



CONTRACT AMENDMENT COVER SHEET

Agency Tracking # 31865-00901	Edison ID 70703	Contract #	Amendment # 1		
Contractor Legal Entity Name Government Data Services, LLC			Edison Vendor ID 0000197041		
Amendment Purpose & Effect(s) Exercise Renewal Option					
Amendment Changes Contract End Date: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		End Date: 6/30/2024			
TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A): \$ 0 RV Contract					
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2022	\$0.00				\$0.00
2023	\$0.00				\$0.00
2024	\$0.00				\$0.00
TOTAL:	\$0.00				\$0.00
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.					
Crystal G. Allen		<i>CPO USE</i>			
Digitally signed by: Crystal G. Allen DN: CN = Crystal G. Allen email = Crystal.G.Allen@tn.gov C = US O = TennCare OU = Budget Date: 2023.04.24 10:07:33 -06'00'					
Speed Chart (optional)		Account Code (optional)			

**AMENDMENT #1
OF CONTRACT 70703
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF TENNCARE
AND
GOVERNMENT DATA SERVICES, LLC**

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/or "TennCare" and Government Data Services, LLC., hereinafter referred to as the "Procuring Party." 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 A.13 is deleted in its entirety and replaced with the following:
 - A.13. Network Connection: Access to information provided by the State will come through a secure connection method determined by the State.
2. Contract Section B is deleted in its entirety and replaced with the following:
 - B.1. This Contract shall be effective for the period beginning on July 1, 2021 ("Effective Date") and ending on June 30, 2024, ("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.

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,

GOVERNMENT DATA SERVICES, LLC.:



04/19/2023

PROCURING PARTY SIGNATURE

DATE

Christopher Cusimano, JD

Managing Member/CEO

PRINTED NAME AND TITLE OF PROCURING PARTY SIGNATORY (above)

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



4/24/2023

JIM BRYSON, COMMISSIONER

DATE



REVENUE CONTRACT

(state revenue contract with an individual, business, non-profit, or government entity of another state or country and from which the state receives monetary compensation)

Begin Date	End Date	Agency Tracking #	Edison Record ID
July 1, 2021	June 30, 2023	31865-00901	70703

Procuring Party Legal Entity Name	Procuring Party Registration ID
Government Data Services, LLC	0000197041

Services Caption
Provision of TennCare Eligibility Information through the TennCare Database

Contractor Ownership Characteristics:

☐ Minority Business Enterprise (MBE):

☐ African American ☐ Asian American ☐ Hispanic American ☐ Native American

☐ Woman Business Enterprise (WBE)

☐ Tennessee Service Disabled Veteran Enterprise (SDVBE)

☐ Disabled Owned Business (DSBE)

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

☐ Government ☐ Non-Minority/Disadvantaged ☒ Other Limited Liability Company

Selection Method & Process Summary (mark the correct response to confirm the associated summary)	
<input type="checkbox"/> Competitive Selection	
<input checked="" type="checkbox"/> Other	The procuring party selection was directed by law, court order, settlement agreement, or resulted from the state making the same agreement with <u>all</u> interested parties or <u>all</u> parties in a predetermined "class."

CPO USE - RV

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION
DIVISION OF TENNCARE
AND
GOVERNMENT DATA SERVICES LLC**

This Contract, by and between the State of Tennessee, Department of Finance and Administration, Division of Division of TennCare, hereinafter referred to as the "State" and Government Data Services, LLC, hereinafter referred to as the "Procuring Party," is for the provision of TennCare eligibility information on its eligible members through the TennCare database, as further defined in the "SCOPE OF SERVICES."

The Procuring Party is a Limited Liability Company.
Procuring Party Place of Incorporation or Organization: Ohio

A. SCOPE OF SERVICES:

- A.1. Purpose. The purpose of this contract is to provide Eligibility Verification Services to the Procuring Party. Procuring Party shall send requests to the State for verification of eligibility (HIPAA 270) and the State shall send a response (HIPAA 271) to the Procuring Party regarding verification of eligibility. The Procuring Party agrees that it shall maintain a list of its subscribing providers (subscribers) and upon written request by the State shall furnish a copy of this list and/or its contracts with each subscriber to the State within thirty (30) business days of the request.
- A.2. The Procuring Party agrees that it shall only release to subscribers information contained in the eligibility response transaction provided by TennCare and the information shall be only related to individuals with whom the subscriber has a treatment relationship. The Procuring Party shall not supplement eligibility information, including subscriber or coverage data, except to decode coded values or otherwise format the response for readability.
- A.3. The Eligibility Verification Service provided to subscribers by the Procuring Party shall allow subscribers access to eligibility information only by the input of required data elements as specified in the relevant Health Insurance Portability and Accountability Act of 1996 (HIPAA) implementation guide and TennCare companion guide for the eligibility inquiry request transaction as published on the TennCare Internet site, including any subsequent amendments or revisions. Procuring Party and subscribers are responsible for adherence to directions, guidance and conditions contained within amendments and revisions to both the HIPAA Implementation Guide and TennCare Companion Guide. Required data elements shall include appropriate identifying information for the TennCare member and relevant date(s) of service(s). A span of service dates cannot exceed 366 calendar days. The Procuring Party shall forward eligibility inquiry request transactions received from subscribers to TennCare in the format specified in the published TennCare companion guide.
- A.4. To the extent Procuring Party is classified as a Health Care Clearinghouse, the Procuring Party shall not inquire *en masse* (data matching of less than fifty percent (50%) for eligibility data for an entire subscriber roster where the inquiry is not in the context of immediate treatment, payment or health care operations. To the extent the Procuring Party is classified as a Health Care Clearinghouse, the Procuring Party may forward requests on behalf of and on the explicit request of health care subscribers who in turn can request the eligibility data only to support a direct patient treatment relationship and verification of eligibility to support treatment, payment or health care operations for a member who represents that he/she is covered by Medicaid or whom the health care provider reasonably believes to be covered by Medicaid.
- A.5. It shall be the responsibility of the Procuring Party to ensure satisfaction of all its responsibilities as specified in this Contract. No subscriber contract terminates or reduces the legal responsibility of the Procuring Party to TennCare to ensure that all activities under this Contract are carried out.

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

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

- a. That access to eligibility information shall be restricted to the specific purposes of verification and reporting of eligibility for Medicaid benefits specific to members and dates of service where a member is requesting payment for medical services and a treatment relationship exists to support and justify the subscriber's request.
- b. That verification of eligibility under the system is not an assurance of payment by the State and that the records of the State as to a recipient's eligibility status shall be the final authority.
- c. That the subscriber indemnifies and holds harmless the State, its agents and employees, from any and all claims by such subscriber or any recipient who is aggrieved by the actions of any party under this Contract.
- d. That the subscriber must be an approved Medicaid Provider and must include its valid TennCare Provider number and National Provider Identifier (NPI) in the Procuring Party's contract.
- e. That fees charged subscribers must be consistent with the market rate for similar subscription services.
- f. The Procuring Party shall maintain records for three (3) years showing subscriber name, TennCare member name and I.D. number. The Procuring Party shall submit to random auditing by the State, and shall, if requested, provide a service auditor's report attesting to the condition of the Procuring Party's activities, including controls over information technology and related processes, as well as privacy, security and confidentiality safeguards.
- g. All proprietary information, including but not limited to, provider reimbursement information provided to TennCare, shall be deemed confidential and not subject to disclosure under the Tennessee Public Records Act, Tenn. Code Ann. § 10-7-501, *et seq.*
- h. The private, confidential, and individually identifying data collected, maintained, or used in the course of performance of this Contract shall neither be disseminated, used nor disclosed in violation of any federal and/or State laws, including, but not limited to, the Medicaid Safeguarding Information on Individuals regulations, 42 CFR 431.300 *et seq*; the Privacy Act of 1974, 5 U.S.C. § 552a; the Tennessee Public Records Act, Tenn. Code Ann. § 10-7-501, *et seq.*; the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C.A. § 1320d *et seq.*, 45 C.F.R. §§ 164.508, 510, 512(e); the Identity Theft Victims' Rights Act of 2004, Tenn. Code Ann. § 39-14-150; Tennessee Identity Theft Deterrence Act of 1999, Tenn. Code Ann. § 47-18-2101 *et seq.*; the Financial Privacy and the Safeguards Rules located in Title V of the Gramm-Leach Bliley Act of 1999 (GLB), PL 106-102, 113 Stat 1338 (November 12, 1999) (when in the course of performance the Procuring Party causes data to have GLB Financial Privacy Rule or Safeguard Rule implication); American Recovery and Reinvestment Act of 2009 (ARRA), Health Information Technology for Economic and Clinical Health Act (HITECH Act), (Pub. L. 111-5), § 13001, *et seq.* (Feb. 17, 2009); Identity Theft Red Flags and Address Discrepancies Under the Fair and Accurate Credit Transactions Act of 2003, 72 FR 63718-01 (November 9, 2007) (the "Red Flag Rules"); and the Substance Abuse and Mental Health Services confidentiality regulations.
- i. For training of and information to subscriber's employees about the subscriber's obligations to the TennCare Program; accountability for the actions of employees; and acceptance of the requirements of the TennCare Program.
- j. That information made available pursuant to this Contract is confidential in nature and is protected as such pursuant to State and Federal laws, rules, regulations, and policies. Therefore, it is expressly agreed by all parties to this Contract that information relating to members and providers

obtained pursuant to this Contract shall be treated as confidential information by all agents, employees, representatives or others acting on behalf of the parties, to the extent and manner that confidential treatment is provided under State or Federal Laws, and the information shall not be used in any manner except as necessary for the proper discharge of the parties rights and obligations under this Contract.

- k. Assurance that reasonable efforts are made by the State to ensure that the information made available to the Procuring Party pursuant to this Contract is complete, accurate, and current. However, it is expressly agreed by all parties to this Contract that the State does not warrant that the information is complete, accurate, or current and the State expressly disclaims any liability as a result of reliance by any party on the contents of the information. The parties further agree to hold the State harmless from any claims arising, directly or indirectly, out of reliance on the completeness, accuracy, or timeliness of the information provided by the State.
 - l. All subscriber contracts shall include the effective date of the contract, a signature page which contains the Procuring Party and subscriber names which are typed or legibly written, subscriber's business name with titles, if applicable, contact information, and dated signatures of all appropriate parties;
- A.6. The Procuring party agrees to comply with all State and Federal laws, rules, regulations, policies and court orders as they exist or as amended that are or may be applicable to this Contract, including, but not limited to, those laws, rules, regulations, and policies contained in ancillary contracts/agreements such as the Trading Partner Agreement (Attachment A) and Business Associate Agreement (Attachment B), where applicable.
 - A.7. Confidential Information (i) shall be held by the Procuring Party in strictest confidence at all times; (ii) shall not be disclosed or divulged by the Procuring Party to any person or entity, except those employees and agents of the Procuring Party who require access to such information, and only after those employees and agents have been instructed that the information is subject to the confidentiality and safeguarding obligations set forth herein; and (iii) shall not be used by the Procuring Party for any purpose not set forth herein or otherwise authorized in writing by TennCare. The Parties shall diligently exercise the highest degree of care to preserve privacy, security and integrity of, and prevent unauthorized access to, the Confidential Information. By executing this Contract, the Procuring Party assures that it has established written policies and procedures relating to confidentiality, including the confidentiality of protected health information (PHI) and eligibility information. The Procuring Party further assures, by executing this Contract, that its organization has implemented administrative, technical and physical safeguards and mechanisms that protect against the unauthorized or inadvertent disclosure of confidential information to any person or entity outside its organization.
 - A.8. Any information obtained by TennCare Parties, intermediaries or carriers in the course of carrying TennCare contracts/agreements shall not be disclosed and remain confidential; furthermore, such requests which have been made pursuant to the Tennessee Public Records Act, Tenn. Code Ann. § 10-7-501, *et seq.* shall be denied under authority of an appropriate statutory exemption.
 - A.9. TennCare contemplates data sharing within the ambit of HIPAA to include, but not be limited to, specific testing environments for the purpose of establishing a treatment relationship or to respond to Medicare Advantage plan finder file eligibility inquiries for the purpose of identifying dual-eligibles enrolled in the Medicare Advantage plan. Such transactions shall be implemented under the health care operations permitted use set forth in HIPAA and for payment purposes, respectively.
 - A.10. The Procuring Party, if a Health Care Clearinghouse, shall not store eligibility information received on behalf of a request by a subscriber except to the extent confirmation of delivery is necessary. In no event shall Procuring Party store eligibility information beyond a reasonable threshold period defined by TennCare as a maximum of thirty (30) days, unless otherwise required by law, nor shall Procuring Party retain TennCare-related data for independent third-party documentation without prior approval and written authorization from TennCare.
 - A.11. The Procuring Party is prohibited from any and all automated extraction of predictive information from data for the purpose of finding patterns of behavior and trends or anomalies that may otherwise escape detection,

the advanced statistical analysis and modeling of the data to find useful patterns and relationships, and the use of computational techniques involving statistics, machine learning and pattern recognition to analyze the data. To the extent data sharing or electronic data interchange (EDI) is utilized between the Parties for the purposes of provision, coordination or management of a treatment relationship, such use or disclosure shall be governed by strict compliance with return and destruction of PHI as defined in 45 C.F.R. pts. 160 and 164.

- A.12. Minimum Acceptable Encryption Requirements: All data transmitted by the use of the Internet must be protected. SSC Secure transaction, data encryption per State, HIPAA and ARRA HITECH encryption standards. Levels of data security must be reviewed to ensure that security levels are upgraded as newer technology is developed and security standards are increased. All data security standards must follow the Centers for Medicare and Medicaid Services (CMS) acceptable guidelines as well as meet HIPAA and HITECH regulations.
- A.13. Network Connection: All information access will come through a dedicated network connection that must be furnished by the Procuring Party or a virtual private network (VPN) connection with access information provided by TennCare. The Procuring Party will be responsible for any cost associated with the installation and operation of this connection.
- A.14. Acceptable Authentication Approaches: Authentication (This function is accomplished by the use of the Internet, and is referred to as an "in-band" process). Connection authentication standards shall be provided and/or reviewed and approved by the State prior to granting access to State systems and networks.
- a. Formal Certificate Authority-based use of digital certificates is acceptable.
 - b. Locally-managed digital certificates are acceptable, providing all parties to the communication are covered by the certificates.
 - c. Token or "smart cards" are acceptable for authentication. In-band tokens overall network control of the token database for all parties.
- A.15. CMS Audit: In addition to the auditing requirements stipulated in this contract, CMS reserves the right to audit any organization implementation of, and/or adherence to these requirements. This includes the right to require that any organizations utilizing the Internet for transmission of CMS Privacy Act-protected, Medicaid confidential information and/or other sensitive information submit documentation to demonstrate that they meet these requirements.
- A.16. The State agrees to provide current TennCare Eligibility Information on its eligible members as specified in the relevant HIPAA implementation guide and TennCare companion guide for the eligibility inquiry response transaction as published on the TennCare Internet site, including any subsequent amendments or revisions.
- A.17. In the course of daily operations the State shall update the eligibility information specified in A.16 and shall provide this information to the Procuring Party through on-line or batch access to the State's TennCare Management Information System (TCMIS).
- A.18. Access Suspension: TennCare reserves the right to suspend Procuring Party's access in the event of Procuring Party's inappropriate use or access as determined by TennCare, including, but not limited to, in the event fifty percent (50%) of Procuring Party's requests received are not matched. TennCare may evaluate such patterns for indications of inappropriate use, including inquiry outside of the context of immediate treatment, payment or healthcare operations, or where the Procuring Party has no reasonable cause to believe that information requested was for individuals eligible for TennCare.
- A.19. TCMIS Related Requirements. The Procuring Party must provide TennCare representatives with direct access to all available services via a test account. TCMIS' designated security officer must be permitted to conduct tests of the Procuring Party's Internet services and its security features prior to transmitting any Tennessee Medicaid eligibility data or information via the World-Wide Web or internet. Additional requirements include:
- a. Procuring Party must maintain logs of Internet access activity to TCMIS for a period of ten (10) years.

- b. Logs must be made available for inspection upon demand by TennCare representatives.
- c. Where passwords are utilized, they must be changed at least every ninety (90) days.
- d. A properly configured server firewall must be installed and maintained at the Procuring Party's site to prevent potential unauthorized access. The Procuring Party shall immediately notify the State should the Procuring Party have notice of a data security breach whenever unencrypted personal information was obtained, or is reasonably believed to have been obtained, by an unauthorized user.
- e. Physical access to client and server systems must be limited to authorized Procuring Party personnel.

B. TERM OF CONTRACT:

- B.1 This Contract shall be effective for the period beginning on July 1, 2021 ("Effective Date") and ending on June 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 three (3) 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.

C. PAYMENT TERMS AND CONDITIONS:

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

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

D. STANDARD TERMS AND CONDITIONS:

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

effectively used by the Procuring Party. The final decision, as to what these units of service are, shall be determined by the State. In the event of disagreement, the Procuring Party may file a claim with the Tennessee Claims Commission in order to seek redress.

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

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

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

- D.11. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.12. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.13. State and Federal Compliance. The Procuring Party and the State shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.14. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Procuring Party agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Procuring Party acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.15. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.16. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.17. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D. 18. HIPAA Compliance. The State and Procuring Party 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").
- a. Procuring Party 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. Procuring Party 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 Procuring Party 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 Procuring Party 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 such information without entering into a business associate agreement or signing another such document.
 - d. The Procuring Party will indemnify the State and hold it harmless for any violation by the Procuring Party 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.19. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Procuring Party by the State or acquired by the Procuring Party on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and

federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Procuring Party to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

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

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

E. SPECIAL TERMS AND CONDITIONS:

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

The State:

Deputy Commissioner
Department of Finance and Administration
Division of TennCare
310 Great Circle Road
Nashville, TN 37243
Phone: (615) 507-6443
FAX: (615) 532-5236

The Procuring Party:

Christopher Cusimano, JD, CEO
3200 W Market Street
Suite 102
Akron, OH 44333-3324
chrisCUSIMANO@govdataservices.com
Phone: (330) 714-7848 or toll free at (800) 370-7397 x103

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

- E.3 Tennessee Department of Revenue Registration. The Procuring Party shall be registered with the Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material requirement of this Contract.

E.4. Debarment and Suspension. The Procuring Party certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

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

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

E.5. Prohibited Advertising. The Procuring Party shall not refer to this Contract or the Procuring Party's relationship with the State hereunder in commercial advertising in such a manner as to state or imply an endorsement by the State. It is expressly understood and agreed that the obligations set forth in this section shall survive the termination of this Contract in perpetuity.

E.6. Lobbying. The Procuring Party certifies, to the best of its knowledge and belief, that:

- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the Procuring Party, 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 Procuring Party shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The Procuring Party shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

E.7. Hold Harmless. The Procuring Party agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Procuring Party, its employees, or any person acting for or on its or their behalf relating to this Contract. The Procuring Party further agrees it shall be liable for the reasonable cost of attorneys for the State 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 Procuring Party of its obligations under this Section to the extent that the Procuring Party can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Procuring Party, 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.

- E.8. Information Holders. TennCare and the Procuring Party are “information holders” as defined in TCA 47-18-2107. In the event of a breach of the security of Procuring Party’s information system, as defined by TCA 47-18-2107, the Procuring Party shall indemnify and hold TennCare harmless for expenses and/or damages related to the breach. Such obligations shall include, but not be limited to, mailing notifications to affected enrollees. Substitute notice to written notice, as defined by TCA 47-18-2107(e)(2) and (3), shall only be permitted with TennCare’s express written approval. The Procuring Party shall notify TennCare’s Privacy Office immediately upon becoming aware of any security incident that would constitute a “breach of the security of the system” as defined in TCA 47-18-2107.
- E.9. Notification of Breach and Notification of Suspected Breach. - The Procuring Party shall notify TennCare’s Privacy Office immediately upon becoming aware of any incident, either confirmed or suspected, that represents or may represent unauthorized access, use or disclosure of encrypted or unencrypted computerized data that materially compromises the security, confidentiality, or integrity of enrollee PHI maintained or held by the Procuring Party, including any unauthorized acquisition of enrollee PHI by an employee or otherwise authorized user of the Procuring Party’s system. This includes, but is not limited to, loss or suspected loss of remote computing or telework devices such as laptops, tablets, PDAs, smartphones, flash drives, CD/DVDs, and/or other fixed or portable storage media.
- E.10. Personally Identifiable Information. While performing its obligations under this Contract, Procuring Party 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”). Procuring Party agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Procuring Party 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 Procuring Party 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. Procuring Party shall immediately notify State: (1) of any disclosure or use of any PII by Procuring Party or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Procuring Party or its employees, agents and representatives where the purpose of such disclosure is not known to Procuring Party or its employees, agents and representatives. The State reserves the right to review Procuring Party’s policies and procedures used to maintain the security and confidentiality of PII and Procuring Party shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify and/or procure that Procuring Party 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, Procuring Party 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 Procuring Party shall report to the State any instances of unauthorized access to or potential disclosure of PII in the custody or control of Procuring Party (“Unauthorized Disclosure”) that come to the Procuring Party’s attention. Any such report shall be made by the Procuring Party within twenty-four (24) hours after the Unauthorized Disclosure has come to the attention of the Procuring Party. Procuring Party shall take all necessary measures to halt any further Unauthorized Disclosures. The Procuring Party, 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 Procuring Party 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.

IN WITNESS WHEREOF,

GOVERNMENT DATA SERVICES LLC:



Digitally signed by Christopher
Cusimano, JD

Date: 2021.05.19 16:55:34 -04'00'

May 19, 2021

PROCURING PARTY SIGNATURE

DATE

Christopher Cusimano, JD Managing Member / CEO

PRINTED NAME AND TITLE OF PROCURING PARTY SIGNATORY (above)

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

Butch Eley

Digitally signed by Butch Eley

Date: 2021.06.03 12:57:16 -05'00'

BUTCH ELEY, COMMISSIONER

DATE



State of Tennessee
Department of Finance and Administration
Division of TennCare

Trading Partner Agreement

THIS TRADING PARTNER AGREEMENT ("Agreement") is between The State of Tennessee, Department of Finance and Administration, Division of TennCare ("TennCare" or "the State"), 310 Great Circle Road, Nashville, TN 37243, and Government Data Services LLC ("Trading Partner") located at 3200 W. Market St. Ste. 102 Akron, OH 44333-3324, including all office locations and other business locations at which Trading Partner data may be used or maintained. Trading Partners may be referred to herein individually as "Party" or collectively as "Parties."

1. PURPOSE AND BACKGROUND

- 1.1 The Division of TennCare includes TennCare, the state Medicaid agency, Cover Tennessee, the Health Insurance Exchange Planning Initiative, the Division of State Health Planning, and the Office of eHealth Initiatives.
- 1.2 This Agreement is ancillary to any State Contract ("SC"), Contractor Risk Agreement ("CRA") and Business Associate Agreement ("BAA") entered into between Trading Partner and a Division of TennCare, where applicable. The provisions of the SC, CRA and BAA are hereby incorporated by reference and shall be taken and considered as part of this Agreement the same as if fully setout herein.
- 1.3 TennCare, in its capacity as the Medicaid Agency ("TennCare") for the State of Tennessee, by law, must operate the TennCare Medicaid Management Information System ("TCMIS"). The TCMIS contains information regarding claims adjudication, eligibility verification, prior authorization and other information related to the TennCare Program and other TennCare programs.
- 1.4 The State owns the data in the TCMIS and operates the system in which the claims and eligibility data flow. Trading Partners provide the pipeline network for the transmission of electronic data; thus, are required to transport TCMIS data to and from the State and providers of TennCare services.
- 1.5 This Agreement delineates the responsibilities of the State and the Trading Partner in transporting TCMIS data in operation of the TennCare programs.

2. SCOPE

2.1 System Access. The State agrees to provide Trading Partner with electronic access to the TCMIS and network for the purpose of exchanging transactions via Trading Partners' computer systems and network or its authorized designee's computer systems and network.

2.1.1 To the extent Trading Partner executes a contract with TennCare service providers, or their authorized designee (clearinghouse, Value-Added Network (VAN), billing service, etc.), Trading Partner shall represent that it has on hand all necessary authorizations for submitting and receiving TCMIS data. Said contract must stipulate that providers use software tested and approved by Trading Partner as being in the proper format and compatible with the TCMIS.

2.1.1.1 Trading Partner agrees that the TCMIS data transmitted or received by it shall be released only in support of the terms of an executed contract between Trading Partner and the authorized party requesting information to the extent authorized party's request is for the purposes of reporting eligibility for State benefits specific to individuals and dates of service and a treatment relationship exists to support and justify the authorized party's request in keeping with this Agreement.

2.1.2 Prior to the submission of any transactions to the TCMIS production systems, Trading Partner agrees to submit test transactions to the State for the purpose of determining that the transactions comply with all requirements and specifications required by the State.

2.1.3 Successful transaction testing must be achieved by Trading Partner for each provider number that the Trading Partner represents before any production transaction submissions are processed for that provider. No electronic transaction received by the State for providers without successful transaction testing shall be processed.

2.1.4 The parties agree that the State shall make the sole determination that test data is acceptable and that transaction testing is successful. This capability to submit test transactions shall be maintained by Trading Partner throughout the term of this Agreement.

2.2 Transaction Types. Trading Partner agrees to submit to the TCMIS and any other TennCare systems only those individual transaction types for which specific approval from the State has been requested and received via the Electronic Data Interchange Request Form available under Electronic Data Interchange ("EDI") on the TennCare website. Prior to the submission of any transaction types to the TCMIS production system or to any other TennCare systems, or as a result of changes to an existing transaction type or system, Trading Partner agrees to submit test transactions to the State for both the additional and any previously approved transaction types.

2.3 Data Submission. Trading Partner shall prepare and submit or receive TCMIS and other TennCare related data using network connectivity, protocols, and media approved by the State. The addition and deletion by the State of approved submission network connectivity, protocols, and media may occur from time to time. To the extent the deletion of a network connectivity, protocol, or media is contemplated from the approved list, the State shall supply the Trading Partner with ninety (90) days' notice of the date of impending deletion.

- 2.4 Transmission Speed. For electronic transmission, such as File Transfer Protocol (FTP), that does not involve the physical exchange of storage media, the Trading Partner agrees to provide a minimum design transmission speed of 56 kilobits per second (KBS) with an effective transmission speed of at least eighty percent (80%) of the design transmission speed on a dedicated, secure channel or Virtual Private Network (VPN) from the Trading Partner data center to the State's facility. Trading Partner is free to choose type of channel and ultimate speed above 56 KBS as long as the selected transmission method is approved by TennCare. Trading Partner must coordinate any equipment selection or changes with the State to ensure compatibility with the State's facilities. Trading Partner is responsible for all costs including installation costs, equipment, and line charges.
- 2.5 Data Encryption. Trading Partner must encrypt all data transmitted on channels not otherwise secured and maintain full compatibility with the State's facilities. The State reserves the right to determine when encrypted transmissions are necessary and what encryption technologies and implementations are considered sufficiently secure.
- 2.6 Compression/Decompression. Trading Partner must be capable of compressing and transmitting and receiving and decompressing transaction data files that are compressed and decompressed using the algorithms commercially known as "zip" or "gzip."
- 2.7 Remote Access Request. Trading Partner shall execute a Remote Access Request with the State, found on the TennCare website.

3. **DEFINITIONS**

- 3.1 "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 the State to the Trading Partner under this Agreement. Any information, whether written, graphic, oral, electronic, visual or fixed in any tangible medium or expression, relating to individuals enrolled in any TennCare program ("enrollees"), or relating to individuals who may be potentially enrolled in a TennCare program, which is provided to or obtained through the Trading Partner'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, Tenn. Code. Ann. § 10-7-501 *et seq.*
- 3.2 "Covered entity" shall mean (1) A health plan (2) A health care clearinghouse (3) or a health care provider who transmits any health information in electronic form in connection with a transaction covered by 45 CFR Parts 160 & 164.
- 3.3 "*En Masse Inquiry*" shall mean data matching of less than fifty percent (50%).
- 3.4 "Health care clearinghouse" shall mean a public or private entity, including a billing service, repricing company, community health management information system or community health information system, and "value-added" networks and switches, that does either of the following

functions: (1) Processes or facilitates the processing of health information received from another entity in a nonstandard format or containing nonstandard data content into standard data elements or a standard transaction. (2) Receives a standard transaction from another entity and processes or facilitates the processing of health information into nonstandard format or nonstandard data content for the receiving entity.

- 3.5 "Health care provider" shall mean a provider of services (as defined in section 1861(u) of the Act, 42 U.S.C. 1395x(u)), a provider of medical or health services (as defined in section 1861(s) of the Act, 42 U.S.C. 1395x(s)), and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business.
- 3.6 "Health plan" shall mean an individual or group plan that provides, or pays the cost of, medical care information or when requesting protected health information (PHI) from another covered entity, a covered entity must make reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request. A covered entity must limit any request for PHI to that which is reasonably necessary to accomplish the purpose for which the request is made, when requesting such information from other covered entities.
- 3.7 "Individually identifiable health information" means any information, including demographic information collected from an individual, that (a) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (b) relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, and identifies the individual; or, with respect to which there is a reasonable basis to believe that the information can be used to identify the individual.
- 3.8 "Payment" shall mean (1) The activities undertaken by: (i) A health plan to obtain premiums or to determine or fulfill its responsibility for coverage and provision of benefits under the health plan; or (ii) A health care provider or health plan to obtain or provide reimbursement for the provision of health care; and (2) The activities in paragraph (1) of this definition relate to the individual to whom health care is provided.
- 3.9 "Proprietary Information" shall mean TennCare processes, procedures, software, methods and any property of, or relating to, TennCare data.
- 3.10 "Protected Health Information" (PHI) shall mean individually identifiable health information that is transmitted by electronic media, maintained in electronic media; or transmitted or maintained in any other form or medium.
- 3.11 "Standard Eligibility Transaction" shall mean the Health Insurance Portability and Accountability Act of 1996 (HIPAA) 270/271 eligibility inquiry from a sender that is a health plan or health care provider and the designated response from the State.
- 3.12 "Treatment" shall mean the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care

providers relating to a patient; or the referral of a patient for health care from one health care provider to another.

3.13 "Treatment Relationship" shall have the following meanings:

3.13.1 "Direct Treatment Relationship" shall mean a treatment relationship between an individual and a health care provider that is not an indirect treatment relationship.

3.13.2 "Indirect Treatment Relationship" shall mean a relationship between an individual and a health care provider in which (1) The health care provider delivers health care to the individual based on the orders of another health care provider; and (2) The health care provider typically provides services or products, or reports the diagnosis or results associated with the health care, directly to another health care provider, who provides the services or products or reports to the individual.

4. COMPLIANCE

4.1 Trading Partner agrees to comply with all State and federal laws, regulations, and policies as they exist or as amended that are or may be applicable to this Agreement, including, but not limited to, ancillary agreements such as the SC, CRA and BAA (Section 1).

4.1.1 Proprietary and Confidential Information [See 3.1 & 3.9]. All proprietary information, including but not limited to, provider reimbursement information provided to TennCare, shall be deemed confidential and not subject to disclosure under the Tennessee Public Records Act.

4.1.2 Duty to Protect. Confidential Information (i) shall be held by the Trading Partner in strictest confidence at all times; (ii) shall not be disclosed or divulged by the Trading Partner to any person or entity, except those employees and agents of the Trading Partner who require access to such information, and only after those employees and agents have been instructed that the information is subject to the confidentiality obligations set forth herein; and (iii) shall not be used by the Trading Partner for any purpose not set forth herein or otherwise authorized in writing by the TennCare program. The Parties shall diligently exercise the highest degree of care to preserve the security and integrity of, and prevent unauthorized access to, the Confidential Information. By executing this Agreement, Trading Partner and TennCare assure that each respective organization has established written policies and procedures relating to confidentiality, including the confidentiality of protected health information and eligibility information. The Trading Partner and TennCare further assure, by executing this Agreement, that its respective organization has implemented administrative, technical and physical safeguards and mechanisms that protect against the unauthorized or inadvertent disclosure of confidential information to any person or entity outside its organization.

4.1.3 Any information obtained by TennCare Trading Partners, intermediaries or carriers in the course of carrying TennCare agreements shall not be disclosed and remain confidential; furthermore, such requests which have been made pursuant to the Tennessee Public Records Act shall be denied under authority of an appropriate exemption.

- 4.2 Explicit Data Sharing. TennCare contemplates data sharing within the ambit of HIPAA to include, but not be limited to; specific testing environments for the purpose of establishing a treatment relationship or to respond to Medicare Advantage plan finder file eligibility inquiries for the purpose of identifying dual-eligibles enrolled in the Medicare Advantage plan.

Such transactions shall be implemented under the health care operations exception set forth in HIPAA and for payment purposes, respectively.

- 4.2.1 Data Storage. Trading Partner, if a Health Care Clearinghouse, shall not store eligibility information received on behalf of a request by a subscriber provider except to the extent confirmation of delivery is necessary. In no event shall Trading Partner store eligibility information beyond a reasonable threshold period defined by the State as a maximum of thirty (30) days unless otherwise required by law, nor shall Trading Partner retain TennCare related data for independent third-party documentation without prior approval and written authorization from the State program.

- 4.2.2 To the extent Trading Partner is classified as a Health Care Clearinghouse, Trading Partner shall not inquire *en masse* for eligibility data for an entire subscriber provider roster where the inquiry is not in the context of immediate treatment, payment or health care operations.

To the extent Trading Partner is classified as a Health Care Clearinghouse, Trading Partner may forward requests on behalf of and on the explicit request of health care provider subscribers who in turn can request the eligibility data only to support a direct patient treatment relationship and verification of eligibility to support treatment, payment or health care operations for a patient who represents that he/she is covered by Medicaid or the applicable TennCare program or whom the health care provider reasonably believes to be covered by Medicaid or the applicable TennCare program.

- 4.2.3 Prohibition of Data Mining. Unless otherwise agreed to by the parties and in support of functions contained in the agreements listed in Section 1.2, Trading Partner is prohibited from any and all automated extraction of predictive information from data for the purpose of finding patterns of behavior and trends or anomalies that may otherwise escape detection, the advanced statistical analysis and modeling of the data to find useful patterns and relationships, and the use of computational techniques involving statistics, machine learning and pattern recognition to analyze the data.

- 4.3. Treatment Relationship. To the extent data sharing or electronic data interchange (EDI) is utilized between the Parties for the purposes of provision, coordination or management of a treatment relationship, such use or disclosure shall be governed by strict compliance with return and destruction of protected health information (PHI) referenced in Section 9.3 of this Agreement.

- 4.3.2 Medicare Advantage Plan. The State may use or disclose PHI for its payment purposes, as well as for the payment purposes of another covered entity that receives the information. The State will accept and respond to Medicare Advantage plans' "finder files" to enable Medicare

Advantage plans to claim the appropriate payment rate for their dual eligible enrollees pursuant to the limiting provisions within this Agreement.

4.3.2.1 Access/Usage Fee. TennCare reserves the right to amend this Agreement to institute fees predicated upon Trading Partner's access to and usage of enrollee data absent a bidirectional relationship for such data.

4.3.3 Suspension of Access. TennCare reserves the right to suspend Trading Partner's access in the event of Trading Partner's inappropriate use of access as determined by TennCare, including, but not limited to, in the event fifty percent (50%) of Trading Partner requests received are not matched. TennCare may evaluate such patterns for indications of inappropriate use, including inquiry outside of the context of immediate treatment, payment or healthcare operations, or where the Trading Partner has no reasonable cause to believe that information requested was for individuals eligible for the applicable TennCare program.

5. CLAIMS, CHARGES AND PAYMENT

5.1 Consideration. The Trading Partner certifies that all services for which reimbursement will be claimed shall be provided in accordance with all federal and State laws pertaining to TennCare Programs.

5.1.1 The Trading Partner certifies that all charges submitted for services and items provided shall not exceed Trading Partner's and/or Provider's usual and customary charges for the same services and items provided to persons not entitled to receive benefits under TennCare Programs.

5.1.2 The Trading Partner understands that any payments made in satisfaction of claims submitted through Electronic Media shall be delivered from federal and State funds and that any false claims, statements or documents, or concealments of a material fact may be subject to prosecution under federal and state law.

5.2 Access. The Trading Partner and/or Provider shall allow TennCare access to claims data and assures that claims data shall be submitted by authorized personnel so as to preclude erroneous payments received by the Trading Partner and/or Provider regardless of the reason for such erroneous payments.

6. GUIDELINES FOR TENNCARE STANDARD ELECTRONIC TRANSACTIONS

6.1 HIPAA Transactions. The State has adopted the HIPAA transaction standards and has created companion documentation to assist in conducting electronic transactions with the State. The ASC X12 and National Council for Prescription Drug Programs ("NCPDP") standards required by HIPAA regulation are formulated to minimize the need for users to reprogram their data processing systems for multiple formats by allowing data interchange through the use of common interchange structures.

- 6.2 Acknowledgement Capacity. The State shall acknowledge standard transactions from an authorized Trading Partner. No other transactions are acknowledged including proprietary formats and those from an unauthorized submitter.
- 6.3 HIPAA Companion Guide. All TennCare specific information can be found in the TennCare HIPAA Companion Guide, which is a de facto part of this Trading Partner Agreement. The TennCare HIPAA Companion Guide is a multi-part document that can be accessed from the TennCare SFTP server or provided by e-mail via written request.
- 6.3.1 270/271 Healthcare Eligibility Benefit Inquiry/Response. Transaction Standard for Eligibility for a Health Plan - This transaction is used by fee-for-service ("FFS") providers to receive eligibility information about a subscriber. The State may also use this transaction set to verify eligibility for a third party health plan or Medicare Advantage plan. Data sharing or EDI utilized between the Parties shall be for the purposes of provision, coordination or management of a current treatment relationship or for an enrollee for whom an open balance exists which has been timely filed and is within the State's look-back time parameters.
- 6.3.2 276/277 Health Care Claim Status. Transaction Standard for Health Care Claim Status and Response – This transaction is used by the FFS provider to get the status of a claim.
- 6.3.3 278 Referral Certification and Authorization. Transaction Standard for Referral Certification and Authorization – This transaction is used by FFS providers to request prior authorization for clients receiving services from a FFS provider.
- 6.3.4 820 Payment Order/Remittance Advice. Transaction Standard for Health Plan Premium Payments – This transaction shall be sent to the Managed Care Contractors ("MCCs") and shall contain the capitated payment summary for the month.
- 6.3.5 834 Benefit Enrollment and Maintenance. Transaction Standard for Enrollment and Disenrollment in a Health Plan – This transaction is sent to the MCCs and shall contain enrollment information for the MCC. A 271U response transaction that primarily contains service limits information is always distributed with an 834.
- 6.3.6 835 Remittance Advice. Transaction Standard for health Care Payment and Remittance Advice - This transaction is used by FFS providers to receive an electronic remittance advice.
- 6.3.7 837 Professional. Transaction Standard for Health Care Claims or Equivalent Encounter Information: Professional – This transaction is used to submit professional claims from FFS providers and encounter data information from the MCCs.
- 6.3.8 837 Dental. Transaction Standard for Health Care Claims or Equivalent Encounter Information: Dental - This transaction is used to submit dental encounter data from the Dental MCC.
- 6.3.9 837 Institutional. Transaction Standard for Health Care Claims or Equivalent Encounter Information: Institutional - This transaction is used to submit institutional claims from FFS providers and encounter data information from the MCCs.

6.3.10 NCPDP 1.2 or PAS 3.0. Transaction Standard for Health Care Claims or Equivalent Encounter Information: Pharmacy -This transaction is used to submit retail pharmacy crossover claims from the Durable Medical Equipment Regional Carrier ("DMERC") and encounter data information from the Pharmacy MCC and DSNPs.

6.4 HL7 and Other Standard Transactions. TennCare has adopted HL7 to support its Health Information Exchange (HIE) activities and may adopt other standard transactions as needed to support its business activities. Companion Guides or usage documentation may be provided to define TennCare specific information using an appropriate format for the given transaction standard.

7. ELECTRONIC DATA INTERCHANGE (EDI) DOCUMENTS

7.1 EDI Request Form. The EDI Request Form may be found on the TennCare website. It outlines all transactions used between applicable TennCare programs and the Trading Partner including HIPAA transactions and proprietary formats. For most proprietary formats, the transaction name is sufficient identification information; however, a file format and/or additional clarification data for any proprietary format may be appended to the EDI Request Form, if necessary. All completed EDI Request Forms and related questions should be directed to the TennCare EDI Unit via mail or email at the address below.

7.1.1 Updates to the EDI Request Form may be made at any time by mutual agreement of both parties. Each update of the EDI Request Form supersedes all prior versions; therefore, each EDI Request Form must contain all transactions between both parties.

7.2 HIPAA Acknowledgment. All X12 transactions received by the State shall receive a 999 acknowledgement regardless of their HIPAA status.

7.2.1 Each Trading Partner has the option to send back to the State 999 acknowledgement transactions on all formats, except the State outbound 834 and 271U transactions, which require acknowledgements. The Trading Partner must indicate their acknowledgement intent for every transaction on the EDI Request Form.

7.2.2 Any transaction, per the Trading Partner Agreement, requiring an acknowledgement back to the State where an acknowledgement is not received, shall result in a transmission re-send before the next update cycle is processed.

7.3 Transaction Tables. The "Transaction Frequency" column shall contain the anticipated normal frequency of this transaction. Anticipated values are "D" for daily, "W" for weekly, "S" for semi-monthly, "M" for monthly, "Q" for quarterly, "A" for annually, "R" for on-request, "O" for other. Multiple indicators may be used for a transaction that has multiple processing cycles.

7.3.1 The "Transaction Source" column shall contain the origination source for the transaction. For transactions that come from the State, this column is already filled in with "TennCare". For

transactions from the Trading Partner, "TP" may be used. For transactions created by a third party for the Trading Partner, enter the third party's name.

- 7.3.2 The "Trading partner access person" column shall contain the name(s) of all individuals listed on the Security Forms below who shall access the given transaction.
- 7.3.3 The blank transaction rows on the request form are for proprietary file formats. Each production file sent between the State and the Trading Partner shall be represented on this form. Trading Partners that have multiple sources for a given transaction should include the file format once for each source.
- 7.4 Unique Identifier. The State shall assign a unique identification number or "Submitter ID" to every Trading Partner. For most Trading Partners, the Submitter ID shall be based upon tax ID – Employer Identification Number (EIN) or Social Security Number (SSN) – since the tax ID is already a required identifier on many HIPAA transactions. The assigned Submitter ID shall be used on all HIPAA transactions. The Submitter ID shall be used as the Receiver ID for transactions that originate from the State.
- 7.4.1 The Trading Partner may provide a GS02 sender code on the EDI Request form. This code shall be used as the GS03 receiver code for transactions originating from the State. A default value of the Trading Partner's Submitter ID shall be used if a value is not specified.

8. SECURITY

- 8.1 Security Forms. Trading Partner shall complete an acknowledgement of the State Acceptable Use Policy for every individual that shall access the State System. The State's security standards and the Center for Medicare and Medicaid Services (CMS) privacy and security regulations require the assignment of individual IDs.
- 8.1.1 For all forms requiring signatures, two (2) signed copies of completed forms must be mailed or a copy emailed to the TennCare EDI Unit at the address below. All forms must be completed as accurately as possible.
- 8.1.2 Upon processing of security forms, the State will countersign and return a copy of the forms for Trading Partner's files, along with Trading Partner's pertinent sign-on information.
- 8.1.3 Additional Security Forms may be submitted by the Trading Partner at any time after the execution of this Agreement to request access for additional individuals. Standard State processing shall apply to the additional requests.
- 8.2 Terminated Employees - Security. It is the responsibility of the Trading Partner to notify the State when a listed individual leaves the employment of the Trading Partner or has a legal name change. Failure to do so may result in the contract termination.

8.3. Access Request. Trading Partner shall submit a completed TennCare Access Request form for each type of access desired for the transmission or reception of transaction data, and for each Trading Partner workforce individual controlling such transmissions or receptions.

8.3.1 The Trading Partner shall submit for the State's approval a list of from one (1) to three (3) Trading Partner workforce individuals authorized to submit Access Requests on behalf of the Trading Partner.

8.3.2 It is the responsibility of the Trading Partner to notify the State when a Trading Partner workforce individual authorized to submit Access Request forms leaves the employment of the Trading Partner or has a legal name change.

8.4 Remote Access Request. The Trading Partner shall complete and provide to the State a Remote Access Request. It is the responsibility of the Trading Partner to notify the State, by providing an updated Remote Access Request, any material changes to their systems and networks that would have impact on their connectivity with the State's networks.

9. TERM AND TERMINATION

9.1 Term. This Agreement shall be effective as of the date on which it has been signed by both parties and the term of this Agreement shall be for one year from the effective date, at which time it will automatically renew for successive periods of one (1) year unless otherwise terminated in accordance with this Agreement.

9.1.1 This Agreement may be terminated by either party by giving at least thirty (30) days advanced written notice to the other party. Any provisions required by State or federal statute shall survive the expiration, cancellation, or termination of this Agreement.

9.2 Termination for Cause. This Agreement authorizes and Trading Partner acknowledges and agrees TennCare shall have the right to immediately terminate this Agreement and suspend operations, including, but not limited to, all processing operations, or any part thereof, or payments to providers, if Trading Partner fails to comply with, or violates a material provision of this Agreement.

9.2.1 Upon TennCare's knowledge of a material breach by Trading Partner, TennCare shall either: (i) Provide notice of breach and an opportunity for Trading Partner to reasonably and promptly cure the breach or end the violation, and terminate this Agreement if Trading Partner does not cure the breach or end the violation within the reasonable time specified by TennCare; or (ii) Immediately terminate this Agreement if Trading Partner has breached a material term of this Agreement and cure is not possible; or (iii) If termination, cure, or end of violation is not feasible, TennCare shall report the violation to the Secretary.

9.3 Effect of Termination. Upon termination of this Agreement for any reason, Trading Partner shall, at its own expense, either return and/or destroy all confidential information (including PHI) received, from the applicable TennCare program or created or received by Trading Partner on behalf of the applicable TennCare program. 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 Trading Partner.

- 9.3.1 The Trading Partner shall consult with the State as necessary to assure an appropriate means of return and/or destruction and shall notify the State 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 State.
- 9.3.2 The State shall not prohibit the retention of a single separate, archived file of the confidential TennCare information by the Trading Partner if the method of such archiving reasonably protects the continued privacy and security of such information and the Trading Partner obtains written approval at such time from the State. Otherwise, neither Trading Partner nor its subcontractors and agents shall retain copies of the State's confidential information, including enrollee PHI, except as provided herein.
- 9.3.3 The Parties agree to anticipate the return and/or the destruction of the State's confidential information, and understand that removal of the confidential information from Trading Partner's information system(s) and premises will be expected in almost all circumstances. The Trading Partner shall notify the State whether it intends to return and/or destroy the confidential information with such additional detail as requested. In the event Trading Partner determines that returning or destroying confidential information received by or created for the State at the end or other termination of this Agreement is not feasible, Trading Partner shall provide notification to the State of the conditions that make return or destruction unfeasible.
- 9.3.4 The Parties contemplate the State's confidential information shall not be merged or aggregated with data from sources unrelated to this Agreement, or Trading Partner's other business data, including for purposes of data backup and disaster recovery, until the parties identify the means of return or destruction of State data or State confidential information at the conclusion of this Agreement, or otherwise make an express alternate agreement consistent with the provisions of this Section.
- 9.3.5 Upon written mutual agreement of the Parties that return or destruction of all State confidential information is unfeasible and upon express agreement as to the means of continued protection of the data, Trading Partner shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI or other confidential information to those purposes that make the return or destruction unfeasible, for so long as Trading Partner maintains such PHI or other confidential information.

10. GENERAL PROVISIONS

- 10.1 Regulatory Reference.A reference in this Agreement to a State or federal law or regulation means the State or federal law or regulation as in effect or as amended.

- 10.2 Amendment. The Parties agree to take such action to amend this Agreement from time to time as is necessary to comply with related State and federal regulations upon the effective date of such amendment, regardless of whether this Agreement has been formally amended.
- 10.3 Assignment. Trading Partner shall not sell, transfer, assign or dispose of this Agreement, whole or in part, or any right, title or interest therein, to any other party without the express written consent of TennCare. Such consent, if granted, shall not relieve Trading Partner of its obligations under the Agreement.
- 10.4 Billing Service(s). In the event a billing service is used, the Trading Partner hereby certifies that the billing service is authorized to submit claims on the Trading Partner's behalf using Electronic Media. The Trading Partner agrees that if the billing agreement with the billing service is terminated, the Trading Partner shall immediately report the termination in writing to TennCare. The Trading Partner must complete a new security agreement and testing cycle when making a change from one billing service to another.
- 10.5 Entire Agreement. This Agreement, together with all addenda attached hereto and incorporated by reference herein, and construed in conjunction with a SC, CRA and/or BAA, contains the entire agreement of the parties and supersedes any previous understanding, commitment or agreement, oral or written, concerning the subject matter hereof, all of which are hereby incorporated. Any change to this Agreement shall be effective only when set forth in writing and executed by the parties.
- 10.6 Prohibition of Offshore Disclosure. Nothing in this Agreement shall permit the Trading Partner to view, share, and use or disclose TennCare confidential information in any form via any medium with any third party beyond the boundaries and jurisdiction of the United States without prior approval and express written authorization from TennCare.
- 10.7 Survival. The respective rights and obligations of Trading Partner under Section 9.3 of this Agreement shall survive the termination of this Agreement.
- 10.8 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Trading Partner and TennCare to comply with State and federal laws or regulations.
- 10.9 Headings. Paragraph Headings are used in this Agreement are for the convenience of the Parties and shall have no legal meaning in the interpretation of the Agreement.
- 10.10 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 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.

BUREAU OF TENNCARE:

TennCare EDI Unit State of
Tennessee
Dept. of Finance and Administration Division
of TennCare
310 Great Circle Road, Nashville, TN 37243
Email: EDI.TennCare@tn.gov

TRADING PARTNER:

Government Data Services LLC
3200 W. Market St. Ste. 102 Akron, OH 44333-3324
Email: chriscusimano@govdataservices.com

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.

- 10.11 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.
- 10.12 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.
- 10.13 State Liability. The State shall have no liability except as specifically provided in this Agreement.
- 10.14 Intellectual Property. Neither party shall acquire any rights in the other party's Proprietary and/or Confidential Information under this Agreement except the limited rights necessary to perform or carry out the intended purposes set forth in this Agreement. This Agreement grants no license by either party to the other, either directly or by implication, estoppel or otherwise. All right, title and interest emanating from ownership of the Proprietary and/or Confidential Information shall remain vested in the State.
- 10.15 Injunctive Relief. The parties acknowledge that any remedy at law for the breach threatened breach of the provisions of this Agreement may be inadequate to fully and properly protect TennCare and, therefore, the parties agree that TennCare may be entitled to injunctive relief in

addition to other available remedies; provided, however, that nothing contained herein shall be construed as prohibiting the State from pursuing any other remedies available in law or in equity for such breach or threatened breach.

10.16 Force Majeure. The obligations of the parties to this Agreement are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.

10.17 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 federal legislation 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.

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

By: Stephen Smith
Digitally signed by Stephen Smith
Date: 2021.06.03 13:05:25 -05'00'
Stephen M. Smith, Director

By: 
Digitally signed by Christopher Cusimano, JD
Date: 2021.05.19 17:12:14 -04'00'
Christopher Cusimano, JD Managing Member / CEO

Date: _____

Date: May 19, 2021

State of Tennessee
Dept. of Finance and Administration
Division of TennCare
310 Great Circle Road, Nashville, TN 37243

Government Data Services LLC
3200 W. Market St. Ste. 102
Akron, OH 44333-3324



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 _____ Government Data Services LLC

_____ (“Business Associate”), located at 3200 W. Market Ste. 102 Akron, OH 44333 _____, 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:

4 RV Government Data Services Contract Dated 05/19/2021 #70703

Trading Partner Agreement

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 thirty (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:

Christopher Cusimano, JD
Qinghua "Logan" Qian
John H. Shafer

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) 507-6697
Facsimile: (615) 734-5289
Email: Privacy.TennCare@tn.gov

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:

Stephen Smith, Director
Division of TennCare
310 Great Circle Rd.
Nashville, TN 37243
Fax: (615) 253-5607

BUSINESS ASSOCIATE:

Privacy Officer
Government Data Services LLC
3200 W. Market Ste. Ste. 102
Akron, OH 44333
Fax: (330) 864-4374

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**
Stephen M. Smith, Director
Digitally signed by Stephen Smith
Date: 2021.06.03 13:07:02 -05'00'

BUSINESS ASSOCIATE:

By: 
Christopher Cusimano, JD Managing Member / CEO
Digitally signed by Christopher Cusimano, JD
Date: 2021.05.19 17:07:36 -04'00'

Date: _____

Date: May 19, 2021

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

Business Associate Address:
Government Data Services LLC
3200 W. Market Ste. Ste. 102
Akron, OH 44333
Fax: (330) 864-4374