or essential to the administration of the TennCare program.
 - c. The Contractor agrees to abide by all relevant federal laws, restrictions on access, use, and disclosure, and security requirements in this Contract.

- d. The Contractor shall provide a current list of the employees of such contractor with access to SSA data and provide such lists to TennCare.
- e. The Contractor shall restrict access to the data obtained from TennCare to only those authorized employees who need such data to perform their official duties in connection with purposes identified in this Contract. The Contractor shall not further duplicate, disseminate, or disclose such data without obtaining TennCare's prior written approval.
- f. The Contractor shall ensure that its employees:
 - (1) properly safeguard PHI/PII furnished by TennCare under this Contract from loss, theft or inadvertent disclosure;
 - (2) receive regular, relevant and sufficient SSA data related training, including use, access and disclosure safeguards and information regarding penalties for misuse of information;
 - (3) understand and acknowledge 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;
 - (4) ensure that laptops and other electronic devices/ media containing PHI/PII are encrypted and/or password protected;
 - (5) Send emails containing PHI/PII only if the information is encrypted or if the transmittal is secure; and,
 - (6) limit disclosure of the information and details relating to a PHI/PII loss only to those with a need to know.

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

- g. **Loss or Suspected Loss of Data.** If an employee of the Contractor becomes aware of suspected or actual loss of PHI/PII, the Contractor must notify TennCare immediately upon becoming aware to report the actual or suspected loss. The Contractor must provide TennCare with timely updates as any additional information about the loss of PHI/PII becomes available.

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

- h. TENNCARE may immediately and unilaterally suspend the data flow under this Contract, or terminate this Contract, if TennCare, in its sole discretion, determines that the Contractor has: (1) made an unauthorized use or disclosure of TennCare SSA-supplied data; or (2) violated or failed to follow the terms and conditions of this Contract Section.
- i. This Section further carries out Section 1106(a) of the Act (42 U.S.C. 1306), the regulations promulgated pursuant to that section (20 C.F.R. Part 401), the Privacy of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, related Office of Management and Budget ("OMB") guidelines, the Federal Information Security Management Act of 2002 ("FISMA") (44 U.S.C. 3541 et seq.), and related National Institute of Standards and Technology ("NIST") guidelines, which provide

the requirements that the SSA stipulates that the Contractor must follow with regard to use, treatment, and safeguarding data in the event data is exchanged with a federal information system.

j. Definitions.

- (1) "SSA-supplied data" or "data" as used in this section – information, such as an individual's social security number or income, supplied by the Social Security Administration to TennCare to determine entitlement or eligibility for federally-funded programs (covered by a CMPPA between SSA and F&A, and IEA between SSA and TennCare).
- (2) "Protected Health Information/Personally Identifiable Information" (PHI / PII) (45 C.F.R. 160.103; OMB Circular M-06-19) – Protected health information means individually identifiable health information that is: (i) Transmitted by electronic media; (ii) Maintained in electronic media; or (iii) Transmitted or maintained in any other form or medium.
- (3) "Individually Identifiable Health Information"- information that is a subset of health information, including demographic information collected from an individual, and: (1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) identifies the individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- (4) "Personally Identifiable Information" – any information about an individual maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and information which can be used to distinguish or trace an individual's identity, such as their name, Social Security Number, date and place of birth, mother's maiden name, biometric records, including any other personal information which can be linked to an individual.

E.19. 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 TennCare or its designee. When this is not possible, the Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy print-outs and will provide the TennCare or its 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 TennCare and, upon request, to the IRS reviewing office.
- (10) TennCare 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.

(i) 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.

c) Inspection.

The IRS and TennCare with 24-hour notice, shall have the right to send their 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 with FTI under this contract. The IRS and TennCare's right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, specific measures may be required in cases where the Contractor is found to be noncompliant with Contract safeguards.

E.20. 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.21. Offer of Gratuities. By signing this contract, the Contractor signifies that no member of or a delegate of Congress, nor any elected or appointed official or employee of the State of Tennessee, the federal General Accounting Office, federal Department of Health and Human Services, the Center for Medicare and Medicaid Services, or any other state or federal agency has or will benefit financially or materially from this Contract. This Contract may be terminated by TennCare as provided in Section D.5, 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.22. 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.

1. Nondiscrimination Compliance Coordinator. 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 (codified at 45 C.F.R. pt. 92) 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. Contractor agrees that its civil rights compliance staff member will work directly with TennCare's Director of Civil Rights Compliance ("DCRC") in order to implement and coordinate nondiscrimination compliance activities. 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 the DCRC by name.

Within ten (10) calendar days of the commencement of any period of time that the Contractor does not have a NCC, the Contractor shall provide written notice of this event to the DCRC. The name and contact information for the new NCC shall be reported in writing to the DCRC within ten (10) calendar days of assuming the duties of the NCC.

2. Policies and Procedures. The Contractor shall, at a minimum, implement nondiscrimination in its personnel policies and procedures as it relates to hiring, promoting, operational policies, contracting processes and participation on advisory/planning boards or committees.
3. Implementation. Prior to implementation of this Contract, the NCC shall participate in a readiness review phase. The DCRC shall provide the NCC with the nondiscrimination/civil rights readiness review expectations for this Contract and provide technical assistance to the NCC.

(i) The NCC shall provide the Contractor's written policies and procedures that demonstrate nondiscrimination in the provision of services provided under this Contract to DCRC. These policies shall include topics, such as, discrimination complaint workflows and procedures, the provision of effective communication services (i.e. language assistance services to individuals with Limited English Proficiency and auxiliary aids or services to individuals with disabilities), and providing other forms of assistance to individuals with disabilities (i.e. reasonable accommodations). 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. Any nondiscrimination policies

and procedures that are specific to TennCare program members and/or participants shall be prior approved in writing by the DCRC.

(ii) The Contractor's NCC shall develop a nondiscrimination training plan within thirty (30) days of the implementation of this Contract and shall provide a copy of such training plan to DCRC. This training plan shall detail how the Contractor's annual civil rights training will be provided to staff and tracked for compliance. The plan shall include the Contractor's procedures for training new hires and capturing the new hire training data. On a quarterly and annual basis, the Contractor's new hire and annual training data shall be provided to DCRC. If needed, the NCC may request an extension of time for providing the training plan to DCRC. Thereafter, the Contractor shall update the training plan as needed to conform to changes in federal and State law and provided to the DCRC on an annual basis and upon request.

4. Training. On an annual basis, the Contractor shall be responsible for making nondiscrimination training available to all Contractor staff and to its subcontractors that are considered to be recipients of federal financial assistance under this contract. The Contractor shall be able to show documented proof to OCRC that the training was made available to the Contractor's staff and to its subcontractors that are considered to be recipients of federal financial assistance under this contract.
5. Records. 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"), TennCare, 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, TennCare, or THRC. The requested information may be necessary to enable HHS, DOJ, TennCare, 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.
6. Access. 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, TennCare, 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.
7. Complaint Forms. The Contractor shall use and have available to individuals TennCare's discrimination complaint forms for the TennCare program(s) covered under this contract. These discrimination complaint forms shall be provided to individuals upon request and be available on the Contractor's website. TennCare's discrimination complaint forms are vital documents and must be available at a minimum in the English, Spanish, Arabic languages. The DCRC shall provide the NCC with TennCare's 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 TennCare program(s) 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 DCRC.

8. Nondiscrimination Notice and Taglines. Should the Contractor create TennCare materials, the Contractor shall ensure that significant publications and significant communications, including small sized publications and communications that are targeted to beneficiaries, participants, enrollees, applicants, and members of the public shall be printed with the notice of nondiscrimination and LEP taglines as required by TennCare and set forth in TennCare's tagline templates and the applicable federal civil rights laws, including 45 C.F.R. pt 45. Written materials specific to TennCare's programs' members shall be prior approved in writing by TennCare prior to the materials being sent to these individuals and shall be translated for members who are Limited English Proficient in accordance with the following requirements:
 - (i) Pursuant to 68 Fed. Reg 47311-02, within ninety (90) calendar days of notification from TennCare, all vital Contractor documents related to this Contract shall be translated and available to each Limited English Proficiency ("LEP") group identified by TennCare in accordance with the applicable standards set forth below:
 - (ii) If a LEP group constitutes five percent (5%) or 1,000, whichever is less, of the population targeted under this Contract, vital documents shall be translated into that LEP language. Translation of other documents, if needed, can be provided orally; or
 - (iii) If there are fewer than fifty (50) individuals in a language group that is part the population targeted under this Contract that reaches the five percent (5%) trigger in (a), the Contractor shall inform those individuals that it does not provide written translation of vital documents but provides written notice in that group's primary language of the right to receive competent oral interpretation of those written materials, free of cost.
 - (iv) At a minimum, all vital Contractor documents shall be translated and available in Spanish.
- b. Nondiscrimination Compliance Reports. The Contractor shall submit the following nondiscrimination compliance deliverables to TennCare as follows:
 1. Annual Compliance Questionnaire. Annually, the DCRC shall provide the NCC with a Nondiscrimination Compliance Questionnaire. The NCC shall answer the questions contained in the Compliance Questionnaire and submit the completed Questionnaire to DCRC 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 TennCare.
 - (i) As part of the requested documentation for the Nondiscrimination Compliance Questionnaire, the NCC shall submit copies of the Contractor's nondiscrimination policies and procedures (e.g. 45 C.F.R. § 80.3; 45 C.F.R. § 92.101) that demonstrate nondiscrimination in the provision of its services, programs, or activities provided under this Contract.
 - (ii) The NCC shall include, as part of the requested documentation for the Nondiscrimination Compliance Questionnaire, reports that capture data for all language and communication assistance services used and provided by the Contractor under this Contract. The Contractor shall ensure that language and communication assistance section of the questionnaire contains:

- (a) the names of the Contractor's language and communication assistance service providers;
- (b) the languages in which interpretation and translation services are available;
- (c) the auxiliary aids or services that are provided and are available;
- (d) the hours that language and communication assistance services are available;
- (e) numbers individuals call to access language and communication assistance services;
- (f) a separate Excel spreadsheet report that captures a listing of language and communication assistance services that were requested by members and/or participants (e.g. Arabic; Braille) and the methods used to provide the language and alternative communication service to the members (i.e. interpretation; translation).

Upon request, the NCC 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.

2. Quarterly Compliance Reports. The NCC shall submit a quarterly Non-discrimination Compliance Report which shall include the following:
 - (i) A summary listing that captures the total number of the Contractor's new hires that have completed civil rights/nondiscrimination training and cultural competency training and the dates the trainings were completed for that quarter;
 - (ii) A listing of the total number of the Contractor's employees that have completed annual civil rights training and cultural competency training and the dates completed for that quarter, if annual training was provided during that quarter.
 - (iii) An update of all written discrimination complaints filed by individuals, such as, employees, members, participants, and subcontractors in which the discrimination allegation is related the provision of and/or access to TennCare covered services provided by the Contractor, which the NCC is assisting the DCRC with resolving. This update shall include, at a minimum: identity of the complainant, complainant's relationship to the Contractor, circumstances of the complaint; type of covered service related to the complaint, date complaint filed, the Contractor's resolution, date of resolution, and the name of the Contractor staff person responsible for adjudication of the complaint. For each complaint reported as resolved the Contractor shall submit a copy of the complainant's letter of resolution.
 - (iv) The NCC shall provide a listing of all discrimination claims that are reported to the Contractor that are claimed to be related to the provision of and/or access to TennCare's covered services provided by the Contractor. The Contractor shall ensure that the listing includes, at a minimum, the:
 - A. Identity of the complainant;
 - B. Complainant's relationship to the Contractor;
 - C. Circumstances of the complaint;
 - D. Type of covered service related to the complaint;
 - E. Date complaint filed;
 - F. Contractor's resolution;
 - G. Date of resolution.

When such reports are made, the Contractor shall offer to provide the discrimination complaint forms to the individual making the report.

- (v) The language and communication assistance report shall capture a summary listing of language and communication assistance services that were requested by members and/or participants (i.e. Arabic; Braille) and the methods used to provide the language and alternative communication service to the members and/or participants (i.e. interpretation; translation). Upon request, the NCC 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. All discrimination complaints against the Contractor and its employees and its subcontractors that are considered to be recipients of federal financial assistance under this contract shall be resolved according to the provisions of this Section and the below subsections:
- 1. Discrimination Complaints against the Contractor and/or Contractor's Employees. When complaints concerning alleged acts of discrimination committed by the Contractor and/or its employees related to the provision of and/or access to one of TennCare's programs are reported to the Contractor, the NCC shall send such complaints within two (2) business days of receipt to the DCRC. The DCRC shall investigate and resolve all alleged acts of discrimination committed by the Contractor and/or its employees. The Contractor shall cooperate with TennCare during the investigation and resolution of such complaints. The DCRC reserves the right to request that the NCC assist with conducting the initial investigations and to suggest resolutions of alleged discrimination complaints. If the DCRC requests that the NCC assist TennCare with conducting the initial investigation, the NCC shall start the initial investigation within five (5) business days from the date of the request. The NCC shall provide the DCRC with all requested information, including but not limited to, the identity of the party filing the complaint; the complainant's relationship to the Contractor; the circumstances of the complaint; date complaint filed; and the Contractor's suggested resolution. The DCRC shall review the NCC's initial investigations and determine the appropriate resolutions for the complaints as set forth in subsection c below. During the complaint investigation, the NCC shall have the opportunity to provide the DCRC with any information that is relevant to the complaint investigation. The Contractor shall take reasonable methods to keep such documentation and materials confidential and shall not disclose the documentation or materials related to such investigation, to any third party unless otherwise required by law.
 - 2. Discrimination Complaints against the Contractor's Subcontractors that are recipients of federal financial assistance under this Contract. Should complaints concerning alleged acts of discrimination committed by the Contractor's subcontractors related to the provision of and/or access to one of TennCare's programs be reported to the Contractor, the NCC shall inform the DCRC of such complaints within two (2) business days from the date Contractor learns of such complaints. If the DCRC requests that the NCC assist TennCare with conducting the initial investigation, the NCC's nondiscrimination compliance officer shall start the initial investigation within five (5) business days from the date of the request. Once an initial investigation has been completed, the NCC's shall report his/her determinations to the DCRC. At a minimum, the NCC's report shall include the identity of the party filing the complaint; the complainant's relationship to the Contractor; the circumstances of the complaint; date complaint filed; and the Contractor's suggested resolution. The DCRC shall review the NCC's initial investigations and determine the appropriate resolutions for the complaints as set forth in subsection (3) below. The DCRC reserves the right to investigate and resolve all complaints concerning alleged acts of discrimination

committed by the Contractor's subcontractors that are recipients of federal financial assistance under this Contract. The Contractor's Providers and Subcontractors that are recipients of federal financial assistance under this Contract shall cooperate with TennCare and the Contractor during discrimination investigations and resolutions.

3. Corrective Action Plans to Resolve Discrimination Complaints. If a discrimination complaint against the Contractor or its employees or one of its subcontractors who are recipients of federal financial assistance under this contract, is determined by the DCRC to be valid, the DCRC shall, at its option, either: (i) provide the Contractor with a corrective action plan to resolve the complaint, or (ii) request that the Contractor submit a proposed corrective action plan to the DCRC for review and approval that specifies what actions the Contractor proposes to take to resolve the discrimination complaint. Upon provision of the corrective action plan to Contractor by the DCRC, or approval of the Contractor's proposed corrective action plan by the DCRC, the Contractor shall implement the approved corrective action plan to resolve the discrimination complaint. TennCare, in its sole discretion, shall determine when a satisfactory discrimination complaint resolution has been reached and shall notify Contractor of the approved resolution. A discrimination complaint resolution corrective action plan may consist of approved nondiscrimination training on relevant discrimination topics. Prior to use, the nondiscrimination training material shall be reviewed and approved by the DCRC. Time periods for the implementation of the corrective action plan nondiscrimination training shall be designated by TennCare.

d. Electronic and Information Technology Accessibility Requirements.

1. The Contractor shall comply with the civil rights requirements set forth in 42 C.F.R. § 433.112 regarding the design, development, installation or enhancement of mechanized processing and information retrieval systems. In addition, the Contractor shall participate in the State's effort to comply with the nondiscrimination requirements for acquiring automatic data and processing equipment and services set forth in 45 C.F.R. § 95.633.
2. 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"), the Americans with Disabilities Act, and 45 C.F.R. pt. 92 (or any subsequent standard adopted by an oversight administrative body, including the Federal Accessibility Board). To comply with the accessibility requirements for Web content and non-Web electronic documents and software, the Contractor shall use the most current W3C's Web Content Accessibility Guidelines ("WCAG") level AA or higher (For the W3C's guidelines see: <https://www.w3.org/WAI/standards-guidelines/wcag/new-in-21/>) (More resources can be found at <https://www.w3.org/WAI/> and <https://www.access-board.gov/guidelines-and-standards/communications-and-it/>).

Contractor agrees to perform regularly scheduled (i.e., automatic) scans and manual testing for the most current WCAG level AA or higher 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 the most current WCAG level AA or higher. Commercial Off-the-shelf ("COTS") products may be used to verify aspects of the most current WCAG level AA or higher compliance. Should the Contractor have a designated staff member responsible for Contractor's electronic and information technology accessibility compliance, the name and contact information for this individual shall be provided to TennCare within ten (10) days of the implementation of this Contract and within ten (10) days of this position being reassigned to another staff member.

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

Should the system or a component of the system fail to comply with the accessibility standards, the Contractor shall develop and submit to TennCare 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.

TennCare shall review the noncompliance report to determine whether or not it is acceptable and should be implemented. Once the noncompliance report is approved by TennCare the Contractor may implement the compliance plan. TennCare, 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 the most current WCAG level AA or higher, it shall demonstrate through its reporting to TennCare that obtaining or providing accessible content would fundamentally alter the nature of its goods and services or would result in an undue burden.

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.

- e. Culturally Competent Delivery of Program Services. The Contractor and its subcontractors that are providing services pursuant to this Contract shall participate in the State's efforts to promote the delivery of services in a culturally competent manner to all TennCare enrollees/representatives/participants, including those with Limited English Proficiency, disabilities and diverse cultural and ethnic backgrounds regardless of an individual's sex. This includes the Contractor emphasizing to its staff the importance of providing language and communication assistance services, auxiliary aids or services, or reasonable accommodations to individuals who are being served under this Contract and instruction on the procedures the Contractor's staff should use to provide the needed assistance to the individual.

- E.23. Discovery and Litigation Hold Requirements. TennCare is frequently involved in litigation as either a party or a non-party with relevant information. The Contractor shall cooperate with all TennCare requests to aid in data and document retention, and collection, as required for litigation. The Contractor shall also provide subject matter experts as needed for depositions or as witnesses at trial. These services will be provided at no cost to the State. TennCare and its attorneys shall exert all reasonable efforts to limit the scope and cost of discovery and litigation requests.

IN WITNESS WHEREOF,

QSOURCE:

Dawn M. FitzGerald

07/07/2020

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

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

Butch Eley SS

BUTCH ELEY, COMMISSIONER

5/16/20

DATE

Applicable Terms and Definitions

1. Abortion, Sterilization, Hysterectomy (ASH) - Annual audit conducted to monitor compliance with federal requirements for abortions, sterilizations, and hysterectomies.
2. Access – An enrollee’s ability to obtain medical care. The ease of access is determined by components such as the availability of medical services and their acceptability to the enrollee, the location of health care facilities, transportation, hours of operation, and cost of care.
3. (The) Act – The Social Security Act. Title XIX of the Act governs the federal Medicaid program.
4. Administrative Cost – All costs related to the administration of this Contract.
5. Adverse Action - Any action taken by the MCC and CoverKids HPA(s) and DBM to deny, reduce, terminate, delay or suspend a covered service as well as any other acts or omissions of the MCC and CoverKids HPA(s) and DBM which impair the quality, timeliness or availability of such benefits.
6. Annual Network Adequacy (ANA) – As required by 42 CFR 438.364[a][2] and in 56-32-131 of the Tennessee Code Annotated (TCA), the EQRO completes an annual review of each health plan regarding the adequacy of the provider network and the completeness of the communication with enrollees and providers about TennCare-covered services. The EQRO completes this report at the direction of Tennessee Department of Commerce and Insurance (TDCI) with support from TennCare.
7. Annual Quality Survey (AQS) – As required by 42 CFR 438.364[a][2], the EQRO conducts an AQS of each MCO, PBM, and DBM in order to determine the extent to which each MCO, PBM and DBM is in compliance with the CRA with the State of Tennessee, Division of TennCare and 42 CFR Parts 417.106, 430, 433, 434 and 438.
8. Appeal Procedure - The process to resolve an enrollee’s right to contest verbally or in writing, any adverse action taken by the MCC and CoverKids HPA(s) and DBM to deny, reduce, terminate, delay, or suspend a covered service as well as any other acts or omissions of the MCC and CoverKids HPA(s) and DBM which impair the quality, timeliness or availability of such benefits. The appeal procedure shall be governed by TennCare rules 1200-13-12-.11, 1200-13-13-.11, 1200-13-14-.11, CoverKids rule 0620-05-01-.05 and any and all applicable court orders. Complaint shall mean an enrollee’s right to contest any other action taken by the MCC and CoverKids HPA(s) and DBM or service provider other than those that meet the definition of an adverse action.
9. Balanced Budget Act (BBA) – A congressional law and a set of statutes that amends and modifies Medicaid regulations. The rules can be found in 42 CFR Part 438, Subparts A-J.
10. Baseline Assessment Tool (BAT) – Tool provided by the National Committee for Quality Assurance to complete and forward to the approved Health Employer Data and Information Set auditing firm as the initial step in the HEDIS audit.
11. Behavioral Health Services – Generally recognized and accepted mental health and substance abuse services.
12. Benefits - A schedule of health care services to be delivered to enrollees covered in the Contractor Risk Agreement.
13. Best Practice Guidelines—Guidelines for provision of health and behavioral health services to children in state custody.

14. Best Practice Network (BPN)—A group of Best Practice Providers.
15. Best Practice Provider (BPP)—A provider (primary care, behavioral health, or dental) who has been determined by the state to have the interest, commitment, and competence to provide appropriate care for children in state custody, in accordance with the Remedial Plan and statewide Best Practice Guidelines, and who has agreed to be in the MCO and CoverKids HPA(s) and DBM network.
16. Business Associate – A vendor as defined in 45 CFR 160.103 that provides a service or performs or assists in the performance of an activity, for or on behalf of the Covered Entity that involves the use or disclosure of protected health information (PHI). Any reference to Business Associate includes the Business Associate’s employees, agents, officers, subcontractors, third party contractors, volunteers, or directors.
17. Case Manager - An organization or a provider responsible for supervising or coordinating the provision of initial and primary care to patients; for initiating and/or authorizing referrals for specialty care; and for monitoring the continuity of patient care services.
18. Center of Excellence for Children in or at Risk of State Custody - Tertiary care academic medicine center designated by the state as possessing, or being in a position to quickly develop, expertise in pediatrics, child behavioral health issues (including aggression, depression, attachment disorders and sexualized behaviors), and the unique health care needs of children in or at risk of state custody.
19. Center of Excellence for AIDS – Integrated networks designated by the State as able to provide a standardized and coordinated delivery system encompassing a range of services needed by TennCare eligibles with HIV disease.
20. CFR - Code of Federal Regulations.
21. Children At Risk of State Custody - Children who are determined to belong in one of the following two groups:
 - a. Children at imminent risk of entering custody - Children who are at risk of entering state custody as identified pursuant to TCA 37-5-103(10).
 - b. Children at serious risk of entering custody - Children whom DCS has identified as a result of a CPS referral; or children whose parents or guardians are considering voluntary surrender (who come to the attention of DCS); and who are highly likely to come into custody as a result of being unable to access behavioral health services.
22. Clean claim - A claim received by the MCO and CoverKids HPA(s) and DBM for adjudication, and which requires no further information, adjustment, or alteration by the provider of the services in order to be processed and paid by the MCO and CoverKids HPA(s) and DBM.
23. Clinical Practice Guidelines - Systematically developed tools that help practitioners make decisions about appropriate health care for specific clinical circumstances. Such guidelines are usually evidence-based. **See practice guidelines.**
24. CMS - Centers for Medicare & Medicaid Services
25. Complaint – The process to resolve an enrollee’s right to contest any action taken by the MCC and CoverKids HPA(s) and DBM or service provider other than an adverse action. The MCC and CoverKids HPA(s) and DBM shall not treat anything as a complaint that falls within the definition of adverse action.

26. Consumer Assessment of Health Plans Study (CAHPS) - A set of standardized surveys that measure patient satisfaction with experience of care. CAHPS is sponsored by the Agency for Healthcare Research and Quality.
27. Contractor Risk Agreement (CRA) – The Agreement between the MCCs, CoverKids HPA(s), CoverKids DBM and TennCare and CoverKids that outlines TennCare and CoverKids Benefits, the scope of work, fiscal agreement, etc.
28. Covered Service - See Benefits.
29. CoverKids - The State of Tennessee and any entity authorized by statute or otherwise to act on behalf of the State of Tennessee in administering and/or enforcing the terms of this Contract.
30. CoverKids Enrollee - An enrollee who qualifies and has been determined eligible for benefits in the CoverKids program through eligibility criteria designated in the CoverKids Eligibility Manual.
31. Dental Benefits Manager (DBM) - An entity responsible for the provision and administration of dental services, as defined by TennCare and CoverKids.
32. Department of Children's Services (DCS) – The state agency responsible for child protective services, foster care, adoption, programs for delinquent youth, probation, aftercare, treatment and rehabilitation programs for identified youth, and licensing for all child-welfare agencies, except for child (day) care agencies and child support.
33. DCS Custody Children - Children who have been identified by DCS as belonging in one of the following groups:
 - a. Children in the custody of DCS—Children in the legal and physical custody of DCS whose living arrangement is provided by DCS.
 - b. Children in the legal, but not physical, custody of DCS—Children who are in DCS's legal custody but who reside with parents or guardians or other caretakers.
34. DHHS - United States Department of Health and Human Services.
35. Disenrollment - The discontinuance of a member's entitlement to receive covered services under the terms of this Contract, and deletion from the approved list of members furnished by TennCare to the MCC.
36. Early and Periodic Screening Diagnosis and Treatment (EPSDT) - Federally required Program requiring Medicaid-eligible individuals under twenty-one (21) years of age be provided early and periodic screening, diagnostic and treatment services, involving a comprehensive process in which children and adolescents are screened for health deficiencies, diagnosed, and then treated to the extent that medically necessary services are covered.
37. Eligible Person - Any person certified by TennCare and CoverKids as eligible to receive services and benefits under the TennCare and CoverKids Program.
38. Emergency Medical Condition - A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.
39. Encounter Data - The electronic record of services provided to MCO enrollees by both institutional and practitioner providers (regardless of how the providers were paid) when the services would traditionally be a billable service under fee-for-service (FFS) reimbursement systems. Encounter

First Tennessee
East Tennessee
Knox
Southeast Tennessee
Hamilton

Upper Cumberland
Mid Cumberland
Davidson
South Central

Northwest
Southwest
Shelby

55. Health Maintenance Organization (HMO) - An entity certified by the Department of Commerce and Insurance under applicable provisions of Tennessee Code Annotated (T.C.A.) Title 56, Chapter 32.
56. HPA – Health Plan Administrator. The Health Plan Administrator(s) provides medical, vision, behavioral health and pharmacy services to the CoverKids program.
57. HEDIS – HealthCare Effectiveness Data and Information Set (HEDIS) – The most widely used set of performance measures used in the managed care industry, designed to allow reliable comparison of the performance of managed health care plans. HEDIS is developed and maintained by the National Committee for Quality Assurance.
58. HEDIS Compliance Audit - A comprehensive assessment by a HEDIS Certified Auditor using findings from the HEDIS Baseline Assessment Tool (BAT), from audits in prior years (if applicable) and the HEDIS logical measure groups to select a core set of measures from all MCO-reported measures. The auditor evaluates the core set of measures across all applicable domains described in the HEDIS specifications and extrapolates findings from the core set to all measures reported by the MCO.
59. HIPAA - Health Insurance Portability and Accountability Act of 1996, as codified at 42 USCA §1320d-d8.
60. Home Health Services - Home health services are a mandatory benefit for individuals entitled to nursing facility services under the State's Medicaid and CoverKids plan. Services must be provided at a recipient's place of residence and must be ordered by a physician as part of a plan of care that the physician reviews every sixty days. Home health services must include nursing services, as defined in the State's Nurse Practice Act, that are provided on a part-time or intermittent basis by a home health agency, home health aide services provided by a home health agency, and medical supplies, equipment, and appliances suitable for use in the home. Physical therapy, occupational therapy, speech pathology, and audiology services are optional services States may choose to provide. To participate in the Medicaid and CoverKids program, a home health agency must meet the conditions of participation for Medicare.
61. Hospice - Services as described in Medicaid Rule 1200-13-10 and the Code of Federal Regulations 42 CFR Part 418 which are provided to terminally ill individuals who elect to receive hospice services provided by a certified hospice agency.
62. IRS - Drugs that are Identical, Related or Similar to LTE drugs.
63. Institutes for Mental Diseases (IMD) - In 1988, P.L. 100-360 defined an institution for mental diseases as a hospital, nursing facility, or other institution of more than 16 beds primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services. This definition is in §1905(i) of the Act and in 42 CFR § 435.1009. The regulations also indicate that an institution is an IMD if its overall character is that of a facility established and maintained primarily for the care and treatment of individuals with mental diseases.
64. Inter-rater Reliability – The ability of two individuals to review and analyze the same information and come up with substantially consistent results.
65. Key Personnel – Vendor staff being proposed to do the work under this proposal.

66. Limited English Proficient (LEP) - Potential enrollees and enrollees who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English.
67. Long-term care (LTC) – The services of one of the following: a nursing facility (NF); An Intermediate Care Facility for the Mentally Retarded (ICF/MR), or a Home and Community-Based Services (HCBS) waiver program. (Services provided under a HCBS waiver program are considered to be alternatives to long-term care.
68. LTE - Drugs that the Food and Drug Administration (FDA) considers to be Less Than Effective because there is a lack of substantial evidence of effectiveness for all labeled indications and for which there is no compelling justification for their medical need.
69. MCC – Managed Care Contractor. Collectively this refers to all entities contracted to provide care to TennCare enrollees, including the managed care organizations, behavioral health organizations, dental benefit manager, and pharmacy benefit manager.
70. Managed Care Organization (“MCO”) - An HMO which participates in the TennCare program.
71. Marketing - Any activity conducted by or on behalf of the MCC where information regarding the services offered by the MCC is disseminated in order to persuade eligible persons to enroll or accept an application for enrollment in the MCC's plan operated pursuant to this Contract.
72. Market Area - One (1) or more community service areas in which the MCC is authorized, by terms of this Contract, to market eligible persons for enrollment in the MCC's plan.
73. Medical Loss Ratio – The percentage of capitation payment received from TennCare that is paid for medical expenses (covered medical services).
74. Medical Management Policies and Procedures – All policies and procedures related to the coordination and provision of services including, but not limited to:
- a. Utilization Management policies and procedures, including prior authorization policies and procedures
 - b. Referral and Exemption Requirements
 - c. Out of Area or Out of Plan Use policies and procedures
 - d. Transplant policies and procedures established in accordance
 - e. Prescription Drug Formulary
 - f. Prenatal Care policies and procedures
 - g. Quality Monitoring/Quality Improvement Program
 - h. Management of Medical Care and Coordination of Care policies and procedures
75. Medical Record - A single complete record kept at the site of the member's treatment(s), which documents all of the treatment plans developed, medical services ordered for the member and medical services received by the member.
76. Medically Necessary – Defined by Tennessee Code Annotated, Section 71-5-144, and shall describe a medical item or service that meets the criteria set forth in that statute. The term “medically necessary, “ as defined by TCA Section 71-5-144 applies to TennCare enrollees. Implementation of the term “medically necessary” is provided for in these rules, consistent with the statutory provisions, which control in case of ambiguity. No enrollee shall be entitled to receive and TennCare and/or CoverKids shall not be required to pay for any items or services that fail fully to satisfy all criteria of “medically necessary” items or services, as defined either in the statute or in the Medical Necessity rule chapter 1200-13-16.
77. MAT - Medication Assisted Treatment - The use of medications in combination with counseling and behavioral therapies to provide a whole-patient approach to the treatment of substance use disorders.

78. Member - A person who enrolls in the MCC's and CoverKids HPA(s) and DBM plan under the provisions of this Contract with TennCare and CoverKids. (See Enrollee, also).
79. NAIC – National Association of Insurance Commissioners.
80. National Committee for Quality Assurance (NCQA) – A nonprofit organization committed to assessing, reporting on and improving the quality of care provided by organized delivery systems. Useful information on NCQA may be accessed at the NCQA website: www.ncqa.org
81. Non-TennCare and/or CoverKids Provider – A provider who is not enrolled in TennCare and/or CoverKids and who accepts no TennCare and CoverKids reimbursement for any service, including Medicare crossover payments.
82. OIG – The agency formed outside of TennCare and CoverKids to help prevent, identify and investigate fraud and abuse within the healthcare system, most notably the TennCare system.
83. Out-of-Plan Services - Services provided by a non-contract provider.
84. OIR – The Office for Information Resources is a division within the Department of Finance and Administration (F&A) that provides direction, planning, resources, execution and coordination in managing the information systems needs of the State of Tennessee.
85. Over-Read – A method of quality control to validate the work done by reviewers.
86. Performance Improvement Project (PIP) – Activities conducted by managed care organizations designed to improve the quality of care or services received by Medicaid managed care recipients, CoverKids, PBM and DBM enrollees.
87. Performance Indicators – A preset criteria which involve the recipient or provider and show the outcomes and impact level of Contract performance on specified sets of the population.
88. Pharmacy Benefits Manager (PBM) – An entity responsible for the provision and administration of pharmacy services.
89. Population Health (PH) – A Population Health Management Program (PHMP) strives to address health needs at all points along the continuum of health and well-being through participation of, engagement with, and targeted interventions for the population. The goal of a PHMP is to maintain or improve the physical and psychosocial well-being of individuals through cost-effective and tailored solutions.
90. PH Level 0 Program - Members are considered well and have no identified health risks. The criteria for stratification into Level Zero is no identified health risk such as tobacco use, substance abuse or weight management problems; no identified chronic conditions [as identified by the Chronic Condition tool created by the Agency for Healthcare Research and Quality's (AHRQ) HCUP database]; no indication of pregnancy; or no claims history. Members identified as well are automatically enrolled in the Level Zero Wellness program.
91. PH Level 1 Program - Members in this level are considered to have low to moderate health risk. All members that do not meet the Level Zero or Level Two criteria are placed in Level One. There are three programs within the Population Health (PH) Level One stratification. Members who are pregnant but have no or low risks for pregnancy are passively enrolled in the Low Risk Maternity program. For members who have identified health risks or chronic conditions and do not stratify in the top 3% are passively enrolled in the Health Risk Management program which is similar to the previous disease management programs. Level One also includes the Care Coordination program which is the PH program which addresses members with acute health needs or risks which need

immediate attention but do not meet the requirements for Complex Case Management or that were identified for but declined Complex Case Management.

92. PH Level 2 Program - Members in this stratification are considered to be the sickest of the sick and are in the top three percent of the predictive modeling pool. These members can also be identified for Level Two by referrals or health risk assessments. These members are considered to be the most at risk for adverse health outcomes. There are three PH programs in Level Two. The first is the High-Risk Maternity program. Pregnant members are identified for this program either by referrals or an OB risk assessment. Chronic Care Management and Complex Case Management are the two other PH programs in this level. The goal of the Chronic Care Management program is to improve the quality of life, health status and utilization of services of members with multiple conditions by providing intense self-management education and support. The expectation is that members will remain in this program for 6-12 months or until they have the skills and self-efficacy to self-manage their multiple conditions. The goal of the Complex Case Management program is to move members to optimal levels of health and well-being by providing timely coordination of quality services and self-management support. The expectation is for members to be enrolled in this program for 3-4 months for stabilization of their immediate critical needs and then move them to the Chronic Care Management program if appropriate.
93. Post-stabilization Care Services - Non-emergency services subsequent to an emergency that a treating physician views as medically necessary to maintain the stabilized condition after an emergency medical condition has been stabilized or to improve or resolve the enrollee's condition. An MCO's financial responsibility for post stabilization care services shall end when one of the following are met:
 - a. A plan physician with privileges at the treating hospital assumes responsibility for the enrollee's care
 - b. A plan physician assumes responsibility for the enrollee's care through transfer
 - c. An MCO representative and the treating physician reach an agreement concerning the enrollee's care
 - d. The enrollee is discharged.
94. Practice Guidelines – Systematically developed descriptive tools or standardized specifications for care to assist practitioner and patient decisions about appropriate health care for specific clinical circumstances. Practice guidelines are typically developed through a formal process and are based on authoritative sources that include clinical literature and expert consensus. Practice guidelines may also be called practice parameters, treatment protocols, clinical criteria, or clinical guidelines.
95. Presumptive Eligibility - Temporary eligibility granted to a pregnant woman whose family income is at or below a specified percentage of the federal poverty level in order for the woman to receive prenatal care services.
96. Primary Care Physician - A physician responsible for supervising, coordinating, and providing initial and primary care to patients; for initiating referrals for specialist care; and for maintaining the continuity of patient care. A primary care physician is a physician who has limited his practice of medicine to general practice or who is a Board Certified or Eligible Internist, Pediatrician, Obstetrician/Gynecologist, or Family Practitioner.
97. Primary Care Provider - A primary care physician or registered professional nurse or physician assistant practicing in accordance with state law who is responsible for supervising, coordinating, and providing initial and primary care to patients; for initiating referrals for specialist care; and for maintaining the continuity of patient care.
98. Primary Treatment Center (PTC)—A center developed by DCS for the purpose of providing short-term evaluation and treatment to children who have just come into custody, children already in state custody, children who have been released from state custody and who have been recommitted, and children who are at imminent risk of entering custody.

99. Prior Authorization - The act of authorizing specific services or activities before they are rendered or activities before they occur.
100. Privacy/Security Incident - Any use or disclosure that is not permitted under the Privacy and Security rules that compromises the protected health information (PHI) that poses a potential for significant risk of financial, reputational, or other harm to the enrollee as determined by TennCare.
101. Program Integrity – The Program Integrity unit is responsible for assisting with the prevention, identification and investigation of fraud and abuse within the health care system.
102. Protected Health Information (PHI) - Information created or received by Business Associate from or on behalf of Covered Entity that relates to the provision of health care to an individual; the past, present, or future physical or mental health or condition of an individual; or past, present, or future payment for provision of health care to an individual. 45 CFR §160.103. PHI includes demographic information that identifies the individual or about which there is reasonable basis to believe, can be used to identify the individual. 45 CFR § 160.103. PHI is information transmitted or held in any form or medium. 45 CFR §160.103. PHI does not include education records covered by the Family Educational Rights and Privacy Act, as amended, 20 USCA §1232g(a)(4)(B)(iv).
103. Provider - An appropriately licensed institution, facility, agency, person, corporation, partnership, or association that delivers health care services. Providers are categorized as either TennCare and CoverKids Providers or Non-TennCare and CoverKids Providers. TennCare and CoverKids Providers may be further categorized as being one of the following:
- a. Participating Providers or In-Network Providers;
 - b. Non-Participating Providers or Out-of-Network Providers
 - c. Out-of-State Emergency Providers
104. Provider Agreement - An agreement between an MCO and CoverKids HPA(s) and DBM and a provider or an MCO's subcontractor and a provider of health care services which describes the conditions under which the provider agrees to furnish covered services to the MCO's and CoverKids HPA(s) and DBM members.
105. Provider Enrollment File (PEF) – Each MCO has a Provider Enrollment File (PEF) that includes information on all providers of covered TennCare services to be paid by the MCC. The PEF contains demographic, payment, specialty and other identifying data elements as well as date specific contract status with the MCC.
106. Quality Assurance (QA) - A formal set of activities to review and affect the quality of services provided. Quality assurance includes quality assessment and corrective actions to remedy any deficiencies identified in the quality of direct patient, administrative and support services.
107. Quality Improvement (QI) – The effort to assess and improve the performance of a program or organization. Quality Improvement includes quality assessment and implementation of corrective actions to address any deficiencies identified. The ongoing process of responding to data gathered through quality monitoring efforts, in such a way as to improve the quality of health care delivered to individuals. This process necessarily involves follow-up studies of the measures taken to effect change in order to demonstrate that the desired change has occurred.
108. Quality Monitoring (QM) - The ongoing process of assuring that the delivery of health care is appropriate, timely, accessible, available, and medically necessary and in keeping with established guidelines and standards and reflective of the current state of medical knowledge.
109. Risk Stratification – The act or process of dividing TennCare members into different levels of need based on their health risk. For TennCare's Population Health program, risk stratification is accomplished by predictive modeling which is based on claims, pharmacy, lab and other data. Information from health risk assessments is also used to identify member's risk level. Through this

process members are identified for one of three health risk stratification levels. Level Zero is wellness, Level One is low to moderate health risk, and Level Two is the top three percent or the sickest of the sick.

110. Routine Care – Non urgent medical care such as screenings, immunizations, or health assessments.
111. Seriously Emotionally Disturbed (SED) - This determination can only be made by a qualified provider on behalf of a minor child.
112. Serious Mental Illness (SMI) - This determination can only be made by a qualified provider on behalf of an adult.
113. Service Location - Any location at which an enrollee obtains any health care service covered by the MCC and CoverKids HPA(s) and DBM pursuant to the terms of this Contract.
114. Service Site - The locations designated by the MCC and CoverKids HPA(s) and DBM at which members shall receive primary care provider and preventive services.
115. Shall - Indicates a mandatory requirement or a condition to be met.
116. Specialty Services – Includes Essential Hospital Services, services provided by a Center of Excellence, and specialty physician services.
117. State - State of Tennessee.
118. State Plan - The State Plan is a comprehensive statement submitted by the state Medicaid and CHIP agency describing the nature and scope of its program and giving assurance that it will be administered in conformity with the specific requirements stipulated in the pertinent title of the Act, and other applicable official issuances of the Department of Health and Human Services (HHS). The State Plan contains all information necessary for the Department to determine whether the plan can be approved, as a basis for Federal Financial Participation (FFP) in the State program. The State Plan consists of written documents furnished by the State to cover each of its programs under the Act including the medical assistance program (Title XIX) or Title XXI. After approval of the original plan by HHS, all relevant changes, required by new statutes, rules, regulations, interpretations, and court decisions, are required to be submitted currently so HHS may determine whether the plan continues to meet federal requirements and policies. Determinations regarding State Plans (including plan amendments and administrative practice under the plans) originally meet, or continue to meet, the requirements for approval based on relevant federal statutes and regulations. (may be accessed from the TennCare website <http://www.tn.gov/tenncare/> or CoverKids website <https://www.tn.gov/coverkids/coverkids/state-plan.html>)
119. Subcontract - An agreement entered into by the Contractor with any other organization or person who agrees to perform any administrative function or service for the Contractor specifically related to securing or fulfilling the Contractor's obligations to TennCare and CoverKids under the terms of this Contract, when the intent of such an agreement is to delegate the responsibility for any major service or group of services required by the TennCare and CoverKids /Contractor Contract. This shall also include any and all agreements between any and all subcontractors for the purposes related to securing or fulfilling the Contractor's obligations to TennCare and CoverKids under the terms of this Contract.
120. Subcontractor - Any organization or person who provides any function or service for the Contractor specifically related to securing or fulfilling the Contractor's obligations to TennCare under the terms of this Contract.
121. TennCare - TennCare is the State of Tennessee's Medicaid program that provides health care for approximately 1.4 million Tennesseans and is located within the Department of Finance and

Administration. TennCare includes the Office of eHealth and the Strategic Planning and Innovation group, which includes all of the Cover Tennessee Programs, including CoverKids and CoverRx.

122. TennCare Medicaid Enrollee – An enrollee who qualifies and has been determined eligible for benefits in the TennCare program through Medicaid eligibility criteria as described in the Medicaid/TennCare Rules and Regulations.
123. TennCare and CoverKids Provider - A provider who accepts as payment in full for furnishing benefits to a TennCare and CoverKids enrollee, the amounts paid pursuant to an approved agreement with an MCC and/or CoverKids HPA(s) and DBM or TennCare and/or CoverKids. Such payment may include copayments from the enrollee or the enrollee's responsible party. Except in the case of Out-of-State Emergency Providers, a TennCare and/or CoverKids HPA(s) provider must be enrolled with TennCare and/or CoverKids HPA(s). TennCare providers must abide by all TennCare rules and regulations, including the rules regarding provider billing of patients as found in Rule 1200-13-13.08. TennCare and CoverKids HPA(s) Providers must be appropriately licensed for the services they deliver and must not be providers who have been excluded from participation in Medicare or Medicaid.
124. TennCare Standard Enrollee – An enrollee who qualifies and has been determined eligible for benefits in the TennCare program through eligibility criteria designated as “TennCare Standard” as described in the February 12, 2002 TennCare Program Design and Waiver Modifications as submitted to CMS and the TennCare Rules and Regulations. (This eligibility category is scheduled to be disenrolled as part of the proposed TennCare Reform.
125. Tennessee Bureau of Investigation, Medicaid Fraud Control Unit (TBI MFCU) – The State agency responsible for the investigation of provider fraud and abuse in the State Medicaid Program.
126. Tennessee Department of Mental Health and Substance Abuse Services (“TDMHSAS”) - The State agency having the statutory authority to provide care for persons with mental illness, serious emotional disturbance, or substance abuse disorders. For the purposes of this Contract, TDMHSAS shall mean the State of Tennessee and any entity authorized by statute or otherwise to act on behalf of the State of Tennessee in administering and/or enforcing the terms of this Contract.
127. Third Party Resource - Any entity or funding source other than the enrollee or his/her responsible party, which is or may be liable to pay for all or part of the cost of medical care of the enrollee.
128. Third Party Liability (TPL) – Any amount due for all or part of the cost of medical care from a third party.
129. Urgent Care – Any request for medical care or treatment with respect to which the application of the time periods for making non-urgent care determinations:
 - a. Could seriously jeopardize the life or health of the member or the member's ability to regain maximum function, based on a prudent layperson's judgment, or
 - b. In the opinion of a practitioner with knowledge of the member's medical condition, would subject the member to severe pain that cannot be adequately managed without the care or treatment that is the subject of the request.
130. Vital MCC Documents – Consent forms and notices pertaining to the reduction, denial, delay, suspension or termination of services. All vital documents must be available in Spanish.

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	67250
CONTRACTOR LEGAL ENTITY NAME:	QSource
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	62-0924699

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.

Dawn M. FitzGerald

CONTRACTOR SIGNATURE

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

Dawn M. FitzGerald, Chief Executive Officer

PRINTED NAME AND TITLE OF SIGNATORY

07/07/2020

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.

	PROGRAM ISSUES	DAMAGE
1.	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 D.34. E.11, and E.16.	\$1,000 per affected member per occurrence.
2.	Failure by the Contractor to execute the appropriate agreements to effectuate transfer and exchange of TennCare enrollee PHI/PII or TennCare confidential information including, but not limited to, a data use agreement, trading partner agreement, business associate agreement or qualified protective order prior to the use or disclosure of PHI/PII to a third party. (See E.11, E.15. and Business Associate Agreement between the parties)	\$1,000 per affected member per occurrence.
3.	Failure by the Contractor to seek express written approval from TennCare prior to the use or disclosure of TennCare enrollee data or TennCare confidential information in any form via any medium with any third party beyond the boundaries and jurisdiction of the United States. (See E.15 and Business Associate Agreement between the parties)	\$1,000 per affected member per occurrence.
4.	Failure by the Contractor to timely report violations in the access, use and disclosure of PHI/PII or timely report a security incident or timely make a notification of breach or notification of suspected breach per Sections (See E.11, E.16 and Business Associate Agreement between the parties)	\$1,000 per affected member per occurrence.



HIPAA Business Associate Agreement

THIS HIPAA BUSINESS ASSOCIATE AGREEMENT ("Agreement") is between The State of Tennessee, Division of TennCare ("TennCare" or "Covered Entity"), located at 310 Great Circle Road, Nashville, TN 37243 and Qsource ("Business Associate"), located at 8245 Tournament Drive, Suite 201, Memphis, TN 38125, including all office locations and other business locations at which Business Associate data may be used or maintained. Covered Entity and Business Associate may be referred to herein individually as "Party" or collectively as "Parties."

BACKGROUND

The Parties acknowledge that they are subject to the Privacy and Security Rules (45 C.F.R. Parts 160 and 164) promulgated by the United States Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, and as amended by the final rule modifying the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules under the Health Information Technology for Economic and Clinical Health Act (HITECH). If Business Associate provides services to Covered Entity pursuant to one or more contractual relationships, said Agreements are detailed below and hereinafter referred to as "Service Agreements."

LIST OF AGREEMENTS AFFECTED BY THIS HIPAA BUSINESS ASSOCIATE AGREEMENT:

Contract 67250

In the course of performing services under a Service Agreement, Business Associate may come into contact with, use, or disclose Protected Health Information ("PHI"). Said Service Agreements are hereby incorporated by reference and shall be taken and considered as a part of this document the same as if fully set out herein.

In accordance with the federal privacy and security rules and regulations set forth at 45 C.F.R. Part 160 and Part 164, Subparts A, C, D and E, which require Covered Entity to have a written memorandum with each of its Business Associates, the Parties wish to establish satisfactory assurances that Business Associate will appropriately safeguard PHI that Business Associate may receive (if any) from or on behalf of Covered Entity, and, therefore, execute this Agreement.

1. DEFINITIONS

All capitalized terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms defined in 45 C.F.R. Parts 160 through 164 or other applicable law or regulation. A reference in this Agreement to a section in the Privacy or Security Rule means the section as in effect or as amended.

1.1 “Commercial Use” means obtaining PHI with the intent to sell, transfer or use it for commercial, or personal gain, or malicious harm; sale to third party for consumption, resale, or processing for resale; application or conversion of data to make a profit or obtain a benefit contrary to the spirit of this Agreement, including but not limited to presentation of data or examples of data in a conference or meeting setting where the ultimate goal is to obtain or gain new business.

1.2 “Confidential Information” shall mean any non-public, confidential or proprietary information, whether written, graphic, oral, electronic, visual or fixed in any tangible medium or expression, which is supplied by TennCare to the Business Associate under this Agreement. Any information, whether written, graphic, oral, electronic, visual or fixed in any tangible medium or expression, relating to individuals enrolled in the TennCare program (“TennCare enrollees”), or relating to individuals who may be potentially enrolled in the TennCare program, which is provided to or obtained through the Business Associate’s performance under this Agreement, shall also be treated as “Confidential Information” to the extent that confidential status is afforded such information under state and federal laws or regulations. All confidential information shall not be subject to disclosure under the Tennessee Public Records Act.

1.3 “Electronic Signature” means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

1.4 “Marketing” shall have the meaning under 45 C.F.R. § 164.501 and the act or process of promoting, selling, leasing or licensing any TennCare information or data for profit without the express written permission of TennCare.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE (Privacy Rule)

2.1 Compliance with the Privacy Rule. Business Associate shall fully comply with the requirements under the Privacy Rule applicable to "business associates," as that term is defined in the Privacy Rule and not use or further disclose PHI other than as permitted or required by this Agreement, the Service Agreements, or as required by law. In case of any conflict between this Agreement and the Service Agreements, this Agreement shall govern.

2.2 HITECH Act Compliance. The Health Information Technology for Economic and Clinical Health Act (HITECH) was adopted as part of the American Recovery and Reinvestment Act of 2009. HITECH and its implementing regulations impose new requirements on Business Associates with respect to privacy, security, and Breach notification. Business Associate hereby acknowledges and agrees that to the extent it is functioning as a Business Associate of Covered Entity, Business Associate shall comply with any applicable provisions of HITECH. Business Associate and the Covered Entity further agree that the provisions of HIPAA and HITECH that apply to business associates and that are required to be incorporated by reference in a business associate agreement have been incorporated into this Agreement between Business Associate and Covered Entity. Should any provision not be set forth specifically, it is as if set forth in this Agreement in its entirety and is effective as of the Applicable Effective Date, and as amended.

2.3 Business Management. Business Associate may use and disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of Business Associate. Business Associate may provide data aggregation services relating to the Health Care Operations of TennCare, or as required by law. Business Associate is expressly prohibited from using or disclosing PHI other than as permitted by this Agreement, any associated Service Agreements, or as otherwise permitted or required by law, and is prohibited from uses or disclosures of PHI that would not be permitted if done by the Covered Entity.

2.4 Privacy Safeguards and Policies. Business Associate shall use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by the Service Agreement(s), this Agreement or as required

by law. This includes the implementation of Administrative, Physical, and Technical Safeguards to reasonably and appropriately protect the Covered Entity's PHI against any reasonably anticipated threats or hazards, utilizing the technology commercially available to the Business Associate (See also Section 3.2). The Business Associate shall maintain appropriate documentation of its compliance with the Privacy Rule, including, but not limited to, its policies, and procedures, records of training and sanctions of members of its Workforce.

2.5 Business Associate Contracts. Business Associate shall require any agent, including a Subcontractor, to whom it provides PHI received from, maintained, created or received by Business Associate on behalf of Covered Entity, or that carries out any duties for the Business Associate involving the use, custody, disclosure, creation of, or access to PHI or other confidential TennCare information, to agree, by written agreement with Business Associate, to substantially similar, but not less stringent restrictions and conditions that apply through this Agreement to Business Associate with respect to such information except for the provision at section 4.6, which shall only apply to the Business Associate notwithstanding the requirements in this section 2.5.

2.6 Mitigation of Harmful Effect of Violations. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

2.7 Reporting of Violations in Use and Disclosure of PHI. Business Associate shall require its employees, agents, and Subcontractors to promptly report to Business Associate immediately upon becoming aware of any use or disclosure of PHI in violation of this Agreement and to report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement. The Business Associate shall report such violation to Covered Entity immediately upon becoming aware of, and in no case later than 48 hours after discovery.

2.8 Breach of Unsecured Protected Health Information. As required by the Breach Notification Rule, Business Associate shall, and shall require its Subcontractor(s) to, maintain systems to monitor and detect a Breach of Unsecured PHI, whether in paper or electronic form.

2.8.1 Business Associate shall provide to Covered Entity notice of a Breach of Unsecured PHI immediately upon becoming aware of the Breach, and in no case later than 48 hours after discovery.

2.8.2 Business Associate shall cooperate with Covered Entity in timely providing the appropriate and necessary information to Covered Entity.

2.8.3 Covered Entity shall make the final determination whether the Breach requires notification to affected individuals and whether the notification shall be made by Covered Entity or Business Associate.

2.9 Access of Individual to PHI and other Requests to Business Associate. If Business Associate receives PHI from Covered Entity in a Designated Record Set, Business Associate agrees to provide access to PHI in a Designated Record Set to Covered Entity in order to meet its requirements under 45 C.F.R. § 164.524. If Business Associate receives a request from an Individual for a copy of the Individual's PHI, and the PHI is in the sole possession of the Business Associate, Business Associate will provide the requested copies to the Individual in a timely manner. If Business Associate receives a request for PHI not in its possession and in the possession of the Covered Entity, or receives a request to exercise other Individual rights as set forth in the Privacy Rule, Business Associate shall promptly forward the request to Covered Entity. Business Associate shall then assist Covered Entity as necessary in responding to the request in a timely manner. If a Business Associate provides copies of PHI to the Individual, it may charge a reasonable fee for the copies as the regulations shall permit.

2.10 Requests to Covered Entity for Access to PHI. The Covered Entity shall forward to the Business

Associate in a timely manner any Individual's request for access to or a copy (in any form they choose, provided the PHI is readily producible in that format) of their PHI that shall require Business Associate's participation, after which the Business Associate shall provide access to or deliver such information as follows:

- (a) The Parties understand that if either Party receives a request for access to or copies of PHI from an Individual which the Party may complete with only its own onsite information, the time for such response shall be thirty (30) days, with notification to the Covered Entity upon completion.
- (b) If the Covered Entity receives a request and requires information from the Business Associate in addition to the Covered Entity's onsite information to fulfill the request, the Business Associate shall have fifteen (15) days from date of Covered Entity's notice to provide access or deliver such information to the Covered Entity so that the Covered Entity may timely respond to the Individual within the sixty (30) day requirement of 45 C.F.R. § 164.524.
- (c) If the Party designated above as responding to the Individual's request is unable to complete the response to the request in the time provided, that Party shall provide the Individual, or Individual's designee, with a written statement of the reasons for the delay and the date by which the Party will complete its action on the request. The Party may extend the response time once for no more than thirty (30) additional days.
- (d) Business Associate is permitted to send an Individual or Individual's designee unencrypted emails including Electronic PHI if the Individual requests it, provided the Business Associate has advised the Individual of the risk and the Individual still prefers to receive the message by unencrypted email.

2.11 Individuals' Request to Amend PHI. If Business Associate receives PHI from Covered Entity in a Designated Record Set, Business Associate agrees to make any amendments to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526, regarding an Individual's request to amend PHI. The Business Associate shall make the amendment promptly in the time and manner designated by Covered Entity, but shall have thirty (30) days' notice from Covered Entity to complete the amendment to the Individual's PHI and to notify the Covered Entity upon completion.

2.12 Recording of Designated Disclosures of PHI. Business Associate shall document any and all disclosures of PHI by Business Associate or its agents, including information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.

2.13 Accounting for Disclosures of PHI. The Business Associate agrees to provide to Covered Entity or to an Individual, or Individual's designee, in time and manner designated by Covered Entity, information collected in accordance with this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. The Covered Entity shall forward the Individual's request requiring the participation of the Business Associate to the Business Associate in a timely manner, after which the Business Associate shall provide such information as follows:

- (a) If Covered Entity directs Business Associate to provide an accounting of disclosures of the Individual's PHI directly to the Individual, the Business Associate shall have sixty (60) days from the date of the Individual's request to provide access to or deliver such information to the Individual or Individual's designee. The Covered Entity shall provide notice to the Business Associate in time to allow the Business Associate a minimum of thirty (30) days to timely complete the Individual's request.
- (b) If the Covered Entity elects to provide the accounting to the Individual, the Business Associate shall have thirty (30) days from date of Covered Entity's notice of request to provide

- information for the Accounting to the Covered Entity so that the Covered Entity may timely respond to the Individual within the sixty (60) day period.
- (c) If either of the Parties is unable to complete the response to the request in the times provided above, that Party shall notify the Individual with a written statement of the reasons for the delay and the date by which the Party will complete its action on the request. The Parties may extend the response time once for no more than thirty (30) additional days.
- (d) The accounting of disclosures shall include at least the following information:
- (1) date of the disclosure;
 - (2) name of the third party to whom the PHI was disclosed,
 - (3) if known, the address of the third party;
 - (4) brief description of the disclosed information; and
 - (5) brief explanation of the purpose and basis for such disclosure.
- (e) The Parties shall provide one (1) accounting in any twelve (12) months to the Individual without charge. The Parties may charge a reasonable, cost-based fee, for each subsequent request for an accounting by the same Individual if he/she is provided notice and the opportunity to modify his/her request. Such charges shall not exceed any applicable State statutes or rules.

2.14 Minimum Necessary. Business Associate shall use reasonable efforts to limit any use, disclosure, or request for use or disclosure of PHI to the minimum amount necessary to accomplish the intended purpose of the use, disclosure, or request in accordance with the requirements of the Privacy Rule.

2.14.1 Business Associate represents to Covered Entity that all its uses and disclosures of, or requests for, PHI shall be the minimum necessary in accordance with the Privacy Rule requirements.

2.14.2 Covered Entity may, pursuant to the Privacy Rule, reasonably rely on any requested disclosure as the minimum necessary for the stated purpose when the information is requested by Business Associate.

2.14.3 Business Associate shall adequately and properly maintain all PHI received from, or created or received on behalf of, Covered Entity.

2.15 Privacy Compliance Review upon Request. Business Associate agrees to make its internal practices, books and records, including policies, procedures, and PHI, relating to the use and disclosure of PHI received from, created by or received by Business Associate on behalf of Covered Entity available to the Covered Entity or to the Secretary of the United States Department of Health in Human Services or the Secretary's designee, in a time and manner designated by the requester, for purposes of determining Covered Entity's or Business Associate's compliance with the Privacy Rule.

2.16 Cooperation in Privacy Compliance. Business Associate agrees to fully cooperate in good faith and to assist Covered Entity in complying with the requirements of the Privacy Rule.

3. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE (Security Rule)

3.1 Compliance with Security Rule. Business Associate shall fully comply with the requirements under the Security Rule applicable to "Business Associates," as that term is defined in the Security Rule. In case of any conflict between this Agreement and Service Agreements, this Agreement shall govern.

3.2 Security Safeguards and Policies. Business Associate shall implement Administrative, Physical, and

Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity as required by the Security Rule. This includes specifically, but is not limited to, the utilization of technology commercially available at the time to the Business Associate to protect the Covered Entity's PHI against any reasonably anticipated threats or hazards. The Business Associate understands that it has an affirmative duty to perform a regular review or assessment of security risks, conduct active risk management and supply best efforts to assure that only authorized persons and devices access its computing systems and information storage, and that only authorized transactions are allowed. The Business Associate will maintain appropriate documentation of its compliance with the Security Rule.

3.3 Security Provisions in Business Associate Contracts. Business Associate shall ensure that any agent to whom it provides Electronic PHI received from, maintained, or created for Covered Entity or that carries out any duties for the Business Associate involving the use, custody, disclosure, creation of, or access to PHI supplied by Covered Entity, shall execute a bilateral contract (or the appropriate equivalent if the agent is a government entity) with Business Associate, incorporating substantially similar, but not less stringent restrictions and conditions in this Agreement with Business Associate regarding PHI except for the provision in Section 4.6.

3.4 Reporting of Security Incidents. The Business Associate shall track all Security Incidents as defined and as required by HIPAA and shall periodically report such Security Incidents in summary fashion as may be requested by the Covered Entity. The Covered Entity shall not consider as Security Incidents, for the purpose of reporting, external activities (port enumeration, etc.) typically associated with the "footprinting" of a computing environment as long as such activities have only identified but not compromised the logical network perimeter, including but not limited to externally facing firewalls and web servers. The Business Associate shall reasonably use its own vulnerability assessment of damage potential and monitoring to define levels of Security Incidents and responses for Business Associate's operations. However, the Business Associate shall expediently notify the Covered Entity's Privacy Officer of any related Security Incident, immediately upon becoming aware of any unauthorized acquisition including but not limited to use, disclosure, modification, or destruction of PHI by an employee or otherwise authorized user of its system of which it becomes aware.

3.4.1 Business Associate identifies the following key contact persons for all matters relating to this Agreement:

Dawn FitzGerald, CEO
8245 Tournament Drive, STE 201
Memphis, TN 38125
901.692.3539
dfitzgerald@qsource.org

Business Associate shall notify Covered Entity of any change in these key contacts during the term of this Agreement in writing within ten (10) business days.

3.5 Contact for Security Incident Notice. Notification for the purposes of Sections 2.8 and 3.4 shall be in writing made by email/fax, certified mail or overnight parcel immediately upon becoming aware of the event, with supplemental notification by facsimile and/or telephone as soon as practicable, to:

TennCare Privacy Officer
310 Great Circle Rd.
Nashville Tennessee 37243
Phone: (615) 507-6855
Facsimile: (615) 734-5289

3.6 Security Compliance Review upon Request. Business Associate shall make its internal practices, books, and records, including policies and procedures relating to the security of Electronic PHI received from, created by or received by Business Associate on behalf of Covered Entity, available to the Covered Entity or to the Secretary of the United States Department of Health in Human Services or the Secretary's designee, in a time and manner designated by the requester, for purposes of determining Covered Entity's, Business Associate's compliance with the Security Rule.

3.7 Cooperation in Security Compliance. Business Associate shall fully cooperate in good faith to assist Covered Entity in complying with the requirements of the Security Rule.

3.8 Refraining from intimidation or retaliation. A Covered Entity or Business Associate may not threaten, intimidate, coerce, harass, discriminate against, or take any other retaliatory action against any Individual or other person for-- (a) Filing of a complaint under 45 C.F.R. § 160.306; (b) testifying, assisting, or participating in an investigation, compliance review, proceeding, or hearing; or (c) opposing any act or practice made unlawful, provided the Individual or person has a good faith belief that the practice opposed is unlawful, and the manner of opposition is reasonable and does not involve a disclosure of PHI in violation of HIPAA.

4. USES AND DISCLOSURES BY BUSINESS ASSOCIATE

4.1 Use and Disclosure of PHI for Operations on Behalf of Covered Entity. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform Treatment, Payment or Health Care Operations for, or on behalf of, Covered Entity as specified in Service Agreements, provided that such use or disclosure would not violate the Privacy and Security Rule, if done by Covered Entity.

4.2 Other Uses of PHI. Except as otherwise limited in this Agreement, Business Associate may use PHI within its Workforce as required for Business Associate's proper management and administration, not to include Marketing or Commercial Use, or to carry out the legal responsibilities of the Business Associate.

4.3 Third Party Disclosure Confidentiality. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are required by law, or, if permitted by law, this Agreement, and the Service Agreement, provided that, if Business Associate discloses any PHI to a third party for such a purpose, Business Associate shall enter into a written agreement with such third party requiring the third party to: (a) maintain the confidentiality, integrity, and availability of PHI and not to use or further disclose such information except as required by law or for the purpose for which it was disclosed, and (b) notify Business Associate of any instances in which it becomes aware in which the confidentiality, integrity, and/or availability of the PHI is Breached immediately upon becoming aware.

4.4 Other Uses Strictly Limited. Nothing in this Agreement shall permit the Business Associate to share PHI with Business Associate's affiliates or contractors except for the purposes of the Service Agreement(s) between the Covered Entity and Business Associate(s) identified in the "LIST OF AGREEMENTS AFFECTED BY THIS HIPAA BUSINESS ASSOCIATE AGREEMENT" on page one (1) of this Agreement.

4.5 Covered Entity Authorization for Additional Uses. Any use of PHI or other confidential TennCare information by Business Associate, its Subcontractors, its affiliate or Contractor, other than those purposes of this Agreement, shall require express written authorization by the Covered Entity, and a Business Associate agreement or amendment as necessary. Activities which are prohibited include, but not are not

limited to, Marketing or the sharing for Commercial Use or any purpose construed by Covered Entity as Marketing or Commercial use of TennCare enrollee personal or financial information with affiliates, even if such sharing would be permitted by federal or state laws.

4.6 Prohibition of Offshore Disclosure. Nothing in this Agreement shall permit the Business Associate to share, use or disclose PHI in any form via any medium with any third party beyond the boundaries and jurisdiction of the United States without express written authorization from the Covered Entity.

4.7 Prohibition of Other Uses and Disclosures. Business Associate shall not use or disclose PHI that is Genetic Information for underwriting purposes. Moreover, the sale, marketing or the sharing for commercial use or any purpose construed by Covered Entity as the sale, marketing or commercial use of TennCare enrollee personal or financial information with affiliates, even if such sharing would be permitted by federal or state laws, is prohibited.

4.8 Data Use Agreement - Use and Disclosure of Limited Data Set. Business Associate may use and disclose a Limited Data Set that Business Associate creates for Research, public health activity, or Health Care Operations, provided that Business Associate complies with the obligations below. Business Associate may not make such use and disclosure of the Limited Data Set after any cancellation, termination, expiration, or other conclusion of this Agreement.

4.9 Limitation on Permitted Uses and Disclosures. Business Associate will limit the uses and disclosures it makes of the Limited Data Set to the following: Research, public health activity, or Health Care Operations, to the extent such activities are related to covered functions, including business planning and development such as conducting cost-management and planning-related analysis related to managing and operating Business Associates functions, formulary development and administration, development and improvement of methods of payment or coverage policies, customer service, including the provision of data analysis for policy holders, plan sponsors, or other customers, to the extent such activities are related to covered functions, provided that PHI is not disclosed and disclosure is not prohibited pursuant to any other provisions in this Agreement related to Marketing or Commercial use.

4.10 Business Associate shall enter into written agreements that are substantially similar to this Business Associate Agreements with any Subcontractor or agent which Business Associate provides access to Protected Health Information.

4.11 Business Associates shall implement and maintain information security policies that comply with the HIPAA Security Rule.

5. OBLIGATIONS OF COVERED ENTITY

5.1 Notice of Privacy Practices. Covered Entity shall provide Business Associate with the notice of Privacy Practices produced by Covered Entity in accordance with 45 C.F.R. § 164.520, as well as any changes to such notice.

5.2 Notice of Changes in Individual's Access or PHI. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses.

5.3 Notice of Restriction in Individual's Access or PHI. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use of PHI.

5.4 Reciprocity for Requests Received by Business Associate. The Parties agree that this Section (Section

5) is reciprocal to the extent Business Associate is notified or receives an inquiry from any Individual within Covered Entity's covered population.

6. TERM AND TERMINATION

6.1 Term. This Agreement shall be effective as of the date on which it has been signed by both parties and shall terminate when all PHI which has been provided, regardless of form, by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if the Parties agree that it is unfeasible to return or destroy PHI, subsection 6.3.5 below shall apply.

6.2 Termination for Cause. This Agreement authorizes and Business Associate acknowledges and agrees Covered Entity shall have the right to terminate this Agreement and Service Agreement in the event Business Associate fails to comply with, or violates a material provision of this Agreement and any provision of the Privacy and Security Rules.

6.2.1 Upon Covered Entity's knowledge of a Breach by Business Associate, Covered Entity shall either:

- (a) Provide notice of breach and an opportunity for Business Associate to reasonably and promptly cure the breach or end the violation, and terminate this BAA if Business Associate does not cure the breach or end the violation within the reasonable time specified by Covered Entity; or
- (b) Immediately terminate this BAA if Business Associate has breached a material term of this BAA and cure is not possible.

6.3 Effect of Termination. Upon termination of this Agreement for any reason, except as provided in subsections 6.3.2 and 6.3.5 below, Business Associate shall at its own expense either return and/or destroy all PHI and other confidential information received from Covered Entity or created or received by Business Associate on behalf of Covered Entity. This provision applies to all confidential information regardless of form, including but not limited to electronic or paper format. This provision shall also apply to PHI and other confidential information in the possession of sub-contractors or agents of Business Associate.

6.3.1 The Business Associate shall consult with the Covered Entity as necessary to assure an appropriate means of return and/or destruction and shall notify the Covered Entity in writing when such destruction is complete. If information is to be returned, the Parties shall document when all information has been received by the Covered Entity.

6.3.2 This provision (Section 6.3 and its subsections) shall not prohibit the retention of a single separate, archived file of the PHI and other confidential TennCare information by the Business Associate if the method of such archiving reasonably protects the continued privacy and security of such information and the Business Associate obtains written approval at such time from the Covered Entity. Otherwise, neither the Business Associate nor its Subcontractors and agents shall retain copies of TennCare confidential information, including enrollee PHI, except as provided herein in subsection 6.3.5.

6.3.3 The Parties agree to anticipate the return and/or the destruction of PHI and other TennCare confidential information, and understand that removal of the confidential information from Business Associate's information system(s) and premises will be expected in almost all circumstances. The Business Associate shall notify the Covered Entity whether it intends to return and/or destroy the confidential with such additional detail as requested. In the event Business Associate determines that returning or destroying the PHI and other confidential information received by or created for the Covered Entity at the end or other termination of the Service

Agreement is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction unfeasible.

- 6.3.4 Except for Business Associate Agreements in effect prior to April 21, 2005 when the Security Rule became effective, for the renewal or amendment of those same Agreements, or for other unavoidable circumstances, the Parties contemplate that PHI and other confidential information of the Covered Entity shall not be merged or aggregated with data from sources unrelated to that Agreement, or Business Associate's other business data, including for purposes of data backup and disaster recovery, until the parties identify the means of return or destruction of the TennCare data or other confidential information of the Covered Entity at the conclusion of the Service Agreement, or otherwise make an express alternate agreement consistent with the provisions of Section 6.3 and its subsections.
- 6.3.5 Upon written mutual agreement of the Parties that return or destruction of PHI is unfeasible and upon express agreement as to the means of continued protection of the data, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction unfeasible, for so long as Business Associate maintains such PHI.

7. MISCELLANEOUS

7.1 Regulatory Reference. A reference in this Agreement to a section in the Privacy and/or Security Rule means the section as in effect or as amended.

7.2 Amendment. The Parties agree to take such action to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy and Security Rules and the Health Insurance Portability and Accountability Act, Public Law 104-191. Business Associate and Covered Entity shall comply with any amendment to the Privacy and Security Rules, the Health Insurance Portability and Accountability Act, Public Law 104-191, and related regulations upon the effective date of such amendment, regardless of whether this Agreement has been formally amended, including, but not limited to, changes required by the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

7.3 Survival. The respective rights and obligations of Business Associate under Confidentiality and Section 6.3 of this Agreement shall survive the termination or expiration of this Agreement.

7.4 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity and the Business Associate to comply with the Privacy and Security Rules.

7.5 Headings. Paragraph Headings used in this Agreement are for the convenience of the Parties and shall have no legal meaning in the interpretation of the Agreement.

7.6 Notices and Communications. All instructions, notices, consents, demands, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered by electronic mail, hand, by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below, or to such other party, facsimile number, or address as may be hereafter specified by written notice. (For purposes of this section, effective notice to "Respective Party" is not dependent on whether the person named below remains employed by such Party.) The Parties agree to use their best efforts to immediately notify the other Party of changes in address, telephone number, and fax numbers and to promptly supplement this Agreement as necessary with corrected information.

Notifications relative to Sections 2.8 and 3.4 of this Agreement must also be reported to the Privacy

Officer pursuant to Section 3.5.

COVERED ENTITY:
John G. Roberts, Director
Division of TennCare
310 Great Circle Rd.
Nashville, TN 37243
Fax: (615) 253-5607

BUSINESS ASSOCIATE:
Dawn FitzGerald, CEO

8245 Tournament Drive, Ste 201

Memphis, TN 38125
Fax: 615.244.2018

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the date of hand delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the facsimile machine at the receiving location and receipt is verbally confirmed by the sender.

7.7 Transmission of PHI or Other Confidential Information. Regardless of the transmittal methods permitted above, Covered Entity and Business Associate agree that all deliverables set forth in this Agreement that are required to be in the form of data transfers shall be transmitted between Covered Entity and Business Associate via the data transfer method specified in advance by Covered Entity. This may include, but shall not be limited to, transfer through Covered Entity's SFTP system. Failure by the Business Associate to transmit such deliverables in the manner specified by Covered Entity may, at the option of the Covered Entity, result in liquidated damages if and as set forth in one (1) or more of the Service Agreements between Covered Entity and Business Associate listed above. All such deliverables shall be considered effectively submitted upon receipt or recipient confirmation as may be required.

7.8 Strict Compliance. No failure by any Party to insist upon strict compliance with any term or provision of this Agreement, to exercise any option, to enforce any right, or to seek any remedy upon any default of any other Party shall affect, or constitute a waiver of, any Party's right to insist upon such strict compliance, exercise that option, enforce that right, or seek that remedy with respect to that default or any prior, contemporaneous, or subsequent default. No custom or practice of the Parties at variance with any provision of this Agreement shall affect, or constitute a waiver of, any Party's right to demand strict compliance with all provisions of this Agreement.

7.9 Severability. With respect to any provision of this Agreement finally determined by a court of competent jurisdiction to be unenforceable, such court shall have jurisdiction to reform such provision so that it is enforceable to the maximum extent permitted by applicable law, and the Parties shall abide by such court's determination. In the event that any provision of this Agreement cannot be reformed, such provision shall be deemed to be severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.

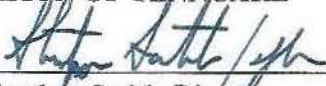
7.10 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee except to the extent that Tennessee law has been pre-empted by HIPAA and HITECH and without giving effect to principles of conflicts of law. Jurisdiction shall be Davidson County, Nashville, Tennessee, for purposes of any litigation resulting from disagreements of the parties for purpose of this Agreement and the Service Agreement (s).

7.11 Compensation. There shall be no remuneration for performance under this Agreement except as specifically provided by, in, and through, existing administrative requirements of Tennessee State government and Services Agreement(s) referenced herein.

7.12 Validity of Execution. Unless otherwise agreed, the parties may conduct the execution of this Business Associate Agreement transaction by electronic means. The parties may agree that an electronic record of the Agreement containing an Electronic Signature is valid as an executed Agreement.

IN WITNESS WHEREOF, the Parties execute this Agreement to be valid and enforceable from the last date set out below:

DIVISION OF TENNCARE

By: 
Stephen Smith, Director

Date: 7/10/20

Division of TennCare
310 Great Circle Road
Nashville, TN 37243
Fax: (615) 253-5607

BUSINESS ASSOCIATE

By: *Dawn M. FitzGerald*
Dawn M. FitzGerald, CEO

Date: 07/07/2020



July 8, 2020

Donovan Morgan
Assistant Director of Contracts
F&A TennCare
310 Great Circle Rd
Nashville, Tennessee 37243

Mr. Morgan,

Qsource is committed to achieving or surpassing a goal of 1.5 percent spend with certified diversity business enterprise firms on State of Tennessee contract 67250. Diversity businesses are defined as those that are owned by minority, women, service-disabled veterans, businesses owned by persons with disabilities, and small businesses which are certified by the Governor's Office of Diversity Business Enterprise (Go-DBE).

We confirm our commitment of 1.5% participation on contract 67250 by using the following diversity businesses:

(i) Name and ownership characteristics (i.e., ethnicity, gender, service-disabled veteran, or disability) of anticipated diversity subcontractors and suppliers:

Goods/Services	Business	
	Name	Characteristics
Office Supplies	Laser Recharge	Small, Woman-Owned
Graphics/Printing	Fineline Graphics	Small, Disadvantaged/Minority-Owned
Office Supplies	Guy Brown	Minority-Owned

(ii) Participation estimates (expressed as a percent of the total contract value to be dedicated to diversity subcontractors and suppliers): 1.5%.

(iii) Description of anticipated services to be performed by diversity subcontractors and suppliers: Printing, printer supplies, office supplies, graphic services

We accept that our commitment to diversity advances the State's efforts to expand opportunity of diversity businesses to do business with the State as contractors and sub-contractors.

Further, we commit to:

1. Using applicable reporting tools that allow the State to track and report purchases from businesses owned by minority, women, service-disabled veterans, businesses owned by persons with disabilities, and small businesses.
2. Reporting monthly to the Go-DBE office the dollars spent with certified diversity businesses owned by minority, women, service-disabled veterans, businesses owned by persons with disabilities, and small business accomplished under contract # 67250.

Qsource is committed to working with the Go-DBE office to accomplish this goal.

Regards,

Dawn M. FitzGerald, MS, MBA
Chief Executive Officer