



**STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION**

**REQUEST FOR PROPOSALS
FOR
EXTERNAL QUALITY REVIEW
RFP # 31865-00400**

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1. INTRODUCTION

The State of Tennessee, Department of Finance and Administration, Division of Health Care Finance and Administration (HCFA, hereinafter referred to as the "State," or "HCFA," has issued this Request for Proposals (RFP) to define minimum contract requirements; solicit responses; detail response requirements; and, outline the State's process for evaluating responses and selecting a contractor to provide the needed goods or services.

Through this RFP, the State seeks to procure necessary goods or services at the most favorable, competitive prices and to give ALL qualified businesses, including those that are owned by minorities, women, Tennessee service-disabled veterans, and small business enterprises, an opportunity to do business with the state as contractors, subcontractors or suppliers.

1.1. Statement of Procurement Purpose

The State seeks to secure a contract with a highly qualified and experienced External Quality Review Organization (EQRO) to assist the State in reaching its goal of ensuring that each enrollee of the TennCare and CoverKids Programs can access timely, high quality, medically necessary, covered healthcare services. The Balanced Budget Act (BBA) of 1997 requires that the State Medicaid agencies contract with qualified outside entities to conduct an annual review of managed care plans, who will at a minimum be required to annually review the quality outcomes, timeliness of, and access to services for which the managed care plans (MCC) and Dental Benefits Managers (DBMs) are responsible under their respective contracts with the State. The State currently has four (4) managed care plans covering the following Medicaid programs: (1) TennCare, the Tennessee State Medicaid waiver program, (2) TennCare Select, the Tennessee State Medicaid waiver program for those enrollees determined to be at high risk, and (3) TennCare Dental Benefits Manager (DBM). Additionally, CoverKids, the federal Children's Health Insurance Program (CHIP) in Tennessee, has one (1) plan administrator and one (1) Dental Benefit Manager. Unless otherwise indicated, all references to "TennCare", "TennCare MCOs" and "TennCare MCCs" in this RFP shall be deemed to include TennCare, TennCare Select and TennCare DBM managed care plans. All references to "CoverKids" in this RFP shall be deemed to include CoverKids and the CoverKids DBM.

Upon contract signature, the winning respondent will be required to sign RFP Attachment 6.7, HIPAA Business Associate Agreement.

1.2. Scope of Service, Contract Period, & Required Terms and Conditions

The RFP Attachment 6.6., *Pro Forma* Contract details the State's requirements:

- Scope of Services and Deliverables (Section A);
- Contract Period (Section B);
- Payment Terms (Section C);
- Standard Terms and Conditions (Section D); and,
- Special Terms and Conditions (Section E).

The *pro forma* contract substantially represents the contract document that the successful Respondent must sign.

1.3. Nondiscrimination

No person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of a Contract pursuant to this RFP or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The Contractor pursuant to this RFP shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

1.4. RFP Communications

- 1.4.1. The State has assigned the following RFP identification number that must be referenced in all communications regarding this RFP:

RFP #31865-00400

- 1.4.2. **Unauthorized contact about this RFP with employees or officials of the State of Tennessee except as detailed below may result in disqualification from consideration under this procurement process.**

- 1.4.2.1. Prospective Respondents must direct communications concerning this RFP to the following person designated as the Solicitation Coordinator:

Alma Chilton, Director of Contracts
 Department of Finance and Administration
 Division of Health Care Finance and Administration
 310 Great Circle Road
 Nashville, TN 37243
 (615) 507-6384 (phone)
 (615) 253-5414 (fax)
Alma.chilton@tn.gov

- 1.4.2.2. Notwithstanding the foregoing, Prospective Respondents may alternatively contact:

- a. staff of the Governor's Office of Diversity Business Enterprise for assistance available to minority-owned, woman-owned, Tennessee service-disabled veteran owned, and small businesses as well as general, public information relating to this RFP (visit www.tn.gov/businessopp/ for contact information); and
- b. the following individual designated by the State to coordinate compliance with the nondiscrimination requirements of the State of Tennessee, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and associated federal regulations:

Helen Moore
 Department of Finance and Administration
 Division of Health Care Finance and Administration
 310 Great Circle Road
 Nashville, TN 37243
 (615) 507-6474 (Phone)
Helen.moore@tn.gov

- 1.4.3. Only the State's official, written responses and communications with Respondents are binding with regard to this RFP. Oral communications between a State official and one or more Respondents are unofficial and non-binding.
- 1.4.4. Potential Respondents must ensure that the State receives all written questions and comments, including questions and requests for clarification, no later than the Written Questions & Comments Deadline detailed in the RFP Section 2, Schedule of Events.
- 1.4.5. Respondents must assume the risk of the method of dispatching any communication or response to the State. The State assumes no responsibility for delays or delivery failures resulting from the Respondent's method of dispatch. Actual or digital "postmarking" of a communication or

response to the State by a specified deadline is not a substitute for the State's actual receipt of a communication or response.

- 1.4.6. The State will convey all official responses and communications related to this RFP to the prospective Respondents from whom the State has received a Notice of Intent to Respond (refer to RFP Section 1.8).
- 1.4.7. The State reserves the right to determine, at its sole discretion, the method of conveying official, written responses and communications related to this RFP. Such written communications may be transmitted by mail, hand-delivery, facsimile, electronic mail, Internet posting, or any other means deemed reasonable by the State. For internet posting, please refer to the following website: http://tn.gov/generalserv/cpo/sourcing_sub/rfp.shtml.
- 1.4.8. The State reserves the right to determine, at its sole discretion, the appropriateness and adequacy of responses to written comments, questions, and requests related to this RFP. The State's official, written responses will constitute an amendment of this RFP.
- 1.4.9. Any data or factual information provided by the State (in this RFP, an RFP amendment or any other communication relating to this RFP) is for informational purposes only. The State will make reasonable efforts to ensure the accuracy of such data or information, however it is the Respondent's obligation to independently verify any data or information provided by the State. The State expressly disclaims the accuracy or adequacy of any information or data that it provides to prospective Respondents.

1.5. **Assistance to Respondents With a Handicap or Disability**

Prospective Respondents with a handicap or disability may receive accommodation relating to the communication of this RFP and participating in the RFP process. Prospective Respondents may contact the Solicitation Coordinator to request such reasonable accommodation no later than the Disability Accommodation Request Deadline detailed in the RFP Section 2, Schedule of Events.

1.6. **Respondent Required Review & Waiver of Objections**

- 1.6.1. Each prospective Respondent must carefully review this RFP, including but not limited to, attachments, the RFP Attachment 6.6., *Pro Forma* Contract, and any amendments, for questions, comments, defects, objections, or any other matter requiring clarification or correction (collectively called "questions and comments").
- 1.6.2. Any prospective Respondent having questions and comments concerning this RFP must provide them in writing to the State no later than the Written Questions & Comments Deadline detailed in the RFP Section 2, Schedule of Events.
- 1.6.3. Protests based on any objection to the RFP shall be considered waived and invalid if the objection has not been brought to the attention of the State, in writing, by the Written Questions & Comments Deadline.

1.7. **Pre-Response Conference**

A Pre-response Conference will be held at the time and date detailed in the RFP Section 2, Schedule of Events. Pre-response Conference attendance is not mandatory, and prospective Respondents may be limited to a maximum number of attendees depending upon overall attendance and space limitations.

The conference will be held at:

Bureau of TennCare
310 Great Circle Road

Nashville, TN 37243

The purpose of the conference is to discuss the RFP scope of goods or services. The State will entertain questions, however prospective Respondents must understand that the State's oral response to any question at the Pre-response Conference shall be unofficial and non-binding. Prospective Respondents must submit all questions, comments, or other concerns regarding the RFP in writing prior to the Written Questions & Comments Deadline date detailed in the RFP Section 2, Schedule of Events. The State will send the official response to these questions and comments to prospective Respondents from whom the State has received a Notice of Intent to respond as indicated in RFP Section 1.8 and on the date detailed in the RFP Section 2, Schedule of Events.

1.8. **Notice of Intent to Respond**

Before the Notice of Intent to Respond Deadline detailed in the RFP Section 2, Schedule of Events, prospective Respondents should submit to the Solicitation Coordinator a Notice of Intent to Respond (in the form of a simple e-mail or other written communication). Such notice should include the following information:

- the business or individual's name (as appropriate)
- a contact person's name and title
- the contact person's mailing address, telephone number, facsimile number, and e-mail address

A Notice of Intent to Respond creates no obligation and is not a prerequisite for submitting a response, however, it is necessary to ensure receipt of any RFP amendments or other notices and communications relating to this RFP.

1.9. **Response Deadline**

A Respondent must ensure that the State receives a response no later than the response Deadline time and date detailed in the RFP Section 2, Schedule of Events. A response must respond, as required, to this RFP (including its attachments) as may be amended. The State will not accept late responses, and a Respondent's failure to submit a response before the deadline will result in disqualification of the response. It is the responsibility of the Respondent to ascertain any additional security requirements with respect to packaging and delivery to the State of Tennessee. Respondents should be mindful of any potential delays due to security screening procedures, weather, or other filing delays whether foreseeable or unforeseeable.

2. RFP SCHEDULE OF EVENTS

2.1. The following RFP Schedule of Events represents the State's best estimate for this RFP.

EVENT	TIME (central time zone)	DATE (all dates are state business days)
1. RFP Issued		June 2, 2015
2. Disability Accommodation Request Deadline	2:00 p.m.	June 5, 2015
3. Pre-response Conference	10:00 a.m.	June 10, 2015
4. Notice of Intent to Respond Deadline	2:00 p.m.	June 11, 2015
5. Written "Questions & Comments" Deadline	2:00 p.m.	June 16, 2015
6. State Response to Written "Questions & Comments"		June 24, 2015
7. Response Deadline	2:00 p.m.	July 10, 2015
8. State Completion of Technical Response Evaluations		July 17, 2015
9. State Opening & Scoring of Cost Proposals	2:00 p.m.	July 20, 2015
10. State Notice of Intent to Award Released <u>and</u> RFP Files Opened for Public Inspection	2:00 p.m.	July 21, 2015
11. End of Open File Period		July 29, 2015
12. State sends contract to Contractor for signature		August 4, 2015
13. Contractor Signature Deadline	2:00 p.m.	August 7, 2015
14. Contract Start Date		September 1, 2015

2.2. **The State reserves the right, at its sole discretion, to adjust the RFP Schedule of Events as it deems necessary.** Any adjustment of the Schedule of Events shall constitute an RFP amendment, and the State will communicate such to prospective Respondents from whom the State has received a Notice of Intent to Respond (refer to section 1.8).

3. RESPONSE REQUIREMENTS

3.1. Response Form

A response to this RFP must consist of two parts, a Technical Response and a Cost Proposal.

- 3.1.1. **Technical Response.** RFP Attachment 6.2., Technical Response & Evaluation Guide provides the specific requirements for submitting a response. This guide includes mandatory requirement items, general qualifications and experience items, and technical qualifications, experience, and approach items all of which must be addressed with a written response and, in some instances, additional documentation.

NOTICE: A technical response must not include any pricing or cost information. If any pricing or cost information amounts of any type (even pricing relating to other projects) is included in any part of the technical response, the state may deem the response to be non-responsive and reject it.

- 3.1.1.1. A Respondent must use the RFP Attachment 6.2., Technical Response & Evaluation Guide to organize, reference, and draft the Technical Response by duplicating the attachment, adding appropriate page numbers as required, and using the guide as a table of contents covering the Technical Response.
- 3.1.1.2. A response should be economically prepared, with emphasis on completeness and clarity. A response, as well as any reference material presented, must be written in English and must be written on standard 8 ½" x 11" pages (although oversize exhibits are permissible) and use a 12 point font for text. All response pages must be numbered.
- 3.1.1.3. All information and documentation included in a Technical Response should respond to or address a specific requirement detailed in the RFP Attachment 6.2., Technical Response & Evaluation Guide. All information must be incorporated into a response to a specific requirement and clearly referenced. Any information not meeting these criteria will be deemed extraneous and will not contribute to evaluations.
- 3.1.1.4. The State may determine a response to be non-responsive and reject it if:
- a. the Respondent fails to organize and properly reference the Technical Response as required by this RFP and the RFP Attachment 6.2., Technical Response & Evaluation Guide; or
 - b. the Technical Response document does not appropriately respond to, address, or meet all of the requirements and response items detailed in the RFP Attachment 6.2., Technical Response & Evaluation Guide.

- 3.1.2. **Cost Proposal.** A Cost Proposal must be recorded on an exact duplicate of the RFP Attachment 6.3., Cost Proposal & Scoring Guide.

NOTICE: If a Respondent fails to submit a cost proposal exactly as required, the State may deem the response to be non-responsive and reject it.

- 3.1.2.1. A Respondent must only record the proposed cost exactly as required by the RFP Attachment 6.3., Cost Proposal & Scoring Guide and must NOT record any other rates, amounts, or information.

- 3.1.2.2. The proposed cost shall incorporate ALL costs for services under the contract for the total contract period, including any renewals or extensions.
- 3.1.2.3. A Respondent must sign and date the Cost Proposal.
- 3.1.2.4. A Respondent must submit the Cost Proposal to the State in a sealed package separate from the Technical Response (as detailed in RFP Sections 3.2.3., *et seq.*).

3.2. Response Delivery

- 3.2.1. A Respondent must ensure that both the original Technical Response and Cost Proposal documents meet all form and content requirements, including all required signatures, as detailed within this RFP.
- 3.2.2. A Respondent must submit original Technical Response and Cost Proposal documents and copies as specified below.
 - 3.2.2.1. One (1) original Technical Response paper document labeled:

“RFP #31865-00400 TECHNICAL RESPONSE ORIGINAL”

and five (5) digital copies of the Technical Response each in the form of one (1) digital document in “PDF” format properly recorded on its own otherwise blank, standard CD-R recordable disc or USB flash drive labeled:

“RFP #31865-00400 TECHNICAL RESPONSE COPY”

The digital copies should not include copies of sealed customer references, however any other discrepancy between the paper Technical Response document and any digital copies may result in the State rejecting the proposal as non-responsive.
 - 3.2.2.2. One (1) original Cost Proposal paper document labeled:

“RFP #31865-00400 COST PROPOSAL ORIGINAL”

and one (1) copy in the form of a digital document in “PDF/XLS” format properly recorded on separate, blank, standard CD-R recordable disc or USB flash drive labeled:

“RFP #31865-00400 COST PROPOSAL COPY”

In the event of a discrepancy between the original Cost Proposal document and the digital copy, the original, signed document will take precedence.
- 3.2.3. A Respondent must separate, seal, package, and label the documents and copies for delivery as follows:
 - 3.2.3.1. The Technical Response original document and digital copies must be placed in a sealed package that is clearly labeled:

**“DO NOT OPEN...RFP #31865-00400 TECHNICAL RESPONSE FROM
[RESPONDENT LEGAL ENTITY NAME]”**
 - 3.2.3.2. The Cost Proposal original document and digital copy must be placed in a separate, sealed package that is clearly labeled:

“DO NOT OPEN...RFP #31865-00400 COST PROPOSAL FROM [RESPONDENT LEGAL ENTITY NAME]”

- 3.2.3.3. The separately, sealed Technical Response and Cost Proposal components may be enclosed in a larger package for mailing or delivery, provided that the outermost package is clearly labeled:

“RFP #31865-00400 SEALED TECHNICAL RESPONSE& SEALED COST PROPOSAL FROM [RESPONDENT LEGAL ENTITY NAME]”

- 3.2.4. A Respondent must ensure that the State receives a response no later than the Response Deadline time and date detailed in the RFP Section 2, Schedule of Events at the following address:

Alma Chilton, Director of Contracts
 Department of Finance and Administration
 Division of Health Care Finance and Administration
 310 Great Circle Road
 Nashville, TN 37243

3.3. Response & Respondent Prohibitions

- 3.3.1. A response must not include alternate contract terms and conditions. If a response contains such terms and conditions, the State, at its sole discretion, may determine the response to be a non-responsive counteroffer and reject it.
- 3.3.2. A response must not restrict the rights of the State or otherwise qualify either the offer to deliver goods or provide services as required by this RFP or the Cost Proposal. If a response restricts the rights of the State or otherwise qualifies either the offer to deliver goods or provide services as required by this RFP or the Cost Proposal, the State, at its sole discretion, may determine the response to be a non-responsive counteroffer and reject it.
- 3.3.3. A response must not propose alternative goods or services (*i.e.*, offer services different from those requested and required by this RFP) unless expressly requested in this RFP. The State may consider a response of alternative goods or services to be non-responsive and reject it.
- 3.3.4. A Cost Proposal must be prepared and arrived at independently and must not involve any collusion between Respondents. The State will reject any Cost Proposal that involves collusion, consultation, communication, or agreement between Respondents. Regardless of the time of detection, the State will consider any such actions to be grounds for response rejection or contract termination.
- 3.3.5. A Respondent must not provide, for consideration in this RFP process or subsequent contract negotiations, any information that the Respondent knew or should have known was materially incorrect. If the State determines that a Respondent has provided such incorrect information, the State will deem the Response non-responsive and reject it.
- 3.3.6. A Respondent must not submit more than one Technical Response and one Cost Proposal in response to this RFP, except as expressly requested by the State in this RFP. If a Respondent submits more than one Technical Response or more than one Cost Proposal, the State will deem all of the responses non-responsive and reject them.
- 3.3.7. A Respondent must not submit a response as a prime contractor while also permitting one or more other Respondents to offer the Respondent as a subcontractor in their own responses. Such may result in the disqualification of all Respondents knowingly involved. This restriction does not, however, prohibit different Respondents from offering the same subcontractor as a part

of their responses (provided that the subcontractor does not also submit a response as a prime contractor).

3.3.8. The State shall not consider a response from an individual who is, or within the past six (6) months has been, a State employee. For purposes of this RFP:

3.3.8.1. An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;

3.3.8.2. A contract with or a response from a company, corporation, or any other contracting entity in which a controlling interest is held by any State employee shall be considered to be a contract with or proposal from the employee; and

3.3.8.3. A contract with or a response from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six (6) months has been, a State employee shall not be considered a contract with or a proposal from the employee and shall not constitute a prohibited conflict of interest.

3.4. **Response Errors & Revisions**

A Respondent is responsible for any and all response errors or omissions. A Respondent will not be allowed to alter or revise response documents after the Response Deadline time and date detailed in the RFP Section 2, Schedule of Events unless such is formally requested, in writing, by the State.

3.5. **Response Withdrawal**

A Respondent may withdraw a submitted response at any time before the Response Deadline time and date detailed in the RFP Section 2, Schedule of Events by submitting a written request signed by an authorized Respondent representative. After withdrawing a response, a Respondent may submit another response at any time before the Response Deadline. After the Response Deadline, a Respondent may only withdraw all or a portion of a response where the enforcement of the response would impose an unconscionable hardship on the Respondent.

3.6. **Additional Services**

If a response offers goods or services in addition to those required by and described in this RFP, the State, at its sole discretion, may add such services to the contract awarded as a result of this RFP. Notwithstanding the foregoing, a Respondent must not propose any additional cost amounts or rates for additional goods or services. Regardless of any additional services offered in a response, the Respondent's Cost Proposal must only record the proposed cost as required in this RFP and must not record any other rates, amounts, or information.

NOTICE: If a Respondent fails to submit a Cost Proposal exactly as required, the State may deem the response non-responsive and reject it.

3.7. **Response Preparation Costs**

The State will not pay any costs associated with the preparation, submittal, or presentation of any response.

4. GENERAL CONTRACTING INFORMATION & REQUIREMENTS

4.1. RFP Amendment

The State at its sole discretion may amend this RFP, in writing, at any time prior to contract award. However, prior to any such amendment, the State will consider whether it would negatively impact the ability of potential Respondents to meet the response deadline and revise the RFP Schedule of Events if deemed appropriate. If an RFP amendment is issued, the State will convey it to potential Respondents who submitted a Notice of Intent to Respond (refer to RFP Section 1.8). A response must address the final RFP (including its attachments) as amended.

4.2. RFP Cancellation

The State reserves the right, at its sole discretion, to cancel the RFP or to cancel and reissue this RFP in accordance with applicable laws and regulations.

4.3. State Right of Rejection

4.3.1. Subject to applicable laws and regulations, the State reserves the right to reject, at its sole discretion, any and all responses.

4.3.2. The State may deem as non-responsive and reject any response that does not comply with all terms, conditions, and performance requirements of this RFP. Notwithstanding the foregoing, the State reserves the right to waive, at its sole discretion, minor variances from full compliance with this RFP. If the State waives variances in a response, such waiver shall not modify the RFP requirements or excuse the Respondent from full compliance, and the State may hold any resulting Contractor to strict compliance with this RFP.

4.4. Assignment & Subcontracting

4.4.1. The Contractor may not subcontract, transfer, or assign any portion of the Contract awarded as a result of this RFP without prior approval of the State. The State reserves the right to refuse approval, at its sole discretion, of any subcontract, transfer, or assignment.

4.4.2. If a Respondent intends to use subcontractors, the response to this RFP must specifically identify the scope and portions of the work each subcontractor will perform (refer to RFP Attachment 6.2., Section B, General Qualifications & Experience Item B.14.).

4.4.3. Subcontractors identified within a response to this RFP will be deemed as approved by the State unless the State expressly disapproves one or more of the proposed subcontractors prior to signing the Contract.

4.4.4. After contract award, a Contractor may only substitute an approved subcontractor at the discretion of the State and with the State's prior, written approval.

4.4.5. Notwithstanding any State approval relating to subcontracts, the Respondent who is awarded a contract pursuant to this RFP will be the prime contractor and will be responsible for all work under the Contract.

4.5. Right to Refuse Personnel or Subcontractors

The State reserves the right to refuse, at its sole discretion and notwithstanding any prior approval, any personnel of the prime contractor or a subcontractor providing goods or services in the performance of a contract resulting from this RFP. The State will document in writing the reason(s) for any rejection of personnel.

4.6. **Insurance**

From time-to-time, the State may require the awarded Contractor to provide a Certificate of Insurance issued by an insurance company licensed or authorized to provide insurance in the State of Tennessee. Each Certificate of Insurance shall indicate current insurance coverages meeting minimum requirements as may be specified by this RFP. A failure to provide a current, Certificate of Insurance will be considered a material breach and grounds for contract termination.

4.7. **Professional Licensure and Department of Revenue Registration**

- 4.7.1. All persons, agencies, firms, or other entities that provide legal or financial opinions, which a Respondent provides for consideration and evaluation by the State as a part of a response to this RFP, shall be properly licensed to render such opinions.
- 4.7.2. Before the Contract resulting from this RFP is signed, the apparent successful Respondent (and Respondent employees and subcontractors, as applicable) must hold all necessary or appropriate business or professional licenses to provide the goods or services as required by the contract. The State may require any Respondent to submit evidence of proper licensure.
- 4.7.3. Before the Contract resulting from this RFP is signed, the apparent successful Respondent must be registered with the Tennessee Department of Revenue for the collection of Tennessee sales and use tax. The State shall not award a contract unless the Respondent provides proof of such registration or provides documentation from the Department of Revenue that the Contractor is exempt from this registration requirement. The foregoing is a mandatory requirement of an award of a contract pursuant to this solicitation. For purposes of this registration requirement, the Department of Revenue may be contacted at: TN.Revenue@tn.gov.

4.8. **Disclosure of Response Contents**

- 4.8.1. All materials submitted to the State in response to this RFP shall become the property of the State of Tennessee. Selection or rejection of a response does not affect this right. By submitting a response, a Respondent acknowledges and accepts that the full response contents and associated documents will become open to public inspection in accordance with the laws of the State of Tennessee.
- 4.8.2. The State will hold all response information, including both technical and cost information, in confidence during the evaluation process. Notwithstanding the foregoing, a list of actual Respondents submitting timely responses may be available to the public, upon request, after technical responses are opened.
- 4.8.3. Upon completion of response evaluations, indicated by public release of a Notice of Intent to Award, the responses and associated materials will be open for review by the public in accordance with *Tennessee Code Annotated*, Section 10-7-504(a)(7).

4.9. **Contract Approval and Contract Payments**

- 4.9.1. After contract award, the Contractor who is awarded the contract must submit appropriate documentation with the Department of Finance and Administration, Division of Accounts.
- 4.9.2. This RFP and its contractor selection processes do not obligate the State and do not create rights, interests, or claims of entitlement in either the Respondent with the apparent best-evaluated response or any other Respondent. State obligations pursuant to a contract award shall commence only after the contract is signed by the State agency head and the Contractor and after the Contract is approved by all other state officials as required by applicable laws and regulations.

- 4.9.3. No payment will be obligated or made until the relevant Contract is approved as required by applicable statutes and rules of the State of Tennessee.
- 4.9.3.1. The State shall not be liable for payment of any type associated with the Contract resulting from this RFP (or any amendment thereof) or responsible for any goods delivered or services rendered by the Contractor, even goods delivered or services rendered in good faith and even if the Contractor is orally directed to proceed with the delivery of goods or the rendering of services, if it occurs before the Contract start date or after the Contract end date.
- 4.9.3.2. All payments relating to this procurement will be made in accordance with the Payment Terms and Conditions of the Contract resulting from this RFP (refer to RFP Attachment 6.6., *Pro Forma Contract*, Section C).
- 4.9.3.3. If any provision of the Contract provides direct funding or reimbursement for the competitive purchase of goods or services as a component of contract performance or otherwise provides for the reimbursement of specified, actual costs, the State will employ all reasonable means and will require all such documentation that it deems necessary to ensure that such purchases were competitive and costs were reasonable, necessary, and actual. The Contractor shall provide reasonable assistance and access related to such review. Further, the State shall not remit, as funding or reimbursement pursuant to such provisions, any amounts that it determines do not represent reasonable, necessary, and actual costs.

4.10. **Contractor Performance**

The Contractor who is awarded a contract will be responsible for the delivery of all acceptable goods or the satisfactory completion of all services set out in this RFP (including attachments) as may be amended. All goods or services are subject to inspection and evaluation by the State. The State will employ all reasonable means to ensure that goods delivered or services rendered are in compliance with the Contract, and the Contractor must cooperate with such efforts.

4.11. **Contract Amendment**

After contract award, the State may request the Contractor to deliver additional goods or perform additional services within the general scope of the contract and this RFP, but beyond the specified scope of service, and for which the Contractor may be compensated. In such instances, the State will provide the Contractor a written description of the additional goods or services. The Contractor must respond to the State with a time schedule for delivering the additional goods or accomplishing the additional services based on the compensable units included in the Contractor's response to this RFP. If the State and the Contractor reach an agreement regarding the goods or services and associated compensation, such agreement must be effected by means of a contract amendment. Further, any such amendment requiring additional goods or services must be signed by both the State agency head and the Contractor and must be approved by other state officials as required by applicable statutes, rules, policies and procedures of the State of Tennessee. The Contractor must not provide additional goods or render additional services until the State has issued a written contract amendment with all required approvals.

4.12. **Severability**

If any provision of this RFP is declared by a court to be illegal or in conflict with any law, said decision will not affect the validity of the remaining RFP terms and provisions, and the rights and obligations of the State and Respondents will be construed and enforced as if the RFP did not contain the particular provision held to be invalid.

4.13. **Next Ranked Respondent**

The State reserves the right to initiate negotiations with the next ranked Respondent should the State cease doing business with any Respondent selected via this RFP process.

5. EVALUATION & CONTRACT AWARD

5.1. Evaluation Categories & Maximum Points

The State will consider qualifications, experience, technical approach, and cost in the evaluation of responses and award points in each of the categories detailed below (up to the maximum evaluation points indicated) to each response deemed by the State to be responsive.

EVALUATION CATEGORY	MAXIMUM POINTS POSSIBLE
General Qualifications & Experience (refer to RFP Attachment 6.2., Section B)	30
Technical Qualifications, Experience & Approach (refer to RFP Attachment 6.2., Section C)	40
Cost Proposal (refer to RFP Attachment 6.3.)	30

5.2. Evaluation Process

The evaluation process is designed to award the contract resulting from this RFP not necessarily to the Respondent offering the lowest cost, but rather to the Respondent deemed by the State to be responsive and responsible who offers the best combination of attributes based upon the evaluation criteria. ("Responsive Respondent" is defined as a Respondent that has submitted a response that conforms in all material respects to the RFP. "Responsible Respondent" is defined as a Respondent that has the capacity in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.)

5.2.1. **Technical Response Evaluation.** The Solicitation Coordinator and the Proposal Evaluation Team (consisting of three (3) or more State employees) will use the RFP Attachment 6.2., Technical Response & Evaluation Guide to manage the Technical Response Evaluation and maintain evaluation records.

5.2.1.1. The State reserves the right, at its sole discretion, to request Respondent clarification of a Technical Response or to conduct clarification discussions with any or all Respondents. Any such clarification or discussion will be limited to specific sections of the response identified by the State. The subject Respondent must put any resulting clarification in writing as may be required and in accordance with any deadline imposed by the State.

5.2.1.2. The Solicitation Coordinator will review each Technical Response to determine compliance with RFP Attachment 6.2., Technical Response & Evaluation Guide, Section A—Mandatory Requirements. If the Solicitation Coordinator determines that a response failed to meet one or more of the mandatory requirements, the Proposal Evaluation Team will review the response and document the team's determination of whether:

- a. the response adequately meets RFP requirements for further evaluation;
- b. the State will request clarifications or corrections for consideration prior to further evaluation; or,
- c. the State will determine the response to be non-responsive to the RFP and reject it.

5.2.1.3. Proposal Evaluation Team members will independently evaluate each Technical Response (that is responsive to the RFP) against the evaluation criteria in this RFP,

and will score each in accordance with the RFP Attachment 6.2., Technical Response & Evaluation Guide.

- 5.2.1.4. For each response evaluated, the Solicitation Coordinator will calculate the average of the Proposal Evaluation Team member scores for RFP Attachment 6.2., Technical Response & Evaluation Guide, and record each average as the response score for the respective Technical Response section.
- 5.2.1.5. Before Cost Proposals are opened, the Proposal Evaluation Team will review the Technical Response Evaluation record and any other available information pertinent to whether or not each Respondent is responsive and responsible. If the Proposal Evaluation Team identifies any Respondent that does not to meet the responsive and responsible thresholds such that the team would not recommend the Respondent for Cost Proposal Evaluation and potential contract award, the team members will fully document the determination.
- 5.2.2. **Cost Proposal Evaluation.** The Solicitation Coordinator will open for evaluation the Cost Proposal of each Respondent deemed by the State to be responsive and responsible and calculate and record each Cost Proposal score in accordance with the RFP Attachment 6.3., Cost Proposal & Scoring Guide.
- 5.2.3. **Total Response Score.** The Solicitation Coordinator will calculate the sum of the Technical Response section scores and the Cost Proposal score and record the resulting number as the total score for the subject Response (refer to RFP Attachment 6.5., Score Summary Matrix).
- 5.2.4. **Clarifications and Negotiations.** The State reserves the right to award a contract on the basis of initial responses received, therefore, each response shall contain the Respondent's best terms and conditions from a technical and cost standpoint. The State reserves the right to conduct clarifications or negotiations with one or more Respondents. All communications, clarifications, and negotiations shall be conducted in a manner that supports fairness in response improvement.
- 5.2.5. **Clarifications.** The State may identify areas of a response that may require further clarification or areas in which it is apparent that there may have been miscommunications or misunderstandings as to the State's specifications or requirements. The State may seek to clarify those issues identified during one or multiple clarification rounds. Each clarification sought by the State may be unique to an individual Respondent, provided that the process is conducted in a manner that supports fairness in response improvement.
- 5.2.6. **Negotiations.** The State may elect to negotiate with one or more Respondents by requesting revised responses, negotiating costs, or finalizing contract terms and conditions. The State reserves the right to conduct multiple negotiation rounds or no negotiations at all.
- 5.2.7. **Cost Negotiations.** All Respondents, selected for negotiation by the State, will be given equivalent information with respect to cost negotiations. All cost negotiations will be documented for the procurement file. Additionally, the State may conduct target pricing and other goods or services level negotiations. Target pricing may be based on considerations such as current pricing, market considerations, benchmarks, budget availability, or other methods that do not reveal individual Respondent pricing. During target price negotiations, Respondents are not obligated to reduce their pricing to target prices, but no Respondent is allowed to increase prices.
- 5.2.8. If the State determines that it is unable to successfully negotiate a contract with the apparent best evaluated Respondent, the State reserves the right to bypass the apparent best evaluated Respondent and enter into contract negotiations with the next apparent best evaluated Respondent.

5.3. Contract Award Process

- 5.3.1 The Solicitation Coordinator will submit the Proposal Evaluation Team determinations and scores to the head of the procuring agency for consideration along with any other relevant information that might be available and pertinent to contract award.
- 5.3.2. The procuring agency head will determine the apparent best-evaluated Response. To effect a contract award to a Respondent other than the one receiving the highest evaluation process score, the head of the procuring agency must provide written justification and obtain the written approval of the Chief Procurement Officer and the Comptroller of the Treasury.
- 5.3.3. The State will issue a Notice of Intent to Award identifying the apparent best-evaluated response and make the RFP files available for public inspection at the time and date specified in the RFP Section 2, Schedule of Events.

NOTICE: The Notice of Intent to Award shall not create rights, interests, or claims of entitlement in either the apparent best-evaluated Respondent or any other Respondent.

- 5.3.4. The Respondent identified as offering the apparent best-evaluated response must sign a contract drawn by the State pursuant to this RFP. The contract shall be substantially the same as the RFP Attachment 6.6., *Pro Forma* Contract. The Respondent must sign the contract by the Contractor Signature Deadline detailed in the RFP Section 2, Schedule of Events. If the Respondent fails to provide the signed contract by this deadline, the State may determine that the Respondent is non-responsive to this RFP and reject the response.
- 5.3.5. Notwithstanding the foregoing, the State may, at its sole discretion, entertain limited negotiation prior to contract signing and, as a result, revise the *pro forma* contract terms and conditions or performance requirements in the State's best interests, PROVIDED THAT such revision of terms and conditions or performance requirements shall NOT materially affect the basis of response evaluations or negatively impact the competitive nature of the RFP and contractor selection process.
- 5.3.6. If the State determines that a response is non-responsive and rejects it after opening Cost Proposals, the Solicitation Coordinator will re-calculate scores for each remaining responsive Cost Proposal to determine (or re-determine) the apparent best-evaluated response.

RFP ATTACHMENT 6.1.**RFP # 31865-00400 STATEMENT OF CERTIFICATIONS AND ASSURANCES**

The Respondent must sign and complete the Statement of Certifications and Assurances below as required, and it must be included in the Technical Response (as required by RFP Attachment 6.2., Technical Response & Evaluation Guide, Section A, Item A.1.).

The Respondent does, hereby, expressly affirm, declare, confirm, certify, and assure ALL of the following:

1. The Respondent will comply with all of the provisions and requirements of the RFP.
2. The Respondent will provide all services as defined in the Scope of Services of the RFP Attachment 6.6., *Pro Forma* Contract for the total contract period.
3. The Respondent, except as otherwise provided in this RFP, accepts and agrees to all terms and conditions set out in the RFP Attachment 6.6., *Pro Forma* Contract.
4. The Respondent acknowledges and agrees that a contract resulting from the RFP shall incorporate, by reference, all proposal responses as a part of the contract.
5. The Respondent will comply with:
 - (a) the laws of the State of Tennessee;
 - (b) Title VI of the federal Civil Rights Act of 1964;
 - (c) Title IX of the federal Education Amendments Act of 1972;
 - (d) the Equal Employment Opportunity Act and the regulations issued there under by the federal government; and,
 - (e) the Americans with Disabilities Act of 1990 and the regulations issued there under by the federal government.
6. To the knowledge of the undersigned, the information detailed within the response submitted to this RFP is accurate.
7. The response submitted to this RFP was independently prepared, without collusion, under penalty of perjury.
8. 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 Respondent in connection with this RFP or any resulting contract.
9. Both the Technical Response and the Cost Proposal submitted in response to this RFP shall remain valid for at least 120 days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any contract pursuant to the RFP.

By signing this Statement of Certifications and Assurances, below, the signatory also certifies legal authority to bind the proposing entity to the provisions of this RFP and any contract awarded pursuant to it. If the signatory is not the Respondent (if an individual) or the Respondent's company *President* or *Chief Executive Officer*, this document must attach evidence showing the individual's authority to bind the Respondent.

DO NOT SIGN THIS DOCUMENT IF YOU ARE NOT LEGALLY AUTHORIZED TO BIND THE RESPONDENT**SIGNATURE:**

PRINTED NAME & TITLE:

DATE:

**RESPONDENT LEGAL ENTITY
NAME:**

**RESPONDENT FEDERAL EMPLOYER IDENTIFICATION NUMBER (or
SSN):**

RFP ATTACHMENT 6.2. — Section A

TECHNICAL RESPONSE & EVALUATION GUIDE

SECTION A: MANDATORY REQUIREMENTS. The Respondent must address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Respondent must also detail the response page number for each item in the appropriate space below.

The Solicitation Coordinator will review the response to determine if the Mandatory Requirement Items are addressed as required and mark each with pass or fail. For each item that is not addressed as required, the Proposal Evaluation Team must review the response and attach a written determination. In addition to the Mandatory Requirement Items, the Solicitation Coordinator will review each response for compliance with all RFP requirements.

RESPONDENT LEGAL ENTITY NAME:			
Response Page # (Respondent completes)	Item Ref.	Section A— Mandatory Requirement Items	Pass/Fail
		The Response must be delivered to the State no later than the Response Deadline specified in the RFP Section 2, Schedule of Events.	
		The Technical Response and the Cost Proposal documentation must be packaged separately as required (refer to RFP Section 3.2., <i>et. seq.</i>).	
		The Technical Response must NOT contain cost or pricing information of any type.	
		The Technical Response must NOT contain any restrictions of the rights of the State or other qualification of the response.	
		A Respondent must NOT submit alternate responses (refer to RFP Section 3.3.).	
		A Respondent must NOT submit multiple responses in different forms (as a prime and a sub-contractor) (refer to RFP Section 3.3.).	
	A.1.	Provide the Statement of Certifications and Assurances (RFP Attachment 6.1.) completed and signed by an individual empowered to bind the Respondent to the provisions of this RFP and any resulting contract. The document must be signed without exception or qualification.	
	A.2.	Provide a statement, based upon reasonable inquiry, of whether the Respondent or any individual who shall cause to deliver goods or perform services under the contract has a possible conflict of interest (<i>e.g.</i> , employment by the State of Tennessee) and, if so, the nature of that conflict. NOTE: Any questions of conflict of interest shall be solely within the discretion of the State, and the State reserves the right to cancel any award.	
	A.3.	Provide a current bank reference indicating that the Respondent's business relationship with the financial institution is in positive standing. Such reference must be written in the form of a standard business letter, signed, and dated within the past three (3) months.	
	A.4.	Provide two current positive credit references from vendors with which the Respondent has done business written in the form of standard business letters, signed, and dated within the past three (3) months.	
	A.5.	Provide an official document or letter from an accredited credit bureau, verified and dated within the last three (3) months and indicating a satisfactory credit rating for the Respondent (NOTE: A credit bureau report	

RESPONDENT LEGAL ENTITY NAME:			
Response Page # (Respondent completes)	Item Ref.	Section A— Mandatory Requirement Items	Pass/Fail
		number without the full report is insufficient and will <u>not</u> be considered responsive.)	
	A.6.	Provide written attestation that the Respondent does attest, certify, warrant, and assure that the Contractor shall not knowingly employ, in the performance of this Contract, employees who have been excluded from participation in the Medicare, Medicaid, and/or CHIP programs pursuant to Sections 1128 of the Social Security Act.	
<i>State Use – Solicitation Coordinator Signature, Printed Name & Date:</i>			

RFP ATTACHMENT 6.2. — SECTION B

TECHNICAL RESPONSE & EVALUATION GUIDE

SECTION B: GENERAL QUALIFICATIONS & EXPERIENCE. The Respondent must address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Respondent must also detail the response page number for each item in the appropriate space below. Proposal Evaluation Team members will independently evaluate and assign one score for all responses to Section B— General Qualifications & Experience Items.

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
	B.1.	Detail the name, e-mail address, mailing address, telephone number, and facsimile number of the person the State should contact regarding the response.
	B.2.	Describe the Respondent's form of business (<i>i.e.</i> , individual, sole proprietor, corporation, non-profit corporation, partnership, limited liability company) and business location (physical location or domicile).
	B.3.	Detail the number of years the Respondent has been in business.
	B.4.	Briefly describe how long the Respondent has been providing the goods or services required by this RFP.
	B.5.	Describe the Respondent's number of employees, client base, and location of offices.
	B.6.	Provide a statement of whether there have been any mergers, acquisitions, or change of control of the Respondent within the last ten (10) years. If so, include an explanation providing relevant details.
	B.7.	Provide a statement of whether the Respondent or, to the Respondent's knowledge, any of the Respondent's employees, agents, independent contractors, or subcontractors, involved in the delivery of goods or performance of services on a contract pursuant to this RFP, have been convicted of, pled guilty to, or pled <i>nolo contendere</i> to any felony. If so, include an explanation providing relevant details.
	B.8.	Provide a statement of whether, in the last ten (10) years, the Respondent has filed (or had filed against it) any bankruptcy or insolvency proceeding, whether voluntary or involuntary, or undergone the appointment of a receiver, trustee, or assignee for the benefit of creditors. If so, include an explanation providing relevant details.
	B.9.	Provide a statement of whether there is any material, pending litigation against the Respondent that the Respondent should reasonably believe could adversely affect its ability to meet contract requirements pursuant to this RFP or is likely to have a material adverse effect on the Respondent's financial condition. If such exists, list each separately, explain the relevant details, and attach the opinion of counsel addressing whether and to what extent it would impair the Respondent's performance in a contract pursuant to this RFP. NOTE: All persons, agencies, firms, or other entities that provide legal opinions regarding the Respondent must be properly licensed to render such opinions. The State may require the Respondent to submit proof of license for each person or entity that renders such opinions.
	B.10.	Provide a statement of whether there are any pending or in progress Securities Exchange Commission investigations involving the Respondent. If such exists, list each separately, explain the relevant details, and attach the opinion of counsel addressing whether and to what extent it will impair the Respondent's performance in a contract pursuant to this RFP. NOTE: All persons, agencies, firms, or other entities that provide legal opinions regarding the Respondent must be properly licensed to render such opinions. The State may require the

RFP ATTACHMENT 6.2. — SECTION B (continued)

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
		Respondent to submit proof of license for each person or entity that renders such opinions.
	B.11.	Provide a brief, descriptive statement detailing evidence of the Respondent's ability to deliver the goods or services sought under this RFP (e.g., prior experience, training, certifications, resources, program and quality management systems, etc.).
	B.12.	Provide a narrative description of the proposed project team, its members, and organizational structure along with an organizational chart identifying the key people who will be assigned to deliver the goods or services required by this RFP.
	B.13.	Provide a personnel roster listing the names of key people who the Respondent will assign to meet the Respondent's requirements under this RFP along with the estimated number of hours that each individual will devote to that performance. Follow the personnel roster with a resume for each of the people listed. The resumes must detail the individual's title, education, current position with the Respondent, and employment history.
	B.14.	Provide a statement of whether the Respondent intends to use subcontractors to meet the Respondent's requirements of any contract awarded pursuant to this RFP, and if so, detail: <ul style="list-style-type: none"> (a) the names of the subcontractors along with the contact person, mailing address, telephone number, and e-mail address for each; (b) a description of the scope and portions of the goods each subcontractor involved in the delivery of goods or performance of the services each subcontractor will perform; <u>and</u> (c) a statement specifying that each proposed subcontractor has expressly assented to being proposed as a subcontractor in the Respondent's response to this RFP.
	B.15.	Provide documentation of the Respondent's commitment to diversity as represented by the following: <ul style="list-style-type: none"> (a) <u>Business Strategy</u>. Provide a description of the Respondent's existing programs and procedures designed to encourage and foster commerce with business enterprises owned by minorities, women, Tennessee service-disabled veterans, and small business enterprises. Please also include a list of the Respondent's certifications as a diversity business, if applicable. (b) <u>Business Relationships</u>. Provide a listing of the Respondent's current contracts with business enterprises owned by minorities, women, Tennessee service-disabled veterans and small business enterprises. Please include the following information: <ul style="list-style-type: none"> (i) contract description and total value; (ii) contractor name and ownership characteristics (i.e., ethnicity, gender, Tennessee service-disabled); (iii) contractor contact name and telephone number. (c) <u>Estimated Participation</u>. Provide an estimated level of participation by business enterprises owned by minorities, women, Tennessee service-disabled veterans, and small business enterprises if a contract is awarded to the Respondent pursuant to this RFP. Please include the following information: <ul style="list-style-type: none"> (i) a percentage (%) indicating the participation estimate. (Express the estimated participation number as a percentage of the total estimated contract value that will be dedicated to business with subcontractors and supply contractors having such ownership characteristics only and DO NOT INCLUDE DOLLAR AMOUNTS); (ii) anticipated goods or services contract descriptions; (iii) names and ownership characteristics (i.e., ethnicity, gender, Tennessee service-disabled veterans) of anticipated subcontractors and supply contractors.

RFP ATTACHMENT 6.2. — SECTION B (continued)

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
		<p>NOTE: In order to claim status as a Diversity Business Enterprise under this contract, businesses must be certified by the Governor's Office of Diversity Business Enterprise (Go-DBE). Please visit the Go-DBE website at https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9265 for more information.</p> <p>(d) <u>Workforce</u>. Provide the percentage of the Respondent's total current employees by ethnicity and gender.</p> <p>NOTE: Respondents that demonstrate a commitment to diversity will advance State efforts to expand opportunity to do business with the State as contractors and subcontractors. Response evaluations will recognize the positive qualifications and experience of a Respondent that does business with enterprises owned by minorities, women, Tennessee service-disabled veterans and small business enterprises and who offer a diverse workforce.</p>
	B.16.	<p>Provide a statement of whether or not the Respondent has any current contracts with the State of Tennessee or has completed any contracts with the State of Tennessee within the previous five (5) year period. If so, provide the following information for all of the current and completed contracts:</p> <p>(a) the name, title, telephone number and e-mail address of the State contact knowledgeable about the contract;</p> <p>(b) the procuring State agency name;</p> <p>(c) a brief description of the contract's scope of services;</p> <p>(d) the contract period; and</p> <p>(e) the contract number.</p> <p>NOTES:</p> <ul style="list-style-type: none"> ▪ Current or prior contracts with the State are <u>not</u> a prerequisite and are <u>not</u> required for the maximum evaluation score, and the existence of such contracts with the State will <u>not</u> automatically result in the addition or deduction of evaluation points. ▪ Each evaluator will generally consider the results of inquiries by the State regarding all contracts noted.
	B.17.	<p>Provide customer references from individuals (who are <u>not</u> current or former officials or staff of the State of Tennessee) for projects similar to the services sought under this RFP and which represent:</p> <ul style="list-style-type: none"> ▪ two (2) of the larger accounts currently serviced by the Respondent, <u>and</u> ▪ three (3) completed projects. <p>All references must be provided in the form of standard reference questionnaires that have been fully completed by the individual providing the reference as required. The standard reference questionnaire, which <u>must</u> be used and completed as required, is detailed at RFP Attachment 6.4. References that are not completed as required will be considered non-responsive and will not be considered.</p> <p>The Respondent will be <u>solely</u> responsible for obtaining the fully completed reference questionnaires, and for including them within the Respondent's sealed Technical Response. In order to obtain and submit the completed reference questionnaires, as required, follow the process detailed below.</p> <p>(a) Customize the standard reference questionnaire at RFP Attachment 6.4. by adding the subject Respondent's name, and make duplicates for completion by references.</p> <p>(b) Send the customized reference questionnaires to each individual chosen to provide a reference along with a new standard #10 envelope.</p> <p>(c) Instruct the person that will provide a reference for the Respondent to:</p> <p>(i) complete the reference questionnaire (on the form provided or prepared, completed, and</p>

RFP ATTACHMENT 6.2. — SECTION B (continued)

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
		<p>printed using a duplicate of the document);</p> <p>(ii) sign <u>and</u> date the completed, reference questionnaire;</p> <p>(iii) seal the completed, signed, and dated, reference questionnaire within the envelope provided;</p> <p>(iv) sign his or her name in ink across the sealed portion of the envelope; and</p> <p>(v) return the sealed envelope containing the completed reference questionnaire directly to the Respondent (the Respondent may wish to give each reference a deadline, such that the Respondent will be able to collect all required references in time to include them within the sealed Technical Response).</p> <p>(d) Do NOT open the sealed references upon receipt.</p> <p>(e) Enclose all <u>sealed</u> reference envelopes within a larger, labeled envelope for inclusion in the Technical Response as required.</p> <p>NOTES:</p> <ul style="list-style-type: none"> ▪ The State will not accept late references or references submitted by any means other than that which is described above, and each reference questionnaire submitted must be completed as required. ▪ The State will not review more than the number of required references indicated above. ▪ While the State will base its reference check on the contents of the sealed reference envelopes included in the Technical Response package, the State reserves the right to confirm and clarify information detailed in the completed reference questionnaires, and may consider clarification responses in the evaluation of references. ▪ The State is under <u>no</u> obligation to clarify any reference information.
	B.18.	<p>Provide a statement and any relevant details addressing whether the Respondent is any of the following:</p> <p>(a) is presently debarred, suspended, proposed for debarment, or voluntarily excluded from covered transactions by any federal or state department or agency;</p> <p>(b) has within the past three (3) years, been convicted of, or had a civil judgment rendered against the contracting party from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;</p> <p>(c) is presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed above; and</p> <p>has within a three (3) year period preceding the contract had one or more public transactions (federal, state, or local) terminated for cause or default.</p>
	B.19.	<p>Proposer shall describe how its background and experience will enable it to address the requirements of the applicable federal and state civil rights laws. For example, achieving compliance with the civil rights laws involves moving towards ending health care disparities, which is part of the National Strategy for Quality Improvement and is a recognized quality improvement activity. Proposer shall describe how its assessment methods are used to evaluate Manage Care Organizations on these measures and how these methods will be implemented in the performance of this contract.</p>
		<p align="center">SCORE (for <u>all</u> Section B—Qualifications & Experience Items above): (maximum possible score = 30)</p>

RFP ATTACHMENT 6.2. — SECTION B (continued)

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
<i>State Use – Evaluator Identification:</i>		

RFP ATTACHMENT 6.2. — SECTION C

TECHNICAL RESPONSE & EVALUATION GUIDE

SECTION C: TECHNICAL QUALIFICATIONS, EXPERIENCE & APPROACH. The Respondent must address all items (below) and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Respondent must also detail the response page number for each item in the appropriate space below.

A Proposal Evaluation Team, made up of three or more State employees, will independently evaluate and score the response to each item. Each evaluator will use the following whole number, raw point scale for scoring each item:

0 = little value 1 = poor 2 = fair 3 = satisfactory 4 = good 5 = excellent

The Solicitation Coordinator will multiply the Item Score by the associated Evaluation Factor (indicating the relative emphasis of the item in the overall evaluation). The resulting product will be the item's Raw Weighted Score for purposes of calculating the section score as indicated.

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
	C.1.	Provide a narrative that illustrates the Proposer's understanding of the State's requirements and project schedule.		5	
	C.2.	Describe the detailed process to be used for conducting and completing the MCO Annual Quality Survey. Include the data collection tool as well as the format to be used.		5	
	C.3.	Provide a blinded copy of a completed Annual Quality Review of a Medicaid Managed Care Organization, and the corresponding Executive Summary, demonstrating how the proposer designed and implemented a tool capturing all CMS requirements. The sample provided must use a survey tool developed by the EQRO in house staff. Information/Identifiers should be stricken from the documents prior to submission.		5	
	C.4.	Describe the data collection tool and the reporting format the proposer would use for the EPSDT annual evaluation report. Include sample tools and reports for review.		5	
	C.5.	Describe in detail how the proposer would assess network adequacy and delivery of health benefits in accordance with each MCC's Contractor Risk Agreement. Include a sample reporting format.		5	
	C.6.	Provide a detailed description of the process the proposer would use to validate the accuracy of the provider related information submitted by each MCO. If possible, submit tools and report format that would be used for this project.		5	
	C.7.	Provide examples of Technical Assistance that would be offered to both the MCOs and State agency staff. Also provide explanation of how the need for technical assistance would be assessed.		5	
	C. 8.	Provide sample of a comparative analysis the proposer has completed on HEDIS/CAHPS data or other similar data		5	
	C.9.	Provide a sample of a report previously prepared by the proposer that is at least 20 pages long and includes both narrative and charts.		5	
	C.10.	Describe the proposer's process for validation of each MCO's		5	

RFP ATTACHMENT 6.2. — SECTION C (continued)

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
		Performance Improvement Projects. Include proposed reporting format and protocols used.			
	C.11.	Provide a blinded copy of an EQRO/QIO Technical Report that was prepared by the proposer.		5	
	C.12.	Describe how the Proposer will fulfill the CMS requirement for validation of MCO Performance Measures utilizing HEDIS specifications.		5	
	C.13.	Provide a work product sample which was a collaborative effort between the Proposer's biostatistician, epidemiologist and other EQRO staff. Information/identifiers should be stricken from the documents prior to submission.		5	
	C.14.	Describe how the Proposer will train and educate staff regarding Contractor responsibilities described in the scope of this contract. Include ongoing training that may be required.		5	
	C.15.	Describe how the Proposer will monitor and ensure inter-rater reliability among the audit staff. Describe internal controls to assure accuracy and completeness of required reporting.		5	
	C.16.	Describe any current or previous EQRO experience with Population Health or disease management evaluation methods. Describe how the Proposer will monitor and provide feedback to the State regarding the efficacy of MCO Population Health and/or disease management protocols and interventions.		5	
	C.17.	Describe the mechanism the Proposer will use to remain current on State and Federal requirements related to Managed Care Organizations.		5	
	C.18.	Describe ongoing internal controls to safeguard access to data as well as the Proposer's contingency plan for data system failure in any critical EQRO areas.		5	
	C.19.	Describe process and timeframes for establishing an EQRO office in Nashville. Include a description and numbers of both technical and professional staff providing services within this contract.		5	
	C.20.	Provide narrative describing that proposer is QIO or QIO-like entity as required by Federal law for services contained in this procurement. along with any proof of designation.		5	
<p><i>The Solicitation Coordinator will use this sum and the formula below to calculate the section score. All calculations will use and result in numbers rounded to two (2) places to the right of the decimal point.</i></p>					
<p>Total Raw Weighted Score</p> <hr/> <p>Maximum Possible Raw Weighted Score (i.e., 5 x the sum of item weights above)</p>			<p>X 40 (maximum possible score)</p>	<p>= SCORE:</p>	

RFP ATTACHMENT 6.2. — SECTION C (continued)

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
<i>State Use – Evaluator Identification:</i>					
<i>State Use – Solicitation Coordinator Signature, Printed Name & Date:</i>					

COST PROPOSAL & SCORING GUIDE

NOTICE: THIS COST PROPOSAL MUST BE COMPLETED EXACTLY AS REQUIRED

COST PROPOSAL SCHEDULE— The Cost Proposal, detailed below, shall indicate the proposed price for goods or services defined in the Scope of Services of the RFP Attachment 6.6., *Pro Forma* Contract and for the entire contract period. The Cost Proposal shall remain valid for at least one hundred twenty (120) days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any contract resulting from this RFP. All monetary amounts shall be in U.S. currency and limited to two (2) places to the right of the decimal point.

NOTICE: The Evaluation Factor associated with each cost item is for evaluation purposes only. The evaluation factors do NOT and should NOT be construed as any type of volume guarantee or minimum purchase quantity. The evaluation factors shall NOT create rights, interests, or claims of entitlement in the Respondent.

Notwithstanding the cost items herein, pursuant to the second paragraph of the *Pro Forma* Contract section C.1. (refer to RFP Attachment 6.6.), "The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract."

This Cost Proposal must be signed, in the space below, by an individual empowered to bind the Respondent to the provisions of this RFP and any contract awarded pursuant to it. If said individual is not the *President* or *Chief Executive Officer*, this document must attach evidence showing the individual's authority to legally bind the Respondent.

RESPONDENT SIGNATURE:			
PRINTED NAME & TITLE:			
DATE:			
Cost Item Description	Proposed Cost	State Use Only	
		Evaluation Factor	Evaluation Cost (cost x factor)
	October 1, 2015 – September 30, 2016		
General Administration and Operations (including all scopes of services and deliverables included in the pro forma)	\$ _____ per month	12	
	October 1, 2016 – September 30, 2017		
General Administration and Operations (including all scopes of services and deliverables included in the pro forma)	\$ _____ per month	12	
	October 1, 2017 – September 30, 2018		
General Administration and Operations (including all scopes of services and deliverables included in the pro forma)	\$ _____ per month	12	

RFP ATTACHMENT 6.3. (continued)

Cost Item Description	Proposed Cost	State Use Only	
		Evaluation Factor	Evaluation Cost (cost x factor)
	October 1, 2018 – September 30, 2020		
Extension Rates (Should Contract Term Extension Option be Utilized) General Administration and Operations (including all scopes of services and deliverables included in the pro forma)	\$ _____ per month	24	
EVALUATION COST AMOUNT (sum of evaluation costs above): The Solicitation Coordinator will use this sum and the formula below to calculate the Cost Proposal Score. Numbers rounded to two (2) places to the right of the decimal point will be standard for calculations.			
lowest evaluation cost amount from <u>all</u> proposals <hr style="width: 30%; margin-left: 0;"/> evaluation cost amount being evaluated			x 30 (maximum section score)
			= SCORE:
<i>State Use – Solicitation Coordinator Signature, Printed Name & Date:</i>			

REFERENCE QUESTIONNAIRE

The standard reference questionnaire provided on the following pages of this attachment MUST be completed by all individuals offering a reference for the Respondent.

The Respondent will be solely responsible for obtaining completed reference questionnaires as required (refer to RFP Attachment 6.2., Technical Response & Evaluation Guide, Section B, Item B.17.), and for enclosing the sealed reference envelopes within the Respondent's Technical Response.

RFP #31865-00400 REFERENCE QUESTIONNAIRE

REFERENCE SUBJECT: RESPONDENT NAME (completed by Respondent before reference is requested)

The “reference subject” specified above, intends to submit a response to the State of Tennessee in response to the Request for Proposals (RFP) indicated. As a part of such response, the reference subject must include a number of completed and sealed reference questionnaires (using this form).

Each individual responding to this reference questionnaire is asked to follow these instructions:

- complete this questionnaire (either using the form provided or an exact duplicate of this document);
- sign and date the completed questionnaire;
- seal the completed, signed, and dated questionnaire in a new standard #10 envelope;
- sign in ink across the sealed portion of the envelope; and
- return the sealed envelope containing the completed questionnaire directly to the reference subject.

(1) What is the name of the individual, company, organization, or entity responding to this reference questionnaire?

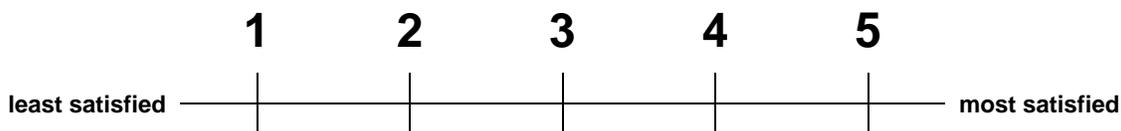
(2) Please provide the following information about the individual completing this reference questionnaire on behalf of the above-named individual, company, organization, or entity.

NAME:	
TITLE:	
TELEPHONE #	
E-MAIL ADDRESS:	

(3) What goods or services does/did the reference subject provide to your company or organization?

(4) What is the level of your overall satisfaction with the reference subject as a vendor of the goods or services described above?

Please respond by circling the appropriate number on the scale below.

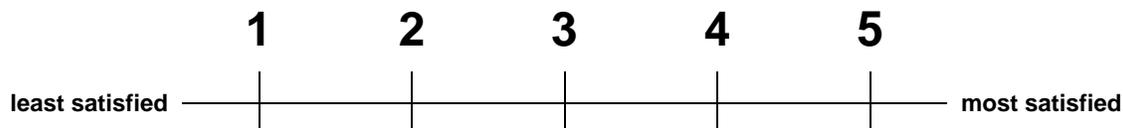


RFP #31865-00400 REFERENCE QUESTIONNAIRE — PAGE 2

If you circled 3 or less above, what could the reference subject have done to improve that rating?

- (5) If the goods or services that the reference subject provided to your company or organization are completed, were the goods or services provided in compliance with the terms of the contract, on time, and within budget? If not, please explain.
- (6) If the reference subject is still providing goods or services to your company or organization, are these goods or services being provided in compliance with the terms of the contract, on time, and within budget? If not, please explain.
- (7) How satisfied are you with the reference subject's ability to perform based on your expectations and according to the contractual arrangements?
- (8) In what areas of goods or service delivery does/did the reference subject excel?
- (9) In what areas of goods or service delivery does/did the reference subject fall short?
- (10) What is the level of your satisfaction with the reference subject's project management structures, processes, and personnel?

Please respond by circling the appropriate number on the scale below.

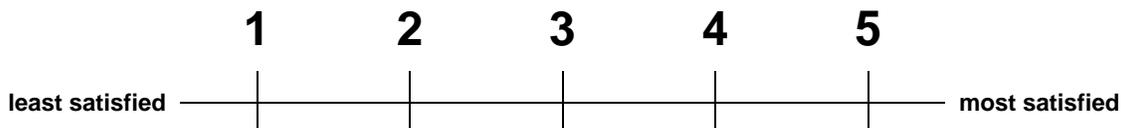


What, if any, comments do you have regarding the score selected above?

RFP #31865-00400 REFERENCE QUESTIONNAIRE — PAGE 3

(11) **Considering the staff assigned by the reference subject to deliver the goods or services described in response to question 3 above, how satisfied are you with the technical abilities, professionalism, and interpersonal skills of the individuals assigned?**

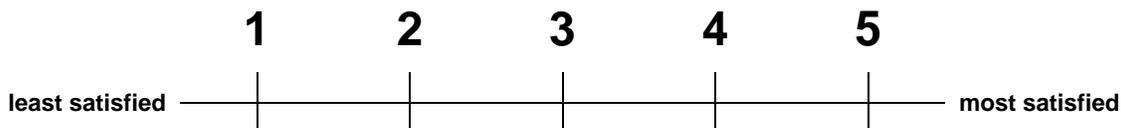
Please respond by circling the appropriate number on the scale below.



What, if any, comments do you have regarding the score selected above?

(12) **Would you contract again with the reference subject for the same or similar goods or services?**

Please respond by circling the appropriate number on the scale below.



What, if any, comments do you have regarding the score selected above?

REFERENCE SIGNATURE:

(by the individual completing this request for reference information)

_____ (must be the same as the signature across the envelope seal)

DATE:

SCORE SUMMARY MATRIX

	<i>RESPONDENT NAME</i>		<i>RESPONDENT NAME</i>		<i>RESPONDENT NAME</i>	
GENERAL QUALIFICATIONS & EXPERIENCE (maximum: 30)						
<i>EVALUATOR NAME</i>						
<i>EVALUATOR NAME</i>						
<i>REPEAT AS NECESSARY</i>						
	AVERAGE:		AVERAGE:		AVERAGE:	
TECHNICAL QUALIFICATIONS, EXPERIENCE & APPROACH (maximum: 40)						
<i>EVALUATOR NAME</i>						
<i>EVALUATOR NAME</i>						
<i>REPEAT AS NECESSARY</i>						
	AVERAGE:		AVERAGE:		AVERAGE:	
COST PROPOSAL (maximum 30)	SCORE:		SCORE:		SCORE:	
TOTAL RESPONSE EVALUATION SCORE: (maximum: 100)						

Solicitation Coordinator Signature, Printed Name & Date:

RFP #31865-00400 *PRO FORMA* CONTRACT

The *Pro Forma* Contract detailed in following pages of this exhibit contains some “blanks” (signified by descriptions in capital letters) that will be completed with appropriate information in the final contract resulting from the RFP.

CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION
CONTRACTOR NAME

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

The Contractor is **a/an Individual, For-Profit Corporation, Non-Profit Corporation, Special Purpose Corporation Or Association, Partnership, Joint Venture, Or Limited Liability Company.**

Contractor Place of Incorporation or Organization: **Location**

Contractor Edison Registration ID # **Number**

A. SCOPE OF SERVICES:

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Contract.
- A.2. The services to be provided under this contract include multiple tasks and deliverables that are consistent with applicable federal External Quality Review (EQR) regulations and protocols for Medicaid Managed Care Organizations, state specific TennCare requirements related to Federal court orders, including but not limited to, *Grier*, and Contractor Risk Agreements (CRAs) with TennCare Managed Care Contractors (MCCs), including the Managed Care Organizations (MCOs) and the TennCare Dental Benefits Manager (DBM). In addition, these services also include tasks and deliverables consistent with the applicable federal EQR regulations and protocols for the Children Health Insurance Program (CHIP), known as "CoverKids" in Tennessee, and the CRA with the CoverKids Health Plan Administrator(s) (HPAs) and the CoverKids DBM. The State currently has four (4) managed care plans covering the following Medicaid programs: (1) TennCare, the Tennessee State Medicaid waiver program, (2) TennCare Select, the Tennessee State Medicaid waiver program for those enrollees determined to be at high risk, and (3) TennCare Dental Benefits Manager (DBM). Additionally, CoverKids, the federal Children's Health Insurance Program (CHIP) in Tennessee, has one (1) plan administrator and one (1) Dental Benefit Manager. "TennCare MCOs" and "TennCare MCCs" in this Contract shall be deemed to include TennCare, TennCare Select and the TennCare DBM, unless otherwise indicated or instructed by the State. All references to "CoverKids" in this Contract shall be deemed to include CoverKids and the CoverKids DBM, unless otherwise indicated or instructed by the State. This Contract is required to keep the State compliant with Federal EQR regulations and rules and to measure MCC specific compliance with State specific Federal court orders and the TennCare Section 1115 Waiver. The specifications for deliverables required in this contract may evolve from year to year in response to program changes such as MCC participation or enrollment levels, changes to the TennCare Waiver, court orders, or CRA, or changes in Federal or State requirements. Amendments to this Contract may be required to reflect such aforementioned changes. The Contractor will be required to perform all tasks and functions identified in the Contract according to specified levels of quality and comprehensiveness as determined by the State. Capitalized terms used in this Contract are either defined herein or in Attachment A hereto, or are deemed to have the meanings ascribed to them in the applicable TennCare CRAs, CoverKids State contract, or the respective DBM contracts.
- A.3. The Contractor shall, under the direction of the State, conduct the TennCare and CoverKids Program External Quality Review Organization (EQRO) functions during the term of this contract

and provide for an orderly transition of the EQRO functions to any new Contractor, or the State, at the end of the contract period. The Contractor, a Quality Improvement Organization (QIO) or QIO-like entity as required by federal law for this type service, shall provide services in accordance with the TennCare Waiver and related amendments which can be found on the Bureau of TennCare's website at <http://www.tn.gov/tenncare/> or CoverKids website at <http://www.covertn.gov/web/stateplan.html>. Should a new contractor be identified at the end of this Contract, the Contractor shall provide assistance during the final month of the contract with the transition of TennCare EQRO functions.

- A.4 **TennCare Program** In addition to general requirements contained elsewhere in this Contract, Sections A.4 through A.78 of this Contract set forth specific Contractor requirements and deliverables pertaining to the TennCare Program, which includes TennCare, TennCare Select and the TennCare DBM. All references in these Sections to "MCC" and "MCO" shall be deemed to refer to all TennCare MCCs, TennCare MCOs and, as directed by the State, the TennCare DBM,
- A.5 The Contractor shall, as directed by the State and at no additional cost to the State, coordinate with, facilitate the prompt exchange of information between, and work collaboratively with any and all other State contractors and State Agencies. If required in order for the Contractor to proceed with any part of the Scope of Services which involves sharing or obtaining information of a confidential, proprietary, or otherwise valuable nature with or from another State contractor, the Contractor may be requested to sign mutually agreeable documents, including but not limited to Non-Disclosure Agreements (Non-Disclosure Documents), which are reasonably necessary to maintain cooperation and collaboration among and with any and all other State contractors and State agencies in the performance of the Contract.

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

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

- A.6. The Contractor shall be responsible for conducting all reviews scheduled effective October 1, 2015, and producing all regularly scheduled monthly, quarterly and annual reports. Key staff shall be the key people who will be assigned to accomplish the work required by this Contract as identified in the Contractor's proposal. At no additional cost to the State, key staff shall be available on site at the TennCare offices located at 310 Great Circle Road, Nashville, Tennessee at times designated by TennCare during the month of September, 2015 to receive documents and orientation from the previous EQRO Contractor including, but not limited to:
- a. the procedures for the EQRO periodic and special reviews of TennCare MCOs, participation in various committees, ad hoc report generation and analysis, and the operation and maintenance of EQRO Systems;
 - b. review operating procedures and receive training on all software used to support the EQRO functions; and
 - c. receive and review files, data, and other materials from the previous EQRO Contractor.

- A.7. The Contractor shall perform the following EQRO functions in accordance with all Federal, State and TennCare requirements:
- a. The Contractor shall develop a comprehensive work plan, including complete staffing allocations in FTE units, that is due to the State no later than September 15th, 2015 with the submission of a detailed work plan due annually thereafter. The plan will outline key tasks and sub-tasks, with associated timeframes for completion and delivery assigned to each task, as deemed necessary to deliver the required work product to the State; A summary report detailing progress towards the work plan must be submitted to HCFA, with an accompanying invoice, by the 15th of each month.
 - b. Operate and maintain a system of internal controls (manual and automated), approved by the State, to safeguard access to data and ensure the integrity, completeness, and accuracy of the data, the processing, and the output products;
 - c. By January 1st of each year perform analysis, and submit a report of existing and new Federal and State policies, procedures and regulations to determine their impact on the EQRO components of the TennCare program, and related State and Contractor-performed functions. The analysis shall include a review of portions of the Federal Register that would impact the Bureau of TennCare.
 - d. Conduct training for Contractor personnel on a continuing basis to maintain satisfactory levels of proficiency relative to all Contractor functions and report to TennCare regarding ongoing Contractor training;
 - e. Operate and maintain an internal control program approved by the State to ensure accuracy of all EQRO functions and processing that meets the State's requirements; internal quality control program shall encompass all annual special reviews, studies, reports, and any other outputs that are produced;
 - f. Develop the external quality review (EQR) survey tools for surveying the MCC's based on current contractual procedures, applicable court orders, the TennCare 1115 Waiver, and State and Federal regulations. The tools shall include specific compliance monitoring activities, a mechanism for obtaining background information from the State, MCC document review, conducting MCC interviews, the collection of accessory information, analyzing and compiling of findings by MCC and reporting evaluation results to the State. The Contractor shall advise the State on an ongoing basis of changes to improve and enhance the audits;
 - g. Perform all the functions of the EQRO in accordance with State requirements and per State-approved standards and procedures;
 - h. Conduct periodic and special quality reviews of the MCOs per the State's schedule and provide written reports of findings and recommendations for corrective action within the predefined time frame;
 - i. Maintain internal records in such a fashion as to provide complete audit trails of activities, account for all transactions, and document all charges;
 - j. Maintain disaster recovery procedures acceptable to the State, and

- k. Implement and maintain processes and policies compliant with Health Insurance Portability and Accountability Act (HIPAA) regulations. Ensure the proper handling of Protected Health Information (PHI).
 - l. Within fifteen (15) days of the start date of the Contract, the Contractor shall submit to TennCare a detailed proposal by which it plans to ensure Inter-rater Reliability in the analyses performed under this Contract.
- A.8. The Contractor shall perform its TennCare EQRO functions in accordance with Federal and State laws, regulations and policies pertaining to Medicaid, including the Tennessee State Medicaid Plan, and policies and procedures pertaining to TennCare including the terms and conditions of the TennCare Waiver. The Contractor shall maintain office space and personnel sufficient to fulfill all contractual obligations in Nashville, Tennessee, at a location to be mutually agreed upon by the State and the Contractor. In the event the Contractor has need of an interpretation of any laws, regulations and/or policies, the request will be made to the State. The State shall provide timely notification to the Contractor of all changes and/or amendments in the MCC CRAs and the DBM contract which can reasonably be expected to affect the Contractor's performance of this Contract. The Contractor shall maintain, on a current and ongoing basis, a full and detailed knowledge of applicable Federal and State laws, regulations, policies, the State Medicaid Plan, federal External Quality Review (EQR) regulations and protocols for Medicaid MCOs, specific TennCare requirements related to Federal court orders, including but not limited to, Grier, the MCC CRAs, DBM contract and the TennCare Waiver.
- A.9. The Contractor's responsibilities as the (EQRO) for TennCare shall include providing and maintaining an administrative structure, including personnel of sufficient background, training, number, scope and authority to perform its contractual responsibilities to the satisfaction of the State. The Contractor shall provide the State with the names and resumes of individuals who are authorized to act on behalf of the Contractor, together with a description of their responsibilities, authorities, and the amount of time each employee will devote to this Contract in Full Time Equivalent (FTEs). The State shall have final approval of FTEs on TennCare projects. The Contractor's key personnel shall include a full-time Physician Consultant, a full-time Contract Manager, and sufficient resources to fulfill contractual obligations. The Contractor must provide access to a biostatistician and epidemiologist on a timely basis that is adequate to meet TennCare's requirements under its Contract. Resumes for all key personnel must be current.
- A.10. The Contractor shall perform an annual quality survey of each TennCare MCC to determine contractual compliance, preparing a written report of findings, and forwarding said report to the State no later than thirty (30) days after completion of the survey, unless otherwise agreed to in writing by the State. An annual survey shall be done to include measures that have been removed from accreditation standards, contractual requirements that are not fully duplicated in the National Committee on Quality Assurance (NCQA) survey or the Annual Network Adequacy (ANA), and all criteria related to TennCare Court cases. Timelines associated with the annual quality survey include but are not limited to:
- a. By December 31st of each calendar year, the Contractor shall submit the proposed review criteria to the State for approval. TennCare will respond with comments by January 15th.
 - b. By February 2nd of each calendar year, the Contractor shall present the proposed schedule for the annual quality survey to the State for approval.
 - c. Appointments with the MCCs shall be scheduled thirty (30) days in advance of visit.
 - d. The State shall be notified of any changes to the approved appointment schedule immediately.

- e. An MCC specific, by Region, draft report of the survey findings along with recommendations for improvement shall be provided to the State thirty (30) days after each MCC's onsite survey. The recommendations for improvement should include specific information the MCCs can utilize to make appropriate changes and, when appropriate, the MCC can adopt other state and national best practices. The final report shall be submitted to the State sixty (60) days following the review of each MCC.
- A.11. The Contractor shall develop review criteria for the Annual Quality Survey, with input from TennCare, to assess contract compliance and compliance with current industry, Federal, and State requirements for Medicaid managed care. Criteria must include, but not be limited to review of enrollee rights and protections, quality assessment and performance improvement, structure and operation standards, measurement and improvement standards and compliance with the appeal process. The survey process shall include document review, interviews with key MCC personnel, and an assessment of the adequacy of information management systems. Review, analysis, and recommendations for improvement of the MCC Structure and overall integration of the health care delivery system shall include but not be limited to, review and assessment of the following documents/activities listed below. After a MCC is NCQA accredited all of the following requirements will not have to be reviewed if the criteria for each area have been fully reviewed by NCQA. Any deletions from the survey must be approved by TennCare.
- a. MCC Structure
- (1) Quality Improvement Program Description (QIPD)
 - (2) Utilization Management Program Description (UMPD)
 - (3) The associated work plans for the QIPD and UMPD
 - (4) The annual evaluation of the MCC Quality Improvement Program
 - (5) Adequacy of MCC's material resources and staffing
 - (6) Oversight of Quality Program by the MCC's governing body
- b. Appropriate documentation of all committee meetings, i.e., Quality, Credentialing, and Peer Review
- c. Oversight of all MCC's initial and recertification processes to include:
- (1) Onsite credentialing file review
 - (2) Review of committee minutes
 - (3) Timeliness of credentialing/recertification process
 - (4) Incorporation of quality assessment (site visit and medical record documentation practices)
 - (5) Assessment of quality of care and service issues which may include but not be limited to physician/provider specific confirmed and trended quality of care and service concerns, appeals data, over/under utilization data, and pharmacy utilization data
 - (6) MCC's process for medical record review of primary care physicians and high volume specialists
- d. MCO Clinical Practice Guidelines
- (1) Adoption, annual review, and dissemination of Clinical Practice Guidelines (CPG) to all appropriate network providers.
 - (2) A CPG must be designated for each of the required Disease Management Programs (as specified in the CRA).
 - (3) The review must indicate whether each CPG is a nationally recognized one or if they were developed by the MCO. If developed by the MCO indicate if they are based on national guidelines and if so, which ones.

- e. Audited HealthCare Effectiveness Data and Information Systems (HEDIS) and Consumer Assessment of Health Plan Surveys (CAHPS) data by MCO to validate opportunities for improvement and areas where meaningful improvement has been achieved. In lieu of prior requirements, the Contractor shall review and analyze the customer satisfaction survey required of the DBM.
- f. MCO Population Health (PH) for the following components:
 - (1) Risk Stratification of MCO population and movement of populations between risk levels
 - (2) Outreach to the members stratified into PH Level 2 Programs
 - (3) Screening for risk factors for high risk pregnancy program
 - (4) Screening for members' need for face-to-face visits
 - (5) Ongoing assessment of members transitioning into higher/lower levels of care
 - (6) Assessment of members' health by use of mini-health survey to all new enrollees and annually thereafter
 - (7) Enrollment of CHOICES members in PH programs
 - (8) Integration of appropriate elements of PH care plan into member's CHOICES care plan to facilitate better management of member's condition
 - (9) Stratification of CHOICES members by risk factors and by type of facility where Long-term care LTC services are delivered.
 - (10) Confirmation that CHOICES Care Coordinator has primary responsibility for coordination of all the member's physical, behavioral health and LTC services, including appropriate management of chronic conditions
 - (11) Evidence that the CHOICES member's care plan includes monitoring of member's condition, ensuring compliance with treatment protocols and life style changes
 - (12) Process for how the CHOICES care coordinator receives notification collected about the member through PH programs, and any educational materials given to the member through PH program
 - (13) Written description of how the CHOICES care coordinator verbally reviews member materials and coordinates necessary follow-up regarding the PH programs such as scheduling screenings or appointments
 - (14) MCO Case Management services are provided consistent with federal and state requirements
 - (15) Evidence that case management activities are being integrated throughout the operations of the MCO.
- g. MCC mechanism for identifying potential under/over utilization trends within provider network and actions taken when performance falls below established standards
- h. MCC process for review and update of medical necessity criteria
- i. MCC process to ensure continuity and coordination of care
- j. MCO case management services
 - (1) Selection criteria
 - (2) Available resources
 - (3) Penetration rate
 - (4) Turn-over rate (length of time in case management)
 - (5) Frequency of enrollee contact
 - (6) Evidence of network physician/provider participation
- k. MCC Utilization Management denial files as designated by TennCare.
- l. MCO Home Health services denials – the number of files reviewed shall be of sufficient number to produce a statistically valid review

- m Adequacy of MCC provider networks
 - (1) Compliance with required access standards
 - (2) Compliance with required wait time standards
 - (3) Analysis of open/closed panels by MCC
 - (4) Compliance with established standards for appointment availability
 - n MCC compliance with Call Center Standards
 - (1) Member Services
 - i. Call answer timeliness
 - ii. Call abandonment rate
 - (2) Health Services (Prior Authorization)
 - i. Call answer timeliness
 - ii. Call abandonment rate
 - iii. Percent of calls returned within twenty-four (24) hours
 - p. Appeal overturn rate by MCC
 - q. Accuracy and timeliness of MCC claims payment
 - r. Comparative analysis of MCC overall provider satisfaction survey results and CHOICES satisfaction survey results.
 - s. MCC operational and departmental policies and procedures
 - t. Analysis of MCC communication to enrollees and providers outlining member rights and responsibilities
 - u. Verification of MCC commitment to improve patient safety
 - v. Annual comparative analysis of MCC compliance with Early and Periodic Screening Diagnosis and Treatment (EPSDT) requirements to include:
 - (1) Identification of best practices
 - (2) Evidence of enrollee and provider educational outreach by individual MCC
 - w. Evaluation of the timeliness and appropriateness of triage and referrals for behavioral health to include a review of written protocols.
 - x. Evaluation of whether the MCCs' are providing culturally and linguistically appropriate services ("CLAS") and are reducing health care disparities. The NCQA Multicultural Health Care ("MHC") standards program is a method that may be utilized to satisfy the U.S. Department of Health and Human Services, Office of Minority Health's CLAS standards. The MCCs' abilities to achieve compliance with the civil rights laws involves reducing health care disparities, which is part of the National Strategy for Quality Improvement and is a recognized quality improvement activity under medical loss ratios.
- A.12. The Contractor shall perform an annual evaluation of each MCC's compliance with the EPSDT requirements set forth in the Contractor Risk Agreement. The evaluation shall include, but not be limited to, a review and assessment of the following for each MCC:
- a. Timely provision of medically necessary care

- b. Proof the MCC has aggressively and effectively informed enrollees of the TENNderCARE (EPSDT) program and services
- c. Network Adequacy Review
- d. Review and assess MCC practices in regards to making decisions about medical necessity, and identify any practices which are inconsistent with federal law.
- e. Review and assess the effectiveness of the MCC's practices and procedures in appropriately referring children from one level of screening or diagnoses to another as required to determine a child's physical health, behavioral health and developmental needs as to medically necessary services.
- f. Review the definition of "medically necessary" treatment being used by the MCC and ensure it is the correct definition for the TennCare population as found in TennCare Rule 1200-13-16.
- g. Review appropriate information to determine that absolute service limits are not used by the MCC in the determination of coverage for the TENNderCARE (EPSDT) population, including, but not limited to, reviewing for the inclusion of rehabilitation services and maintenance services.
- h. Review and assess the MCC's contractual compliance in providing appropriate continuation of services.
- i. Review the MCC prior authorization and utilization review decision processes to ensure that no prior authorization is required for periodic TENNderCARE (EPSDT) screenings, or assessments, and determine if decisions are being made only by qualified personnel with education, training or experience in child and adolescent health.
- j. Review documentation to determine if that MCC is in compliance with the reasonable and promptness requirements of providing services as required within the MCC Contractor Risk Agreement.
- k. Review utilization management denial files to determine that MCCs provide all medically necessary covered services.
- l. Review MCC policy and documentation as to how the MCC provides each primary care provider seeing TENNderCARE (EPSDT) eligible members a quarterly supplemented listing of specialists to whom referrals may be made. Assess MCC compliance with the requirement.
- m. Review and assess the adequacy and effectiveness of MCC's case management activities for the TENNderCARE (EPSDT) population consistent with federal law.
- n. Review and assess the MCC's compliance with the requirement to provide transportation and non-emergent transportation for the TENNderCARE (EPSDT) population.
- o. Review and assess the protocols and procedures in place within the MCC for handling transportation referrals and review necessary information to determine that the MCCs are not imposing blanket restrictions on the provision of transportation.
- p. Review and assess the MCC's coordination of children's health and education services and programs with other State agencies and assess MCC compliance with the current IEP process.

- q. Review and assess MCC's processes and ability to assist in scheduling appointments.
 - r. Review and assess the MCC's processes and documentation of TENNderCARE (EPSDT) services declined by enrollees.
 - s. Review and assess the MCC's processes/efforts for identifying and reaching out to children who have missed appointments or failed to receive TENNderCARE (EPSDT) screenings timely. Determine MCC compliance with all required outreach efforts.
 - t. Review and assess the MCC's processes for identifying and reaching out to inform the illiterate, blind, deaf and Limited English Proficiency ("LEP") populations of TENNderCARE (EPSDT) programs.
 - u. Review and assess the MCC's processes/efforts for informing families of the costs of services.
 - v. Review and assess the MCC's criteria and process for identifying "at-risk" populations and special processes/information used for outreach to this population.
 - w. Review and assess the MCC's criteria and process for notifying pregnant women of available EPSDT services for the unborn child and pregnant women if under 21 years of age.
- A.13. The Contractor shall perform an annual network adequacy review pursuant to TCA Section 56-32-131 and shall establish a procedure to verify that each MCC, including the DBM, is delivering the health benefits required by their Contract with the State, that each is delivering the benefits within the required time frames, and that each MCC has an adequate provider network to ensure the effective and efficient delivery of healthcare services to TennCare enrollees. The Contractor may use the NCQA standards or other nationally recognized standards that will produce a statistically valid review to evaluate the adequacy of each MCC network and benefit delivery compliance with the CRA. This review shall include, but not be limited to, the following specialties:
- a. Primary Care Providers
 - b. Selected High Volume Specialty Providers
 - c. Dentists
 - d. Mental Health Providers
- A.14. The Contractor shall perform a quarterly validation of the accuracy of the provider information reported by the MCCs. A survey tool and reporting format shall be developed by the Contractor and approved by the State prior to implementation of the first quarterly telephonic survey and as necessary thereafter. A random sample large enough to produce statistically valid MCC specific results shall be drawn from the most current TennCare provider enrollment file each quarter.
- a. Providers included in the sample shall be active, in plan providers of the following specialty types:
 - (1) Primary care providers and physician extenders
 - (2) Specialty care providers including, but not limited to, OB, Cardiology, Gastroenterology, Neurology, Neurosurgery, Oncology/Hematology, Ophthalmology, Orthopedics, Otolaryngology, and Urology
 - (3) All reported dental providers
 - (4) All vision providers
 - (5) All BHO providers
 - b. Elements to be validated shall include, but not be limited to, the following:

- (1) Verification of provider address and specialty
 - (2) Status of contract with MCC
 - (3) Panel age restrictions
 - (4) Telephone number
 - (5) Provides TENNderCARE (EPSDT) services (applies to all PCPs and OB/GYNs seeing children <21 years)
 - (6) Panel status (open/closed)
 - (7) Appointment availability for routine and urgent care
 - (8) Prenatal and delivery services (OB/GYN or prenatal providers)
- A.15 The Contractor shall prepare an annual comparative analysis of NCQA Relative Resource Use results using audited data submitted to TennCare by each MCC using Quality Compass from NCQA in order to provide state and regional comparisons of Relative Resource Use data. These comparisons shall be presented in a variety of formats including written, graphs, charts and scatter plots.
- A.16. The Contractor shall prepare an annual comparative analysis of HEDIS and CAHPS results that shall be presented in a variety of formats including written text, graphs, and charts. Trending of all HEDIS data must be included.
- A.17. The Contractor shall perform an annual provider satisfaction survey to measure ease of use when utilizing the TennCare electronic registration portal to obtain or update a Medicaid ID profile. A survey tool shall be developed by the Contractor and approved by the State prior to implementation of the first annual provider satisfaction survey and as necessary thereafter. A random sample large enough to produce statistically valid results shall be drawn from the most current listing of active providers registered electronically in the TennCare Provider Database Management System.
- a. Providers included in the sample shall be:
 - (1) Individual providers
 - (2) Group providers (Single / Multi-Specialty)
 - (3) Entity providers (Hospitals, Non-Emergency Transportation, Rural Health Clinics – RHC and other entities defined by TennCare), and
 - (4) Dental providers, if directed by the State
 - b. Elements to be validated shall include, but not be limited to, the following:
 - (1) Speed of the process (vs. paper-based process)
 - (2) Convenience (vs. paper-based process)
 - (3) Ease of navigating the system
 - (4) Most favorable component
 - (5) Least favorable component
 - (6) Customer service experience
 - (7) Opportunities for improvement
- A.18. The Contractor shall perform validation of all Performance Improvement Projects (PIPs), with a minimum of (5), from each MCC. The Contractor shall provide a summary report for each MCC that includes a section for each region of the state and an analysis of each PIP within that region. In addition to compliance or non-compliance with CMS protocols, the report shall include an evaluation of appropriateness of the PIP, taking into account results of other surveys completed, and include recommendations for improvement based on the documents and processes reviewed. The Contractor shall also include an indication of whether the need for this PIP was supported by appropriate data.

- A.19. The Contractor shall perform validation of MCC performance measures according to CMS protocols and as designated by TennCare.
- A.20. The Contractor shall utilize data files to analyze and summarize enrollment, utilization, and health outcome data for routine and ad hoc reporting as requested by TennCare.
- A.21. The Contractor shall provide technical assistance to the MCCs as directed by the State regarding performance improvement.
- A.22. The Contractor shall host meetings three times per year with MCCs and interrelated oversight agencies to inform them of pertinent/current issues. A list of dates and places for the meetings for the upcoming year shall be sent to TennCare no later than January 15th. In conjunction with TennCare, efforts shall be made to secure speakers to discuss pertinent topics and continuing education credits shall be offered to relevant health plan participants at each meeting.
- A.23. The Contractor shall identify a primary contact individual who shall maintain communication with the State in connection with the Contractor's specified contractual responsibilities.
- A.24. The Contractor shall provide and maintain books, records, claims, documents and other evidence pertaining to the Contract to the extent and in such detail as shall properly reflect conformance with the contract and make these available for inspection by the State or its designee.
- A.25. The Contractor shall provide the State with the documented costs in an annual cost allocation plan to be approved by CMS to support the claim for Federal Financial Participation including providing documentation to support wages, benefits and all other expenditure items. The report shall be submitted to the state annually no later than October 15th.
- A.26. The Contractor shall perform all EQRO operations activities and related systems maintenance/modifications on-site at the facilities in Nashville, Tennessee approved by the State.
- A.27. The Contractor shall identify and inform the State of any procedure which may reduce the cost and/or increase the effectiveness of administering the EQRO function to the TennCare Program.
- A.28. The Contractor shall provide the State with the names of individuals, who are authorized to act on behalf of the Contractor, together with a description of their responsibilities and authorities and all such individuals who will be dedicated to the TennCare project on a full-time basis shall be identified and approved by TennCare.
- A.29. The Contractor shall participate in HCFA meetings as requested by HCFA.
- A.30. The Contractor shall perform all other EQRO activities not otherwise designated as State responsibilities, which are necessary for optimal operation of the EQRO functions.
- A.31. The Contractor shall conduct special focus studies as designated by TennCare.
- A.32. The Contract shall assist in the annual review of the Quality Strategy as requested by TennCare.
- A.33. The Contractor shall prepare for each key activity a draft report, an executive summary, and a full final written report detailing findings and recommendations for each MCC. Each identified report shall encompass results for each health plan by grand region and identify best practices and opportunities for improvement, as well as recommendations specific to each MCC program. Unless otherwise specified all reports shall be submitted to the State in both hard copy and electronic format. The number of hard copy reports and the electronic format shall be determined for each report and shall be mutually agreed upon by the Contractor and the State.

- A.34. The Contractor shall submit a draft of the Annual Quality Survey (AQS) within thirty (30) days following the completion of each MCC's onsite review with the final report due no later than sixty (60) days from the last review. The report shall also assess MCC compliance with contractual requirements and all EQR-related mandatory and optional activities, including but not limited to the methodology of how data was collected, aggregated, analyzed and conclusions drawn as to the quality, timeliness, effectiveness and access to the care furnished by the MCC. Prior to the development of the survey tool, a detailed comparison of MCO Contractual Requirements vs. NCQA standards must be completed and submitted to TennCare for review. If the NCQA standards do not include all related contractual standards for a given topic, the contractual standards would be included in the survey tool. Both the comparison and the survey tool must be approved by TennCare. The report of the quality review should include, but not be limited to, the following components:
- a. A detailed assessment of the strengths and weaknesses of each MCC
 - b. Recommendations for improving the quality of care by each MCC
 - c. Comparative charts on all MCCs
 - d. An assessment of the degree to which each MCC effectively addressed the recommendations for quality improvement made during the previous year's EQR
 - e. An assessment of each MCC's compliance with EPSDT requirements as defined in the CRA.
 - f. The contractual element reviewed with the corresponding CRA citation.
 - g. Scoring criteria used for each contractual element.
- A.35. The Contractor shall submit a separate summary report for the AQS Surveys and the Performance Improvement Projects. Each summary report would include results of the activity across MCCs as well as comparative charts, and shall be prepared with input from TennCare. They would also include the methodology used for each type of activity. Upon final submission to TennCare the summary reports will be utilized to provide information to others in an easy to read format.
- A.36. The Contractor shall submit network adequacy review reports annually by June 1. The reports shall be submitted directly to the Commissioner of the Department of Commerce and Insurance, TennCare Oversight Division, the Comptroller of the Treasury, and the Bureau of TennCare.
- A.37. The Contractor shall submit to the State quarterly validation of the accuracy of the provider information reported by each of the MCCs by the end of each calendar year quarter. The report shall include detail regarding all errors and discrepancies identified for each MCC during the survey process.
- A.38. The Contractor shall submit the annual comparative analysis of MCC HEDIS and CAHPS results to TennCare the State annually by August 1st.
- A.39. The Contractor shall submit the report of annual validation of Performance Improvement Projects to TennCare by September 1st.
- A.40. The Contractor shall submit the report of annual validation MCO Performance Measures to the TennCare annually by September 1.
- A.41. The Contractor shall submit an Annual EQR Technical Report utilizing the results of the annual network adequacy report, the annual quality survey, and information and results from the validation of PIPs and performance measures as required in accordance with 42 CFR 438.364. It should also include a summary of all other activities performed for TennCare. The Annual EQR Technical Report shall be submitted to TennCare by September 30th of each year. The report shall comply with CMS protocols and at a minimum the following should be included in the report:

- a. A description of the manner in which the data from all activities conducted in accordance with 42 CFR 438.358 (validation of PIPs and performance measures and compliance with standards audit) were aggregated and analyzed and conclusions were drawn as to the quality, timeliness, and access to care furnished by the MCCs. The report must also include the following for each activity conducted in accordance with 42 CFR 438.364:
 - (1) Objectives
 - (2) Technical methods of data collection
 - (3) Description of the data obtained
 - (4) Conclusions drawn from the data
 - b. An assessment of each MCC's strengths and weaknesses
 - c. Recommendations for improving quality of health care services
 - d. Comparative information as the State deems methodologically appropriate
 - e. An assessment of the degree to which each MCC has addressed effectively the recommendations for quality improvement made by the EQRO during the previous year
- A.42. The Contractor shall ensure that all reports produced shall include an accurate description of the care delivered to TennCare enrollees. Reviews of care shall be conducted in accordance with generally accepted principles of research design, statistical analysis, and other appropriate validation techniques in order to produce valid and reliable analysis. The reports must include information from the MCCs that indicates care is actually being delivered according to contractual requirements and the MCC's policies and procedures. All information shall clearly identify instances in which care can be improved and provide a baseline for future assessments to determine whether care actually has improved. In addition, the reports should include comparative information on all MCOs and an assessment of the degree to which the MCC effectively addressed the recommendation for quality improvement made during the previous year's EQR.
- A.43. The Contractor shall provide ad hoc reports as requested by the State for such purposes as assessing the health care needs of the TennCare population or subsets of the population, identification of best practices and/or opportunities for improvement within contracted MCCs, or achieving compliance with State or Federal Regulations. Ad hoc reports shall be completed within a timeframe that is commensurate to the complexity of the report and shall be prepared at no additional cost to the State. The State and the Contractor shall develop and agree to the reporting timeframes on a report-by-report basis.
- A.44. The Contractor shall submit a detailed report of activities performed during each month. The report should be submitted to TennCare, in a format designated by TennCare, along with the monthly invoice described in Section C.5.
- A.45. The Contractor shall develop and maintain a plan for quality control to be approved by the State including, but not limited to, reviewer training, inter-rater reliability testing, record over read of ten (10) percent, and determination of sample sizes needed in order to produce results that can be extrapolated to the entire universe being examined. The plan shall cover, at a minimum, the following areas:
- a. Annual quality reviews
 - b. Special reviews
 - c. Report development and generation
 - d. Deliverable production
 - e. Provider Network analysis

- A.46. The Contractor shall develop and maintain written detailed procedures and protocols for all reviews, audits, performance measurements, and surveys identifying all steps in each process. These procedures and protocols must be written in such detail that reviewers will approach all activities in the same manner and with the same interpretation of results. A copy of these procedures and protocols must be provided to TennCare and approved before that activity is initiated. Any changes to these procedures and protocols must also be provided to TennCare for approval.
- A.47. The Contractor shall maintain sufficient professional and technical staff to carry out the duties and responsibilities of the EQRO function and agree to the following requirements:
- a. The Contractor warrants and represents that all persons assigned by it to the performance of this Contract shall be employees of the Contractor and shall be fully qualified to perform the work required herein. The Contractor shall include a similar provision in any contract with any subcontractor selected to perform work hereunder.
 - b. The State shall have the absolute right to approve or disapprove the Contractor's and any subcontractor's key personnel assigned to this Contract, to approve or disapprove any proposed changes in key staff, or to require the removal or reassignment of any key Contractor employee or subcontractor personnel found unacceptable by the State.
 - c. To the extent possible the Contractor shall notify the State in writing of any change in key personnel at least thirty (30) days prior to the change. The Contractor shall upon request, provide the State with a resume of any members of its staff or a subcontractor's staff assigned to or proposed to be assigned to any aspect of the performance of this Contract.
 - d. Personnel commitments made in the Contractor's proposal that resulted in award of this contract shall not be changed except as herein above provided, or due to the resignation of any named individual. Key personnel shall be replaced within thirty (30) days of departure of existing staff, unless exception is granted in writing by TennCare.
- A.48. The Contractor shall be required to provide and maintain a staff of qualified health professionals on-site in Nashville, Tennessee sufficient to complete all regularly scheduled and specially requested quality reviews as described in this Contract. At a minimum, the Contractor shall provide and maintain an on-site staff of sufficient professionals at all times, meeting the following requirements:
- a. The combined experience of this staff must include previous experience in healthcare quality assurance, management and improvement; knowledge and understanding of the NCQA Standards for Accreditation of Managed Care Organizations and Behavioral Health Organizations and the accreditation process; the current HEDIS technical specifications; familiarity with ICD, CPT and hospital revenue codes; practical or clinical health care experience; understanding of managed care plans; and knowledge of Medicaid, Medicare, or similar program, and understanding of the managed care organizations systems.
 - b. The EQRO must have experience and expertise in the epidemiological and statistical measurement of health and service status indicators in defined populations. At a minimum access to a biostatistician and an epidemiologist is required.
 - c. At least two-thirds of the staff must have 5 or more years of relevant experience.
 - d. The review staff must be supervised by individuals with 5 or more years of experience in quality assurance management or review and at least 3 years of management experience.
- A.49. The Contractor shall provide sufficient analysis and technical staff, in addition to the professional staff, for the reviews, with experience and expertise in the epidemiological and statistical

measurement of health and service indicators, including behavioral health, in defined populations to support the requirements in this Contract. This must include in-depth understanding of the scope and methodologies of data collection, the interpretation of data, and the social and economic factors that affect the interpretation of the data. The Contractor must ensure that activities are conducted in accordance with generally accepted principles of research design and statistical analysis in order to produce valid, reliable, and generalizable information. At a minimum, the Contractor shall provide staff with the skills and experience to perform the following functions as requested by TennCare:

- a. Conduct ongoing analysis of encounter and other data and provide the State with written reports of patterns of utilization, areas of potential over/under utilization, target for special reviews or investigation, and recommendations for improving the efficiency and quality of the TennCare program.
 - b. Provide technical recommendations to TennCare regarding identified opportunities for improvement within the Managed Care Organizations assessed performance and methodology of reporting.
 - c. Conduct periodic analysis of the quality of encounter and other data collected from the managed care organizations including testing samples of data, reviewing procedures and processes for capturing and maintaining data, and developing edits for data quality and consistency.
 - d. Provide the State with current information on the development and implementation of quality assurance programs in other states, national standards and measures, industry practices and other information pertinent to the EQRO functions.
 - e. Provide ad hoc and special reports as requested by the State.
- A.50. The Contractor must perform the EQRO functions so as to provide for sufficient flexibility to rapidly conform to changes in Federal and/or State law, regulations, policies, and priorities. In addition, the State expects to see increasing demands for information reporting and data analysis. The Contractor must be able to quickly and accurately respond to requests for information.
- A.51. The Contractor shall conduct and maintain reporting systems and may incorporate any new technologies, methods, or products the Contractor deems necessary or desirable with the approval, in advance, by TennCare, and if judged necessary by TennCare, the State. EQRO Systems, and components thereof, incorporated in the EQRO Systems by any means such as, but not limited to, licenses for use or purchase for ownership, shall become the exclusive property of TennCare and the State upon termination of the Contract regardless of the reason for termination. EQRO Systems Maintenance shall include, but not be limited to, the following:
- a. Implementing new technologies and methods that are generally available (not in alpha test, beta test, or trials of any form unless explicitly approved by the State office of the CIO and TennCare office of the CIO) and will improve the Contractor's ability to meet reporting responsibilities. Such implementations of technologies and methods must be approved by TennCare, and if judged to be necessary by TennCare, the State.
 - b. Implementing modifications to technologies and methods that are necessary to preserve any interoperability with State and TennCare systems and facilities necessary for the Contractor to meet EQRO reporting responsibilities. This includes maintaining communications with the State and TennCare sufficient to be aware of and prepared for any changes to the technological environment of the State and TennCare.

- c. Updating the EQRO Systems' components such that they are based on recent technologies and methods that are generally available in conformance with state standards and the State Architecture and supported by the suppliers and not subject to sunseting or termination of support for a period of not less than twelve (12) calendar months.
- A.52. The Contractor shall provide physical site and data security sufficient to safeguard the operation and integrity of all TennCare-related data as specified and approved by the State. The Contractor shall also consider that all of the information, data, forms, and files are confidential and may not be released or used for any purpose other than carrying out the duties and responsibilities as defined in this Contract without the express consent of the State. The Contractor must ensure that all employees have access to information on a "need to know" basis and that all reasonable efforts are maintained to ensure confidentiality. Any subcontractors, vendors, and anyone other than an employee of the Contractor must not have access to the data or information related to this Contract without explicit State approval. The Contractor shall ensure compliance with Federal and Tennessee State Law as related to confidentiality of information and security.
 - A.53. The Contractor shall restrict access to workstations, terminals, on-line functions, and files as designated by the State and as required to maintain confidentiality and security. Security shall be imposed at both workstation or terminal and operator levels. On-line access over unsecured communications paths or media must be secured in a manner acceptable to the State office of the CIO and TennCare office of the CIO.
 - A.54. The Contractor shall maintain historical records encounter data, reference files, and any other files as required for backup and recovery purposes to support the analysis and reporting processes and to support State and Federal audit trail requirements.
 - A.55. The Contractor must adhere to all applicable TennCare and State standards and architectures for hardware, operating systems, programming languages, software tools or other components proposed by Contractor for constituting the EQRO Systems. Any exceptions to these standards must be explicitly approved by TennCare office of the CIO and the State office of the CIO. All hardware and software proposed by Contractor for constituting the EQRO Systems must be reviewed and approved by TennCare office of the CIO and the State office of the CIO.
 - A.56. The Contractor shall ensure, at all times that the EQRO Systems are continually protected against hardware, software, and human error. The system shall include appropriate checkpoint/restart capabilities and other features necessary to guarantee reliability and recovery, including telecommunications reliability and disaster recovery.
 - A.57. The Contractor shall follow change control procedures that minimize the possibility of human error. All changes must go through a rigorous testing and quality control procedure prior to implementation into production. The Contractor shall develop and follow production procedures that include verification, quality checking, and balancing for each job and for each report or other output. The Contractor must be able to demonstrate that sufficient positive measures are taken in every step of the processing to ensure the completeness and correctness of the results.
 - A.58. The Contractor shall update, test, and maintain a disaster recovery plan that is designed to minimize any disruption to the processing of State transactions and that addresses all processing, files, and software maintained on the EQRO System. The disaster recovery plan developed by the Contractor must meet OIR standards and must be approved by the State and other applicable State agencies. Likewise any changes to the disaster recovery plan must be approved by the State or other agencies designated by the State. The Contractor shall continually review the disaster recovery plan and make necessary updates to provide that the plan always contains accurate and up-to-date information.
 - a. The disaster recovery plan shall include, but not be limited to:

- (1) Checkpoint/restart capabilities
 - (2) Retention and storage of backup files and software
 - (3) Hardware/network backup plan for the EQRO System
 - (4) Backup procedures for all schedule-critical manual operations in the event of a computer or telecommunications outage or a disaster at either the HCFA 310 Great Circle Road, Nashville, Tennessee site or the EQRO site
 - (5) Recovery procedures for loss of manual files and hardcopy documents
 - (6) Annual test of the disaster recovery plan
- b. The disaster recovery plan and procedures shall, at a minimum, provide the following:
- (1) Continued processing assuming the loss of the primary processing site.
 - (2) A detailed backup plan and procedures, including the off-site storage of crucial transaction and master files. The plan and procedures shall include a detailed schedule for backing up critical files and their rotation to an off-site storage facility.
 - (3) The maintenance of current system software, including source code, and documentation at an off-site location.
- A.59. The Contractor shall maintain System Documentation as follows:
- a. Current documentation shall be maintained for all packaged software and custom-developed software constituting the EQRO Systems.
 - (1) Minimum documentation requirements for packaged software are:
 - i. All vendor documentation regarding installation, configuration and operation of software,
 - ii. Data model and definitions as specifically implemented for the State,
 - iii. Full documentation of software configuration as installed for the State,
 - iv. Documentation of any customizations for the State,
 - v. Import, export or interface specifications, and
 - vi. Supporting documentation as required to support maintenance and operations.
 - (2) Minimum documentation requirements for all custom-developed software including reports, queries, control files, parameters, and scripts are:
 - i. Data model and definitions,
 - ii. Current program listings,
 - iii. Program narrative,
 - iv. Import, export or interface specifications,
 - v. Definitions of values used for codes and switches, and
 - vi. Supporting documentation as required to support maintenance and operations.
 - b. Operating documentation shall be maintained for all regularly performed data analyses and reporting processes executed.
 - c. Layouts and data definitions shall be maintained, at a minimum, for all master files and all databases.
 - d. The Contractor shall, at all times, provide that all copies of the System Documentation are current and the Contractor shall incorporate all updates. Four (4) copies of the documentation and all updates shall be provided for the State. Each copy shall consist of hardcopy of all documents other than code and electronic copies of any documents that originated electronically such as but not limited to word processor files, spreadsheets, and entity relationship diagrams, electronic copies of all code that is necessary for building the

EQRO system and appropriate for use in the environment in which the EQRO system is built, such as but not limited to, compiler input, commercially obtained code libraries, loader/binder inputs, and build scripts. The Contractor shall be responsible for maintaining and updating each of the State's copies.

- A.60. The Contractor shall be subject to periodic review and audit by both State and Federal authorities and shall:
- a. Provide data, in a specified electronic media with State approved content and format, to the State within five (5) working days of receipt of request as required to support internal or external audits.
 - b. Produce the source or hardcopy documentation and records which will substantiate information in requested files, or which is missing from the above files, within ten (10) days of receipt of request from the State. Such documentation shall be made available to the State at the State's facility in Nashville, Tennessee.
 - c. Provide reasonable access to facilities and personnel used by the Contractor in delivery of services to the State.
 - d. Be responsible for responding to audit inquiries and findings.
- A.61. The Contractor shall be required to execute and enforce the provisions of the HCFA Business Associate Agreement and ensure that, at all times, EQRO Systems and all data contained therein shall continue to be protected against unauthorized access. All systems and facilities shall include appropriate and reasonable access control measures and other features necessary to ensure security, including active monitoring and incident response. Contractor duties shall include, but not be limited to, the following:
- a. Maintain, in facilities used by the Contractor for the EQRO functions, system security software which prevents unauthorized access to the system and identifies any such attempts at access.
 - b. Require all Contractor employees and all subcontractor personnel to sign relevant TennCare and State agreements for access to systems and data, acknowledging their duties with regard to security, confidentiality, and acceptable use, with copies maintained in their personnel files.
 - c. Maintain complete confidentiality of all passwords and IDs used by Contractor employees and all subcontractor personnel. Employees shall not be permitted to share passwords or IDs among themselves except as explicitly authorized by the State. The Contractor shall ensure that only authorized personnel are granted access to systems or data and will maintain appropriate policy and procedure to ensure that access is revoked when no longer needed or appropriate for the performance of EQRO functions.
 - d. Limit and control access to the facilities used for EQRO functions. Security measures shall include, but not be limited to, entry logs or identification badges. In addition, all server and shared data storage equipment shall be housed in space with controlled access, with doors locked at all times.
 - e. Limit and appropriately protect data stored on personal computers, or other equipment not housed in locked space, with controlled access.
 - f. Secure all data files (i.e. magnetic tapes and disks) controlled by the Contractor in a fireproof vault when not in use.

- g. Secure all reports, whether test or production, in printed or electronic format, which are not forwarded to the State and contain provider or enrollee information until properly disposed of. Disposition shall be in accordance with State requirements.
 - h. Maintain backups of data and software per the disaster recovery plan and secured in the data storage vault. Off-site copies of these backups shall also be arranged. The confidentiality of data in offsite copies will be protected by technological means under the control of the Contractor and as approved by the State office of the CIO and HCFA office of the CIO.
- A.62. The Contractor shall ensure that network connectivity, including leasing of lines/capacity and the provision of communications devices, from the ingress/egress site(s), specified by HCFA and the State, to the ingress/egress site(s) specified by Contractor and approved by TennCare and the State, must be approved by TennCare and the State. The configuration of Contractor ingress/egress site(s), including but not limited to hardware and software, must be approved by TennCare and the State. For any facilities operated by the Contractor exclusively for the benefit of the State, all equipment involved in network connectivity become the property of TennCare and the State upon termination of the Contract regardless of the reason for termination. At termination of the Contract, regardless of the reason for termination, the Contractor will provide TennCare and the State, if so desired by TennCare and the State, the right to assume ownership of leases of lines/capacity for facilities operated exclusively for the benefit of the State.
- A.63. The Contractor shall be solely responsible for the State-owned or provided hardware and equipment that is used and controlled by the Contractor during the term of the Contract. Any hardware and related equipment needing to be replaced or repaired because of abuse, theft, or loss attributable to the Contractor or due to their negligence shall be at no cost to the State. The Contractor shall turn over all State-owned hardware and equipment at the termination of the Contract, regardless of the reason for termination, in satisfactory working condition.
- A.64. The Contractor shall obtain approval from HCFA for all hardware and software proposed by Contractor for constituting the EQRO Systems and data communications with TennCare and the State. The acquisition of and payment for all such hardware and software is the responsibility of the Contractor unless otherwise authorized by TennCare and the State. All hardware and software acquired by the Contractor to meet the responsibilities of the Contract shall become the exclusive property of TennCare and the State, at the option of the State, upon termination of the Contract regardless of the reason for termination.
- A.65. The Contractor shall be responsible for obtaining and maintaining licenses and maintenance agreements for use of any software or hardware purchased or leased for this Contract that is in addition to the software or hardware currently in operation at the time the Contract commences. The Contractor shall ensure that all license and maintenance agreements remain in effect for twelve (12) months past the term of the Contract.
- A.66. The Contractor shall provide all expendable supplies needed to support the EQRO operations at the Contractor's facility to include, but not be limited to diskettes, computer paper stock, laser printer paper, toner, printer ribbon, etc., at no cost to the state.
- A.67. The Contractor shall provide and maintain, at all times, an inventory of all forms that are required to support the functions of the EQRO related to this Contract. The Contractor shall be responsible for providing and maintaining an adequate inventory of forms, supplies etc. to be available for use during the operational dates of the contract at no additional cost to the state.
- A.68. The Contractor shall provide and maintain the flexibility throughout the Contract, to modify the content or format of any form or document used in performing the EQRO functions and to develop and produce any other forms required by the State. All changes shall be made at the

direction of and be approved by the State. The Contractor should consider this requirement when determining the level of inventories to be maintained.

- A.69. The Contractor shall independently obtain adequate liability insurance for hardware and related equipment. The Contractor may, with approval of the State, make other suitable arrangements to insure against loss or damage. In addition, the State shall approve the amount and type of protection provided by the Contractor. The State shall be the loss payee (beneficiary) for insurance obtained pursuant to this Section for State owned equipment and hardware.
- A.70. The Contractor shall demonstrate the following competency and independence requirements:
- a. The Contractor must demonstrate experience with Medicaid recipients, policies, data systems and processes, MCC delivery systems and financing, Quality Assurance and Quality Integrity, research design and methodology.
 - b. The Contractor must possess sufficient physical, technological and financial resources to conduct EQRO and EQR related activities as well as other clinical and non-clinical skills necessary to carry out the EQRO and EQR related activities and to oversee the work of any subcontractor.
 - c. The Contractor must not review an entity it exerts control over the other through stock ownership, stock options, voting trusts, common management, or contractual relationships in which they: (i) deliver any health care service to Medicaid recipients, (ii) conduct, on the state's behalf, ongoing Medicaid managed care program operations related to oversight of the quality of MCC services, except for EQR related activities, (iii) have a present, or known future, direct or indirect financial relationship with an MCC that it will review as an EQRO. [Financial relationship means a direct or indirect ownership or investment interest (including an option or non-vested interest) in any entity. This direct or indirect interest may be in the form of equity, debt, or other means and includes any indirect ownership or investment interest no matter how many levels removed from a direct interest, or a compensation arrangement win an entity.]
- A.71. The Contractor shall provide assistance in the turnover of the TennCare EQRO functions to the State or a new Contractor prior to the conclusion of the Contract, or in the event of a termination for any reason. The Contractor shall be responsible for all work in progress until the end date of this contract as currently written or amended in Section B.1. This includes report requests, analysis projects, special studies, and any other tasks which fall within the scope of work of this Contract and are currently in progress at the time of Transition. The Contractor's responsibilities during the Turnover Phase shall include, but not be limited to, the following:
- a. Prepare and submit a detailed written Turnover Phase plan within thirty (30) days of written request by the State. The plan shall define the turnover approach, define all tasks and subtasks, and provide a schedule for the turnover effort to achieve State requirements.
 - b. Provide a current listing of all software used to support the EQRO functions.
 - c. Transfer all files, data, and other materials of the TennCare EQRO function to the State or its designated agent, as requested.
 - d. Provide copies of all procedures for performing the functions of the EQRO.
 - e. Provide procedures used to the State or its designated agent in the performance of all contract-related functions including, but not limited to, the procedures for the EQRO, periodic reviews of managed care organizations, and ad hoc report generation and analysis.

- f. Provide an estimated inventory of all work in progress and its projected status at the end of the contract within one (1) week after the beginning of the Turnover Phase.
 - g. Update the work in progress inventory estimates weekly throughout the Turnover Phase.
 - h. Provide a final, detailed inventory and accounting of all work in progress and completed work.
 - i. Prepare and submit a final report summarizing turnover task results and certifying the completion of all turnover responsibilities.
 - j. Cooperate with the State and new Contractor throughout the Turnover Phase to ensure a smooth transition.
- A.72. The State shall be responsible for the overall management and general administration of the TennCare Program including establishment of policy and approval of overall administrative procedures including, but not limited to:
- a. Establish and interpret program and medical policy
 - b. Authorize administrative procedures
 - c. Monitor overall program performance
 - d. Contract with MCOs dental benefits managers, and pharmacy benefits manager
 - e. Review changes in federal regulations and devise methods to comply with the changes
 - f. Approve contractual arrangements for HCFA programs
 - g. Prepare budgets for the HCFA programs
 - h. Liaison with the Legislature, other State agencies, and the public
 - i. Coordinate cases of fraud and noncompliance investigation with the Contractor, providers, recipients, legal authorities, and the Federal Government
 - j. Establish, monitor, and manage receivable accounts to recover program funds owed by providers, enrollees and other third parties
 - k. Perform all provider relations functions including training, response to inquiries (written and phone), and preparation and distribution of manuals, bulletins, and training materials.
 - l. Provide record retention and destruction guidelines.
 - m. Impose any sanctions and/or other corrective action required on MCCs as a result of deficiencies and/or failure to comply with TennCare requirements.
- A.73. The State shall be responsible for administering this Contract and providing direction as required to facilitate Contractor operations, including, but not limited to:
- a. Operate and maintain an administrative structure sufficient to assure Contractor compliance with contractual responsibilities
 - b. Provide for liaison and communications with the Contractor in connection with mutual contractual responsibilities

- c. Provide the Contractor with the names of individuals, who are authorized to act on the behalf of the State with respect to this Contract, together with a description of their respective responsibilities and authorities
 - d. Provide interfaces with State and Federal agencies as necessary for the Contractor
 - e. Provide Contractor with a list of primary interfaces from the State for each functional area.
 - f. Provide Contractor with contact names, associated phone numbers and e-mail addresses for each MCC.
 - g. Oversee Contractor's performance; approve Contractor's work plan annually, conduct periodic audits of Contractor's performance; monitor compliance with contract terms and conditions and all applicable State and Federal laws and regulations.
 - h. Perform fiscal audits of the Contractor
 - i. Review and approve all deliverables; provide Contractor with identification of discrepancies or performance deficiencies that require corrective action; approve Contractor's corrective action plan.
 - j. Direct Contractor to make ongoing modifications and enhancements to Contractor procedures if required to support program policy, rules and regulations; improve program and operational performance; resolve problems; and address overall program effectiveness and quality.
 - k. Approve release of any reports, data, forms, files, or other information related to the Contract to any agency or entity outside the State.
 - l. Provide Contractor with requirements for ad hoc data and report requests and approve specifications.
 - m. Provide Contractor with request requirements for "on request" processes
 - n. Prepare specific requirements and definition (with Contractor assistance) for ongoing modifications and enhancements to the EQRO functions.
 - o. Provide access to data and systems required for the performance of EQRO functions, in a manner consistent with current policy and procedures.
 - p. Making EQR results available to interested parties upon request. Information released must comply with Federal HIPAA regulations regarding confidentiality of protected health information.
- A.74. In an effort to ensure smooth transition from one EQRO contractor to the next, the State shall have the following responsibilities during the transition phase for this Contract.
- a. Monitor the implementation of the turnover plan and schedule prepared by the previous Contractor and monitor and assist with the transfer (turnover) of the EQRO functions from the previous Contractor.
 - b. Ensure that appropriate program State staff and previous Contractor staff are available for orientation and data transfer to the Contractor relative to the operation of the EQRO functions.

- c. Review and approve turnover progress reports from the previous Contractor which document the completion of each turnover task to ensure that the transition phase progresses on schedule.
- A.75. The State shall have the following responsibilities in the turnover of the TennCare EQRO functions to the State or a new Contractor prior to the conclusion of the Contract, or in the event of a termination for any reason.
- a. Review and approve the turnover plan and schedule to facilitate and organize the transfer of the EQRO functions to the State or the new Contractor.
 - b. Make State staff and designated Contractor staff available for training the new Contractor in the operation of the EQRO functions.
 - c. Review and approve Contractor's turnover progress reports which document the completion of each turnover task.
- A.76. The Contractor shall, under the direction of HCFA, perform an annual review of abortion, sterilization, and hysterectomy (ASH) documentation, at the MCC level, to assure compliance with state and federal regulations in accordance with the Contractor Risk Agreements (CRAs) and TennCare Select Agreement and Title 42 of the Code of Federal Regulations (CFR), 441, Subparts E and F. The Timeframe for conducting the audit will be decided jointly between TennCare and the EQRO
- a. The sample of medical records to be reviewed shall include the following for the identified time frame of the audit:
 - (1) Paid claims for all absolute abortions;
 - (2) A statistically valid random sample of the absolute sterilizations and hysterectomies;
 - (3) A statistically valid random sample of any possible abortions, sterilizations and hysterectomies, and
 - (4) Sample would be pulled by HCFA's Healthcare Informatics Division.
 - b. The medical record review shall assess for medical documentation of the following Federal guidelines:
 - (1) *Certification of Medical Necessity for Abortion*, including documentation that pregnancy is the result of rape or incest or continuation of pregnancy would endanger mother's life;
 - (2) *Sterilization Consent Form*, including documentation that informed consent was given between thirty (30) days and one hundred eighty (180) days prior to the sterilization (72 hours in the case of premature delivery or emergency surgery), individual over 21 years of age at time consent obtained, and the individual is mentally competent and not institutionalized, and
 - (3) *Statement of Receipt of Information Concerning Hysterectomy*, including documentation that the procedure is medically necessary, is not performed primarily for the purpose of sterilization and is not for cancer prophylaxis.
 - c. The Contractor shall validate and analyze the data and prepare an overall summary of findings report including deficiencies and recommendations to be submitted to TennCare within thirty (30) days of the audit. An overall summary of findings report shall be submitted within sixty (60) days following the last audit.

- A.77. The Contractor shall, at the direction of TennCare, assist TennCare in the analysis and reporting of data pertaining to customer experience and satisfaction with the TennCare CHOICES program.
- a. Such analysis and reporting shall occur annually, and in accordance with a schedule that will be provided to the Contractor.
 - b. The Contractor shall provide a final written summary of the survey findings, including comparisons between CHOICES groups, service settings, and by MCO, as applicable.
 - c. TennCare shall review and approval all reports and materials prior to their dissemination.
 - d. Presentations of the results will be made to the state and other groups as requested by HCFA.
- A.78. The Contractor shall, under the direction of the State, perform an annual focused child health audit. The Contractor, together with QO staff, shall determine the specific focus area to be addressed for each audit based on identified need or state/federal requirements. The sample of medical records to be reviewed shall include the following for the identified time frame of the audit:
- a. A statistically valid random sample plus a 15% over sample of paid claims coded as periodic screens ;
 - b. An identified list of provider specialty codes;
 - c. Other specifics as determined by annual focus area, and
 - d. The sample would be pulled by HCFA's Healthcare Informatics Division

The Contractor shall develop protocols for the audit in conjunction with HCFA. The Contractor shall train and monitor all staff involved with the audit. Training must be based on the mutually agreed upon protocols. The Contractor shall analyze the data and prepare and submit a summary report, including deficiencies and recommendations, to HCFA within thirty (30) days of the audit.

- A.79. **CoverKids Program** In addition to general requirements contained elsewhere in this Contract, Sections A.80 through A.107 set forth specific Contractor requirements and deliverables pertaining to the CoverKids Program. All references in these Sections to "HPA(s)" and "DBM" shall be deemed to refer to CoverKids Program HPA(s) and, as directed by the State, the CoverKids DBM.
- A.80. The services to be provided under this contract include multiple tasks and deliverables that are consistent with the following:
- a. Applicable Federal External Quality Review (EQR) regulations and protocols for Children Health Insurance Program (CHIP).
 - b. Contractor Risk Agreements (CRA) with the CoverKids Health Plan Administrator(s) (HPA(s)) and the CoverKids Dental Benefit Manager (DBM).

This contract is required to keep the State compliant with Federal EQR regulations and rules and to measure HPA(s) specific compliance. The specifications for deliverables required in this contract may evolve from year to year in response to program changes such as HPA(s) participation or enrollment levels or changes in Federal or State requirements. The Contractor

will be required to perform all tasks and functions identified in the contract according to specified levels of quality and comprehensiveness as determined by the State. Quality and comprehensiveness are determined via the timely submission of Contractor reporting requirements for CoverKids as specified in Section A.85. Penalties for failure to provide these reports in a timely and comprehensive fashion may result in substantial penalties to the Contractor, as outlined in Attachment C.

The Contractor shall, under the direction of the State, conduct the CoverKids External Quality Review Organization (EQRO) functions during the term of this Contract and provide for an orderly transition of the EQRO functions to any new Contractor, or the State, at the end of the contract period.

- A.81. The general scope of work required under this contract and the relative responsibilities of the State and the Contractor, including milestones and deliverables for each of the phases are defined in subsequent sections. The Contractor shall carry out the responsibilities related to the CoverKids EQRO functions and perform all Contractor functions not specifically excluded or defined as State responsibilities. This refers to any functions not otherwise documented in this contract that would be essential to meeting the EQRO functions/activities as defined by legislation, e.g., the Balanced Budget Act (BBA). General and specific responsibilities for both the State and the Contractor are defined in this section. The Contractor shall be responsible for producing all regularly scheduled reports.
- A.82. The Contractor shall perform the External Quality Review Organization functions in accordance with all Federal and CoverKids requirements. The Contractor's general responsibilities include but are not limited to:
- a. Within fifteen (15) days of the beginning this contract, the Contractor will develop a comprehensive work plan as a basis for executing the contract. The plan will outline key tasks and sub-tasks, with associated timeframes for completion and delivery assigned to each task, as deemed necessary to deliver the required work product to HCFA;
 - b. Within thirty (30) days of the beginning of this contract, the Contractor will supply the State with a transition plan to provide for an orderly transition of the EQRO;
 - c. Operate and maintain a system of internal controls (manual and automated), approved by HCFA to safeguard access to data and ensure the integrity, completeness, and accuracy of the data, the processing, and the output products;
 - d. Perform analysis of existing and new Federal and State policies, procedures, and regulations to determine their impact on the EQRO components of the CoverKids program, and related State and Contractor-performed functions; provide a written impact analysis to the State with analysis of alternatives and recommendations for changes and enhancements to support the requirements;
 - e. Conduct quality training for HCFA and Contractor personnel on a continuing basis to maintain satisfactory levels of proficiency for all Contractor functions such as:
 - (1) Training as it relates to EQR Activities including: CMS EQR Protocols, EQR Balanced Budget Act Overview
 - (2) Training as it relates to conducting Performance Improvement Projects (PIPs)
 - (3) Training as it relates to Performance Measure Validation
 - (4) Training as it relates to Provider Data Validation

- (5) Training as it relates to completing Plans of Correction
 - (6) Training as it relates to quality improvement activities
- f. Operate and maintain an internal control program approved by HCFA to ensure accuracy of all EQRO functions and processing that meets HCFA's requirements; internal quality control program shall encompass all annual special reviews, studies, reports, and any other outputs that are produced;
 - g. Develop the external quality review survey tools for surveying the HPA(s) and DBM based on current contractual procedures, and State and Federal regulations. The plan shall include: specific compliance monitoring activities, a mechanism for obtaining background information from HCFA, HPA(s) document review, conducting HPA(s) interviews, the collection of accessory information, analyzing and compiling of findings by HPA(s) and reporting evaluation results to HCFA. The Contractor shall advise the State on an ongoing basis of changes to improve and enhance the audits.
 - h. Perform all the functions of the EQRO in accordance with State requirements and per HCFA-approved standards and procedures;
 - i. Conduct periodic and special quality reviews of the HPA(s) and DBM per HCFA's schedule and provide written reports of findings and recommendations for corrective action within the predefined timeframe;
 - j. Maintain internal records in such a fashion as to provide complete audit trails of activities, account for all transactions, and document all charges.
 - k. Maintain disaster recovery procedures acceptable to HCFA.
 - l. Implement and maintain processes and policies compliant with HIPAA regulations. Ensure the proper handling of protected health information.
- A.83. The Contractor shall perform its CoverKids EQRO functions in accordance with Federal and State laws, regulations and policies pertaining to CHIP. In the event the Contractor has need of an interpretation of any laws, regulations and/or policies, the request will be made to HCFA. HCFA shall provide timely notification to the Contractor of all changes and/or amendments in Federal and State laws, regulations, policies, State Plan and the HPA(s) Contractor Risk Agreements. The Contractor shall maintain, on a current and ongoing basis, a full and detailed knowledge of applicable Federal and State laws, regulations, policies, State CHIP Plan and the HPA(s) Contractor Risk Agreements (CRAs).
- A.84. The Contractor shall develop review criteria to assess contract compliance and compliance with current industry, Federal, and State requirements for the HPA(s). Criteria must include, but not be limited to review of enrollee rights and protections, quality assessment and performance improvement, structure and operation standards, measurement and improvement standards and compliance with the appeal process. The survey process shall include: document review, interviews with key HPA(s) and DBM personnel, and an assessment of the adequacy of information management systems. Review, analysis, and recommendations for improvement of the HPA(s) and DBM structure and overall integration of the health care delivery system shall include but not be limited to, review and assessment of the following documents/activities for the previous calendar year:
- a. HPA(s) and DBM Structure:
 - (1) Quality Improvement Program Description (QIPD)

- (2) Utilization Management Program Description (UMPD)
 - (3) The associated work plans for the QIPD and UMPD
 - (4) The annual evaluation of the HPA(s) and the DBM Quality Improvement Program
 - (5) Adequacy of HPA(s) and DBM material resources and staffing
 - (6) Oversight of Quality Program by the HPA(s) and DBM governing body
- b. Appropriate documentation will include: Meeting date, and time, agenda items, subsequent discussion and documentation of any actions taken or items that require follow-up, along with an indication of who is responsible for such follow-up.
- c. Oversight of all HPA(s) and DBM's initial and re-credentialing processes to include:
- (1) Onsite credentialing file review.
 - (2) Review of committee minutes.
 - (3) Timeliness of credentialing/re-credentialing process.
 - (4) Incorporation of quality assessment (Site visit and medical record documentation practices).
 - (5) Assessment of quality of care and service issues which may include but not be limited to physician/provider specific confirmed and trended quality of care and service concerns, appeals data, over/under utilization data, and pharmacy utilization data.
 - (6) HPA(s) and DBM's process for medical record review of primary care physicians and high volume specialists.
- d. HPA(s) and DBM Disease Management Programs for the following components: (at minimum Diabetes, Maternity Management, and Asthma Programs are required by the State for the HPA(s))
- (1) Relevance to HPA(s) population.
 - (2) Consistency with nationally recognized clinical practice guidelines.
 - (3) Assessment of enrollee adherence to treatment plans.
 - (4) Systematic identification of eligible population, initially and at least annual thereafter.
 - (5) Program materials clearly provide information to enrollees about how to use the services, how they were identified for participation, and how to opt in or out of the program.
 - (6) Annual measurement of participation rates.
 - (7) Interventions provided to enrollees based on stratification.
 - (8) Providers are informed and educated about the program.

- (9) Program effectiveness is measured using at least one performance measure that is relevant, quantitative, population based, uses valid methodology, and has been analyzed against a benchmark or goal
 - e. HPA(s) and DBM mechanism for identifying potential under/over utilization trends within provider network and actions taken when performance falls below established standards
 - f. HPA(s) and DBM process for review and update of medical necessity criteria
 - g. HPA(s) and DBM process to ensure continuity and coordination of care
 - h. HPA(s) case management services
 - (1) Selection criteria
 - (2) Available resources
 - (3) Penetration rate
 - (4) Turn-over rate (length of time in case management)
 - (5) Frequency of enrollee contact
 - (6) Evidence of network physician/provider participation
 - i. A sample of ten (10) denial files for the HPA(s) and DBM
 - j. Adequacy of HPA(s) and DBM provider networks
 - (1) Compliance with required access standards
 - (2) Compliance with required wait time standards
 - (3) Analysis of open/closed panels by HPA(s)
 - (4) Compliance with established standards for appointment availability
 - k. HPA(s) and DBM operational and departmental policies and procedures
 - l. Analysis of HPA(s) and DBM communication to enrollees and providers outlining enrollee rights and responsibilities
- A.85. The Contractor shall establish a procedure to verify that the HPA(s) and DBM is delivering the health benefits required by their contract with the State, that each is delivering the benefits within the required timeframes, and that the HPA(s) has an adequate provider network to ensure the effective and efficient delivery of healthcare services to CoverKids enrollees. The Contractor may use the National Committee for Quality Assurance (NCQA) standards or other nationally recognized standards that will produce a statistically valid review to evaluate the adequacy of the HPA(s) and DBM network and benefit delivery compliance with the Contractor Risk Agreement. Evaluation of whether the HPA(s)' and DBM's networks are providing culturally and linguistically appropriate services ("CLAS") and are reducing health care disparities. The NCQA Multicultural Health Care ("MHC") standards program is a method that may be utilized to satisfy the U.S. Department of Health and Human Services, Office of Minority Health's CLAS standards. The HPA(s)' and DBM's networks abilities to achieve compliance with the civil rights laws involves reducing health care disparities, which is part of the National Strategy for Quality Improvement and is a recognized quality improvement activity under medical loss ratios.

This review shall include, but not be limited to, the following specialties:

- a. Primary Care Providers
 - b. Selected High Volume Specialty Providers
 - c. Dentists
 - d. Mental Health Providers
- A.86. The Contractor shall provide a quarterly validation of the accuracy of the provider information reported by the HPA(s) and DBM. A survey tool shall be developed by the Contractor and approved by the State prior to implementation of the first quarterly telephonic survey and as necessary thereafter. At the beginning of each quarter, the Contractor will conduct a telephonic survey of the provider network data received from the HPA(s) and DBM. A random sample large enough to produce statistically valid HPA(s) and DBM-specific results shall be drawn from the most current CoverKids provider enrollment file (to be provided by CoverKids) each quarter. The survey tool will include, but not be limited to, the following:
- a. Providers included in the sample shall be active, in plan providers of the following specialty types:
 - (1) Primary care providers and physician extenders
 - (2) Specialty care providers including, but not limited to, OB, Cardiology, Gastroenterology, Neurology, Neurosurgery, Oncology/Hematology, Ophthalmology, Orthopedics, Otolaryngology, and Urology
 - (3) All reported dental providers
 - b. Elements to be validated shall include, but should not be limited to, the following:
 - (1) Verification of provider address and specialty
 - (2) Contract status
 - (3) Panel age restrictions
 - (4) Telephone number
 - (5) Panel status (open/closed)
 - (6) Appointment availability for routine and urgent care
 - (7) Prenatal & delivery services (OB/GYN or prenatal providers) for the HPA(s)
 - c. To determine if the Program encompasses activities required to meet contract compliance and compliance with current industry, federal, and state requirements for the CoverKids program as part of the Annual Quality Surveys completing an annual review and evaluation of the HPA(s)'s and DBM's Quality Improvement Program Descriptions, Utilization Management Program Descriptions, associated Work Plans and Annual Evaluations.
 - d. Utilizing data files to analyze and summarize enrollment, utilization, and health outcome data for routine and ad hoc reporting.

- e. Provide technical assistance to the HPA(s) and the DBM as directed by HCFA regarding performance improvement.
 - f. Hosting meetings with the HPA(s) and DBM inter-related oversight agencies to inform them of pertinent/current issues. The meetings shall provide an opportunity for training, discussion of CoverKids contract or policy requirements, sharing of best practices, and will be conducted in time frames and settings mutually agreed upon with CoverKids.
 - g. Providing and maintaining adequate liaison and communication with HCFA in connection with the Contractor's specified contractual responsibilities.
 - h. Providing and maintaining books, records, claims, documents and other evidence pertaining to the Contract to the extent and in such detail as shall properly reflect conformance with the Contract and make these available for inspection by HCFA or its designee.
 - i. Providing HCFA with the documented costs in a plan to be approved by Center of Medicare and Medicaid Services (CMS) to support the claim for Federal Financial Participation. The Contractor must be able to provide documentation to support wages, benefits and all other expenditure items.
 - k. Performing all EQRO operations activities and related systems maintenance/modifications on-site at the facilities in Nashville, Tennessee approved by the State.
 - l. Identifying and informing the State of any procedure, which may reduce the cost, and/or increase the effectiveness of administering the EQRO function to the CoverKids program.
 - m. Providing the State with the names of individuals, who are authorized to act on behalf of the Contractor, together with a description of their responsibilities and authorities.
 - n. Performing all other activities not otherwise designated as State responsibilities, which are necessary for optimal operation of the EQRO functions.
- A.87. Contractor Reporting Responsibilities - For each key activity, the Contractor shall prepare both an executive summary and a full written report detailing findings for the HPA(s) and DBM. Reports shall identify best practices and opportunities for improvement, as well as recommendations specific to the HPA(s) program. Unless otherwise specified all reports shall be submitted to HCFA in both hard copy and electronic format. The number of hard copy reports and the electronic format shall be determined for each report and shall be mutually agreed upon by the Contractor and HCFA. Examples of reports follow:
- a. Annual External Quality Review Report. A draft report shall be due within thirty (30) days following completion of the HPA(s)'s and DBM's onsite review. The final report shall be due sixty (60) days following completion of the HPA(s)'s onsite review. The report shall also assess HPA(s) compliance with contractual and all EQR-related mandatory and optional activities, including but not limited to the methodology of how data was collected, aggregated, analyzed and conclusions drawn as to the quality, timeliness, effectiveness and access to the care furnished by the HPA(s). The report shall utilize the following five point scoring or rating system for each component assessed as part of the survey: 90-100 Total Compliance, 80-89 Substantial Compliance, 65-79 Partial Compliance, 55-64 Minimal Compliance and 0-54 Non-Compliance.
 - (1) Performing an annual quality survey of the HPA(s) and DBM to determine contractual compliance, preparing a written report of findings, and forwarding said report to HCFA no later than thirty (30) days after completion of the survey,

unless otherwise agreed to in writing by HCFA. If an organization is National Committee for Quality Assurance (NCQA) accredited, the Contractor will review the organization for contractual compliance.

- (2) Within forty-five (45) days of the beginning of this contract, the Contractor shall submit the proposed review criterion to HCFA for approval.
 - (3) By sixty (60) days after the beginning of this contract, the Contractor shall present the proposed schedule for the quality survey to HCFA for approval.
 - (4) Appointments with the HPA(s) and DBM shall be scheduled thirty (30) days in advance of visit.
 - (5) HCFA shall be notified of any changes to the approved appointment schedule immediately.
 - (6) An HPA(s) and DBM specific draft report of the survey findings along with recommendations for improvement shall be provided to HCFA thirty (30) days from HPA(s)'s and DBM's onsite survey. The final report shall be submitted to HCFA sixty (60) days following the review of the HPA(s) and DBM.
 - (7) The report of the quality review should include but not be limited to the following components:
 - i. A detailed assessment of the strengths and weaknesses of the HPA(s)
 - ii. Recommendations for improving the quality of care by the HPA(s)
 - iii. An assessment of the degree to which the HPA(s) and the DBM effectively addressed the recommendations for quality improvement made during the previous year's EQR
- b. Network adequacy review reports are due annually by June 1 and shall be submitted directly to the Commissioner of the Department of Commerce and Insurance, the Comptroller of the Treasury, and the Director of CoverKids.
 - c. Quarterly validation of the accuracy of the provider information reported by the HPA(s) shall be submitted to HCFA by the end of each quarter of the calendar year. The report shall include detail regarding all errors and discrepancies identified for the HPA(s) during the survey process (refer to Contract section A.85.).
 - d. Production of reports as requested by HCFA for such purposes as assessing the health care needs of the CoverKids population or subsets of the population, identification of best practices and/or opportunities for improvement within contracted HPA(s)s, or achieving compliance with State or Federal Regulations. Ad hoc reports shall be completed within a timeframe that is commensurate to the complexity of the report and shall be prepared at no additional cost to the State. The State and the Contractor shall develop and agree to the reporting timeframes on a report-by-report basis.
 - e. Annual EQR Technical Report utilizing the results of the annual network adequacy report, the annual quality survey, and information and results from the validation of Performance Improvement Projects (PIPs) and performance measures as required in accordance with 42 CFR 438.364. The Annual EQR Technical Report shall be submitted to HCFA by August 15th of each year. The report should be in accordance with current CMS guidelines and at a minimum the following should be included in the report:

- f. A description of the manner in which the data from all activities conducted in accordance with 42 CFR 438.358 (validation of PIPs and performance measures and compliance with standards audit) were aggregated and analyzed and conclusions were drawn as to the quality, timeliness, and access to care furnished by the HPA(S)s. The report must also include the following for each activity conducted in accordance with 42 CFR 438.364:
- (1) Objectives
 - (2) Technical methods of data collection
 - (3) Description of the data obtained
 - (4) Conclusions drawn from the data
 - (5) An assessment of the HPA(s)'s strengths and weaknesses
 - (6) Recommendations for improving quality of health care services
 - (7) Comparative information as HCFA deems methodologically appropriate
 - (8) An assessment of the degree to which the HPA(s) has addressed effectively the recommendations for quality improvement made by the EQRO during the previous year
 - (9) An annual cost allocation plan to be approved by CoverKids and CMS to support the claim for Federal Financial Participation.
 - (10) Monthly Health Care Policy Reports containing articles or summaries of information related to national and state issues and standards for CoverKids populations, changes in requirements under the Balanced Budget Act 1997, etc. shall be provided to HCFA as new information emerges in order to keep HCFA totally informed and current. Reports may include information on best practices or other information that could improve the financial stability of the CoverKids program and quality of care rendered to the CoverKids population.
- A.88. Contractor Quality Control Requirements - The Contractor shall develop and maintain a plan for quality control to be approved by HCFA including, but not limited to, reviewer training and determination of sample sizes needed in order to produce results that can be extrapolated to the entire population being examined. The plan shall cover, at a minimum, the following areas:
- a. Annual quality reviews
 - b. Special reviews
 - c. Report development and generation
 - d. Deliverable production
 - e. Provider Network analysis
- A.89. The Contractor shall develop written detailed internal procedures for all reviews, audits, performance measurements, and surveys identifying all steps in each process. The style and level of detail should be aimed at the Contractor's staff and the detailed procedures for each activity must be approved by HCFA before that activity is initiated.
- A.90. CoverKids Contractor Staffing –

- a. The Contractor shall maintain sufficient professional and technical staff to carry out the duties and responsibilities of the EQRO functions and agree to the following requirements:
- (1) The Contractor warrants and represents that all persons assigned by it to the performance of this Contract shall be employees of the Contractor and shall be fully qualified to perform the work required herein.
 - (2) The State shall have the absolute right to approve or disapprove the Contractor's and any subcontractor's key personnel assigned to this Contract, to approve or disapprove any proposed changes in key staff, or to require the removal or reassignment of any key Contractor employee or subcontractor personnel found unacceptable by HCFA.
 - (3) To the extent possible the Contractor shall notify HCFA in writing of any change in key personnel at least 30 days prior to the change. The Contractor shall upon request, provide HCFA with a resume of any enrollees of its staff or a subcontractor's staff assigned to or proposed to be assigned to any aspect of the performance of this Contract.
 - (4) Providing and maintaining an administrative structure, including personnel of sufficient background, training, size, scope and authority to perform its contractual responsibilities to the satisfaction of HCFA. The Contractor will provide the HCFA with the names of individuals who are authorized to act on behalf of the Contractor, together with a description of their responsibilities, authorities, and the amount of time by each employee, devoted to the project in Full Time Equivalents (FTE's). HCFA shall have final rights to the hiring and termination of key employees. The Contractor's key personnel shall include a Physician Consultant, a Contract Manager, and sufficient resources to fulfill contractual obligations. The Contractor must prove access to a biostatistician and epidemiologist. Resumes for all key personnel must be reviewed by HCFA within ten (10) business days of the start of the contract.
- b. Personnel commitments made shall not be changed except as herein above provided, or due to the resignation of any named individual.
- c. Annual, Follow-Up, and Special Review Staff
- (1) The Contractor shall maintain office space and personnel sufficient to fulfill all contractual obligations in Nashville, Tennessee, at a location to be mutually agreed upon by HCFA and the Contractor sufficient to complete all regularly scheduled and specially requested quality reviews as described in this Contract.
 - (2) At a minimum, the Contractor shall provide and maintain an on-site staff of sufficient professionals at all times. The combined experience of this staff must include previous working experience in healthcare quality assurance, management and improvement; knowledge and understanding of the NCQA Standards for Accreditation of Managed Care Organizations and Behavioral Health Organizations and the accreditation process; the current Health Plan Employer Data and Information Set (HEDIS) technical specifications; familiarity with International Classification of Diseases (ICD), Current Procedural Terminology (CPT) and hospital revenue codes; practical or clinical health care experience; understanding of managed care plans; and knowledge of Medicaid, Medicare, or similar program, and understanding of the managed care organizations systems.

- (3) The Contractor shall have experience and expertise in the epidemiological and statistical measurement of health and service status indicators in defined populations.
 - (4) At least two-thirds of the staff must have five (5) or more years of relevant experience.
 - (5) The review staff must be supervised by individuals with five (5) or more years of experience in quality assurance management or review and at least three (3) years of management experience.
- d. In addition to the professional staff for the reviews, the Contractor shall provide sufficient analysis and technical staff with experience and expertise in the epidemiological and statistical measurement of health and service indicators, including behavioral health, in defined populations to support the requirements in this Contract. This shall include in-depth understanding of the scope and methodologies of data collection, the interpretation of data, and the social and economic factors that affect the interpretation of the data. Contractor must ensure that activities are conducted in accordance with generally accepted principles of research design and statistical analysis in order to produce valid, reliable, and generalizable information. At a minimum, the Contractor shall provide staff with the skills and experience to perform the following functions:
- (1) Provide technical recommendations to CoverKids regarding identified opportunities for improvement within the HPA(s) assessed performance and methodology of reporting.
 - (2) Provide HCFA with current information on the development and implementation of quality assurance programs in other states, national standards and measures, industry practices and other information pertinent to the EQRO functions.
 - (3) Provide ad hoc and special reports as requested by HCFA.
- A.91 Contractor Employee Incentive Programs - Prior to implementing any employee incentive system designed to increase processing productivity, the Contractor shall submit a detailed description of the incentive system to HCFA for approval. This description shall include but is not limited to monetary incentives, quality control reviews for accuracy, reasons that the incentive may be discontinued, assurances that accuracy will be maintained in accordance with this Contract, and progress reports to be submitted to HCFA relating to the incentive program.
- A.92. The Contractor must perform the EQRO functions so as to provide for sufficient flexibility to rapidly conform to changes in Federal and/or State law, regulations, policies, and priorities. In addition, the State expects to see increasing demands for information reporting and data analysis. The Contractor must be able to quickly and accurately respond to requests for information.
- A.93. The Contractor shall provide a written document that identifies all technologies, hardware and software applications utilized under the EQRO contract detailing how it was established and implemented for review and approval by HCFA. The Contractor shall notify HCFA of any changes in technology standards used in the performance of this Contract.
- A.94. Technology and Methods – Maintenance, Upgrades, Changes and Rights:
- a. The Contractor shall maintain the EQRO Systems, including but not limited to:

- (1) Implementing new technologies and methods that are generally available not in alpha test, beta test, or trials of any form unless explicitly approved by the CoverKids office and will improve the Contractor's ability to meet reporting responsibilities. Such implementations of technologies and methods must be approved by CoverKids, and if judged to be necessary by CoverKids, HCFA.
 - (2) Implementing modifications to technologies and methods that are necessary to preserve any interoperability with State and CoverKids systems and facilities necessary for the Contractor to meet EQRO reporting responsibilities. This includes maintaining communications with HCFA and CoverKids sufficient to be aware of and prepared for any changes to the technological environment of HCFA and CoverKids.
 - (3) Updating the EQRO Systems' components such that they are based on recent technologies and methods that are generally available in conformance with state standards and the State Architecture and supported by the suppliers and not subject to sunset or termination of support for a period of not less than twelve (12) calendar months.
- b. The Contractor may incorporate into the Cover Kids EQRO Systems any new technologies, methods, or products the contractor deems necessary or desirable with the advance approval of HCFA.
 - c. EQRO Systems and components thereof, incorporated in the EQRO Systems by any means such as, but not limited to, licenses for use or purchase for ownership, shall become the exclusive property of CoverKids and HCFA upon termination of the Contract regardless of the reason for termination.
- A.95. The Contractor shall provide physical site and data security sufficient to safeguard the operation and integrity of all CoverKids-related data as specified and approved by HCFA. The Contractor shall also consider that all of the information, data, forms, and files are confidential and may not be released or used for any purpose other than carrying out the duties and responsibilities as defined in this Contract without the express consent of HCFA. The Contractor must ensure that all employees have access to information on a "need to know" basis and that all reasonable efforts are maintained to ensure confidentiality. Any subcontractors, vendors, and anyone other than an employee of the Contractor must not have access to the data or information related to this Contract without explicit HCFA approval. The Contractor shall ensure compliance with Federal and Tennessee State Law as related to confidentiality of information and security.
- A.96. The Contractor shall restrict access to workstations, terminals, on-line functions, and files as designated by HCFA and as required to maintain confidentiality and security. Security shall be imposed at both workstation and terminal and operator levels. On-line access over unsecured communications paths or media must be secured in a manner acceptable to the CoverKids office.
- A.97. The Contractor shall maintain historical records encounter data, reference files, and any other files as required for backup and recovery purposes to support the analysis and reporting processes and to support State and Federal audit trail requirements.
- A.98. Data Processing Standards Introduction - This section describes the general data processing standards, which the Contractor shall continually meet during the Transition, Operations and Maintenance, and Transition Phases of the EQRO Contract. These standards supplement the specific performance standards specified in this Contract.
- A.99. System Standards - The Contractor must adhere to all applicable CoverKids and State standards and architectures for hardware, operating systems, programming languages, software tools or other components proposed by Contractor for constituting the EQRO Systems. Any exceptions to

these standards must be explicitly approved by CoverKids office. All hardware and software proposed by Contractor for constituting the EQRO Systems must be reviewed and approved by HCFA..

- A.100 Reliability - At all times, the EQRO Systems shall continue to be protected against hardware, software, and human error. The system shall include appropriate checkpoint/restart capabilities and other features necessary to guarantee reliability and recovery, including telecommunications reliability and disaster recovery. The Contractor shall follow change control procedures that minimize the possibility of human error. All changes must go through a rigorous testing and quality control procedure prior to implementation into production. The Contractor shall develop and follow production procedures that include verification, quality checking, and balancing for each job and for each report or other output and be able to demonstrate that sufficient positive measures are taken in every step of the processing to ensure the completeness and correctness of the results.
- A.101. The Contractor shall ensure that current documentation is maintained for all packaged software and custom-developed software constituting the EQRO Systems.
- a. Minimum documentation requirements for packaged software are:
- (1) All vendor documentation regarding installation, configuration and operation of software,
 - (2) Data model and definitions as specifically implemented for HCFA,
 - (3) Full documentation of software configuration as installed for HCFA,
 - (4) Documentation of any customizations for HCFA,
 - (5) Import, export or interface specifications, and
 - (6) Supporting documentation as required to support maintenance and operations.
- b. Minimum documentation requirements for all custom-developed software including reports, queries, control files, parameters, and scripts are:
- (1) Data model and definitions,
 - (2) Current program listings,
 - (3) Program narrative,
 - (4) Import, export or interface specifications,
 - (5) Definitions of values used for codes and switches, and
 - (6) Supporting documentation as required to support maintenance and operations.

The Contractor shall ensure that operating documentation is maintained for all regularly performed data analyses and reporting processes executed and that layouts and data definitions are maintained, at a minimum, for all master files and all databases.

- A.102. Documentation Updates - The Contractor shall, at all times, provide that all copies of the System Documentation are current and the Contractor shall incorporate all updates. Four (4) copies of the documentation and all updates shall be provided for HCFA. Each copy shall consist of hardcopy of all documents other than code and electronic copies of any documents that

originated electronically such as but not limited to word processor files, spreadsheets, and entity relationship diagrams, electronic copies of all code that is necessary for building the EQRO system and appropriate for use in the environment in which the EQRO system is built, such as but not limited to, compiler input, commercially obtained code libraries, loader/binder inputs, and build scripts. The Contractor shall be responsible for maintaining and updating each of the State's copies.

- A.103. Audit Requirements - The Contractor shall provide data, in a specified electronic media with HCFA approved content and format, to the HCFA within five (5) working days of receipt of request as required to support internal or external audits.
- a. The Contractor must produce the source or hardcopy documentation and records which will substantiate information in the requested files, or which is missing from the above files, within ten (10) days of receipt of request from HCFA. Such documentation shall be made available to HCFA at the State's facility in Nashville, Tennessee.
 - b. Facilities used by the Contractor in delivery of services to HCFA will be subject to periodic review and audit by both State and Federal authorities. The Contractor will be required to provide reasonable access to facilities and personnel and will be responsible for responding to audit inquiries and findings.
- A.104. Data Security - At all times, EQRO Systems and all data contained therein shall continue to be protected against unauthorized access. All systems and facilities shall include appropriate and reasonable access control measures and other features necessary to ensure security, including active monitoring and incident response. The Contractor will be required to execute and enforce the provisions of the CoverKids Business Associate Agreement. Contractor duties shall include, but not be limited to, the following:
- a. Maintain, in facilities used by the Contractor for the EQRO functions, system security software which prevents unauthorized access to the system and identifies any such attempts at access.
 - b. Require all Contractor employees and all subcontractor personnel to sign relevant CoverKids and HCFA agreements for access to systems and data, acknowledging their duties with regard to security, confidentiality, and acceptable use, with copies maintained in their personnel files.
 - c. Maintain complete confidentiality of all passwords and IDs used by Contractor employees and all subcontractor personnel. Employees shall not be permitted to share passwords or IDs among themselves except as explicitly authorized by HCFA. The Contractor shall ensure that only authorized personnel are granted access to systems or data and will maintain appropriate policy and procedure to ensure that access is revoked when no longer needed or appropriate for the performance of EQRO functions.
 - d. Limit and control access to the facilities used for EQRO functions. Security measures shall include, but not be limited to, entry logs or identification badges. In addition, all server and shared data storage equipment shall be housed in space with controlled access, with doors locked at all times.
 - e. Limit and appropriately protect data stored on personal computers, or other equipment not housed in locked space, with controlled access.
 - f. Secure all data files (i.e. magnetic tapes and disks) controlled by the Contractor in a fireproof vault when not in use.

- g. Secure all reports, whether test or production, in printed or electronic format, which are not forwarded to HCFA and contain provider or enrollee information until properly disposed of. Disposition shall be in accordance with HCFA requirements.
- h. Maintain backups of data and software per the disaster recovery plan and secured in the data storage vault. Off-site copies of these backups shall also be arranged. The confidentiality of data in offsite copies will be protected by technological means under the control of the Contractor and as approved by the State office of the CIO and CoverKids office of the CIO.

A.105. Disaster Recovery -

- a. A disaster recovery plan that meets OIR standards and is approved by HCFA shall be updated and maintained by the Contractor. The Contractor shall continually review the disaster recovery plan and make necessary updates to provide that the plan always contains accurate and up-to-date information. The plan shall include, but not be limited to:
 - (1) Checkpoint/restart capabilities
 - (2) Retention and storage of backup files and software
 - (3) Hardware/network backup plan for the EQRO System
 - (4) Backup procedures for all schedule-critical manual operations in the event of a computer or telecommunications outage or a disaster at either the Metro Center site or the EQRO site
 - (5) Recovery procedures for loss of manual files and hardcopy documents
 - (6) Annual test of the disaster recovery plan
- b. The Contractor shall be required to update, test and maintain the disaster recovery plan designed to minimize any disruption to the processing of HCFA transactions. The disaster recovery plan shall address all processing, files, and software maintained on the EQRO System.
- c. The disaster recovery plan and procedures shall, at a minimum, provide the following:
 - (1) Continued processing assuming the loss of the primary processing site.
 - (2) A detailed backup plan and procedures, including the off-site storage of crucial transaction and master files. The plan and procedures shall include a detailed schedule for backing up critical files and their rotation to an off-site storage facility.
 - (3) The maintenance of current system software, including source code, and documentation at an off-site location.
 - (4) The disaster recovery plan developed by the Contractor must be approved by HCFA and other applicable State agencies, likewise any changes to the disaster recovery plan must be approved by HCFA or other agencies approved by HCFA.

A.106. Data Communications - Network connectivity, including leasing of lines/capacity and the provision of communications devices, from the ingress/egress site(s), specified by CoverKids and HCFA, to the ingress/egress site(s) specified by Contractor and approved by CoverKids and HCFA, must

be approved by CoverKids and HCFA. The configuration of Contractor ingress/egress site(s), including but not limited to hardware and software must be approved by CoverKids and the HCFA. For any facilities operated by the Contractor exclusively for the benefit of HCFA, all equipment involved in network connectivity become the property of CoverKids and HCFA upon termination of the Contract regardless of the reason for termination. At termination of the Contract, regardless of the reason for termination, the Contractor will provide CoverKids and HCFA, if so desired by CoverKids and HCFA, the right to assume ownership of leases of lines/capacity for facilities operated exclusively for the benefit of HCFA.

CoverKids will provide access to data and systems required for the performance of EQRO functions, in a manner consistent with current policy and procedures.

- A.107. The Contractor shall be solely responsible for HCFA-owned or provided hardware and equipment that is used and controlled by the Contractor during the term of the Contract. Any hardware and related equipment needing to be replaced or repaired because of abuse, theft, or loss attributable to the Contractor or due to their negligence shall be at no cost to HCFA. The Contractor shall transition all HCFA-owned hardware and equipment at the termination of the Contract, regardless of the reason for termination, in satisfactory working condition.
- a. All hardware and software proposed by Contractor for constituting the EQRO Systems and data communications with CoverKids and HCFA must be approved by CoverKids and HCFA. The acquisition of all such hardware and software is the responsibility of the Contractor unless otherwise authorized by CoverKids and HCFA.
 - b. All hardware and software acquired by the Contractor to meet the responsibilities of the Contract shall become the exclusive property of CoverKids and HCFA upon termination of the Contract regardless of the reason for termination.
- A.108. Lease and Maintenance Agreements - The Contractor shall be responsible for obtaining and maintaining licenses and maintenance agreements for use of any software or hardware purchased or leased for this Contract that is in addition to the software or hardware currently in operation at the time the Contract commences. The Contractor shall ensure that all license and maintenance agreements remain in effect for twelve (12) months past the term of the Contract.
- A.109. Supplies and Forms - Computer Expendable Supplies:
- The Contractor shall provide all expendable supplies needed to support the EQRO operations at the Contractor's facility to include, but not be limited to diskettes, computer paper stock, laser printer paper, toner, printer ribbon, etc.
- A.110. Inventory of Forms and Supplies - The Contractor shall provide and maintain, at all times, an inventory of all forms that are required to support the functions of the EQRO related to this Contract. The Contractor shall be responsible for providing and maintaining an adequate inventory of forms, supplies etc. to be available for use on October 1, 2015, the operational date of the contract.
- A.111. Modifications to Forms - The Contractor shall provide and maintain the flexibility throughout the Contract, to modify the content or format of any form or document used in performing the EQRO functions and to develop and produce any other forms required by HCFA. All changes shall be made at the direction of and be approved by HCFA. The Contractor should consider this requirement when determining the level of inventories to be maintained.
- A.112. Competency and Independence Requirements -

- a. The Contractor must demonstrate experience with Medicaid recipients, policies, data systems and processes, HPA(s) delivery systems and financing, Quality Assurance and Quality Integrity, research design and methodology.
 - b. The Contractor must possess sufficient physical, technological and financial resources to conduct EQRO and EQR related activities as well as other clinical and non-clinical skills necessary to carry out the EQRO and EQR related activities and to oversee the work of any subcontractor.
 - c. The Contractor must not review an entity it exerts control over the other through stock ownership, stock options, voting trusts, common management, or contractual relationships in which they: (i) deliver any health care service to Medicaid recipients, (ii) conduct, on the state's behalf, ongoing Medicaid managed care program operations related to oversight of the quality of HPA(s) services, except for EQR related activities, (iii) have a present, or known future, direct or indirect financial relationship with an HPA(s) that it will review as an EQRO. [Financial relationship means a direct or indirect ownership or investment interest (including an option or non-vested interest) in any entity. This direct or indirect interest may be in the form of equity, debt, or other means and includes any indirect ownership or investment interest no matter how many levels removed from a direct interest, or a compensation arrangement with an entity.
- A.113. Transition Phase - Prior to the conclusion of the Contract, or in the event of a termination for any reason, the Contractor shall provide assistance in the turnover of the CoverKids EQRO functions to HCFA or the new Contractor. The Contractor shall be responsible for all work in progress. This includes report requests, analysis projects, special studies, and any other tasks which fall within the scope of work of this Contract and are currently in progress at the time of Transition.
- a. HCFA Responsibilities
 - (1) Review and approve the transition phase and schedule to facilitate and organize the transfer of the EQRO functions to HCFA or the new Contractor.
 - (2) Make State staff and designated Contractor staff available for training the new Contractor in the operation of the EQRO functions.
 - (3) Review and approve Contractor's turnover progress reports which document the completion of each turnover task.
 - b. Contractor Responsibilities
 - (1) Prepare and submit a detailed written Transition Phase plan within thirty (30) days of beginning of this contract.
 - (2) The plan shall define the turnover approach, define all tasks and subtasks, and provide a schedule for the turnover effort to achieve State requirements.
 - (3) Provide a current listing of all software used to support the EQRO functions.
 - (4) As requested, transfer all files, data, and other materials of the CoverKids EQRO function to HCFA or its designated agent.
 - (5) Provide copies of all procedures for performing the functions of the EQRO.
 - (6) Provide training to HCFA or its designated agent in the performance of all contract-related functions including, but not limited to, the procedures for the

EQRO, periodic reviews of HPA(s) and DBM, ad hoc report generation and analysis.

- (7) Provide an estimated inventory of all work in progress and its projected status at the end of the contract within one (1) week after the beginning of the Transition Phase.
- (8) Update the work in progress inventory estimates weekly throughout the Transition Phase.
- (9) Provide a final, detailed inventory and accounting of all work in progress; and completed work.
- (10) Prepare and submit a final report summarizing turnover task results and certifying the completion of all turnover responsibilities.
- (11) Cooperate with HCFA and new Contractor throughout the Transition Phase to ensure a smooth transition.

State Responsibilities

A.114. The State shall be responsible for the overall management and general administration of the CoverKids Program including establishment of policy and approval of overall administrative procedures.

- a. The State's general responsibilities include:
 - (1) Establishing and interpreting program policy.
 - (2) Authorizing administrative procedures.
 - (3) Monitoring of overall program performance.
 - (4) Contracting with the CoverKids HPA(s) and the DBM.
 - (5) Reviewing changes in federal regulations and devising methods to comply with the changes.
 - (6) Approval of contractual arrangements for the CoverKids program.
 - (7) Preparing budgets for the CoverKids program.
 - (8) Liaison with the Legislature, other State agencies, and the public.
 - (9) Coordination of cases of fraud and noncompliance investigation with the Contractor, providers, recipients, legal authorities, and the Federal Government.
 - (10) Performing fiscal audits of the Contractor.
 - (11) Operating and maintaining an administrative structure sufficient to assure Contractor compliance with contractual responsibilities.
 - (12) Providing for liaison and communications with the Contractor in connection with mutual contractual responsibilities.

- (13) Establishing, monitoring, and managing receivable accounts to recover program funds owed by providers, enrollees and other third parties.
- (14) Providing the Contractor with the names of individuals, who are authorized to act on the behalf of the State with respect to this Contract, together with a description of their respective responsibilities and authorities.
- (15) Administering this Contract and providing direction as required to facilitate Contractor operations.
- (16) Making EQRO results available to interested parties upon request. Information released must comply with Federal HIPAA regulations regarding confidentiality of protected health information.

b. The State's specific responsibilities include:

- (1) Provide interfaces with State and Federal agencies as necessary for the Contractor.
- (2) Provide Contractor with a list of primary interfaces from HCFA for each functional area.
- (3) Oversee Contractor's performance; approve Contractor's work plan quarterly, conduct periodic audits of Contractor's performance; monitor compliance with contract terms and conditions and all applicable State and Federal laws and regulations.
- (4) Notify Contractor of all performance deficiencies; approve Contractor's corrective action plan.
- (5) Direct Contractor to make ongoing modifications and enhancements to Contractor procedures if required to support program policy, rules and regulations; improve program and operational performance; resolve problems; and address overall program effectiveness and quality.
- (6) Prepare specific requirements and definition (with Contractor assistance) for ongoing modifications and enhancements to the EQRO functions.
- (7) Approve release of any reports, data, forms, files, or other information related to the Contract to any agency or entity outside HCFA.
- (8) Provide Contractor with requirements for ad hoc data and report requests and approve specifications.
- (9) Review and approve all deliverables; provide Contractor with identification of discrepancies that require corrective action; approve Contractor's corrective action plan.
- (10) Provide Contractor with request requirements for "on request" processes.
- (11) Provide record retention and destruction guidelines.
- (12) Impose liquidated damages and/or other corrective action required on the HPA(s) and DBM as a result of deficiencies and/or failure to comply with CoverKids requirements.

- (13) Provide Contractor with contact names, associated phone numbers and e-mail addresses for the HPA(s) and DBM.

B. CONTRACT PERIOD:

- B.1. This Contract shall be effective on September 1, 2015 ("Effective Date") and extend for a period of thirty-seven (37) months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.
- B.2. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to two (2) renewal options at the rates specified at C.3.b.(5) and C.3.b.(6) 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.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed **Written Dollar Amount (\$Number)** ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.
- C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.
- a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
- b. The Contractor shall be compensated based upon the following payment methodology:
- (1) Services performed from September 1, 2015 through September 30, 2015, shall be at no cost to the State.
- (2) For service performed from October 1, 2015, through September 30, 2016, the following rates shall apply:

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

- (3) For service performed from October 1, 2016, through September 30 2017, the following rates shall apply:

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

- (4) For service performed from October 1, 2017, through September 30 2018, the following rates shall apply:

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

- (5) Should term extension option be utilized, for services performed from October 1, 2018 through September 30, 2019, the following rates shall apply:

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

- (6) Should term extension option be utilized, for services performed from October 1, 2019 through September 30, 2020, the following rates shall apply:

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

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3.,

above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:

310 Great Circle Road
Nashville, TN 37243

- a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):
- (1) Invoice number (assigned by the Contractor);
 - (2) Invoice date;
 - (3) Contract number (assigned by the State);
 - (4) Customer account name: Department of Finance and Administration, Division of Health Care Finance and Administration;
 - (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
 - (6) Contractor name;
 - (7) Contractor Tennessee Edison registration ID number;
 - (8) Contractor contact for invoice questions (name, phone, or email);
 - (9) Contractor remittance address;
 - (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
 - (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
 - (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
 - (13) Amount due for each compensable unit of good or service; and
 - (14) Total amount due for the invoice period.
- b. Contractor's invoices shall:
- (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
 - (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
 - (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
 - (4) Include shipping or delivery charges only as authorized in this Contract.
- c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.
- C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.

- C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.
- a. The Contractor shall complete, sign, and present to the State an "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, shall be made by automated clearing house.
 - b. The Contractor shall complete, sign, and present to the State a "Substitute W-9 Form" provided by the State. The taxpayer identification number in the Substitute W-9 Form must be the same as the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID.

D. MANDATORY TERMS AND CONDITIONS:

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

The State:

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

The Contractor:

Contractor Contact Name & Title
Contractor Name
Address

Email Address
 Telephone # Number
 FAX # Number

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

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

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

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

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

- D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination. In addition, the Contractor shall comply with the provisions of Contract Section E.27 (Nondiscrimination Compliance Requirements) and this Section D.9 shall not be deemed to limit or abridge any requirement set forth in Section E.27.

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

- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment B, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
- d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
- e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or

regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.

- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for intentional torts, criminal acts, fraudulent conduct, or omissions that result in personal injuries or death.
- D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities,

losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State to enforce the terms of this Contract.

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

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

- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
- b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
- c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
- d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

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

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

- D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
 - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.

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

- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 407.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
 - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below);
 - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
 - e. any technical specifications provided to proposers during the procurement process to award this Contract; and,
 - f. the Contractor's response seeking this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.
- E.2. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. The Contractor shall only use Confidential information for activities pursuant to and related to the performance of the Contract. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

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

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

E.4 Ownership of Software and Work Products.

a. Definitions.

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

b. Rights and Title to the Software

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

c. The Contractor may use for its own purposes the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of

performing under this Contract. The Contractor may develop for itself, or for others, materials which are similar to or competitive with those that are produced under this Contract.

- E.5 State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible personal property furnished by the State for the Contractor's use under this Contract. Upon termination of this Contract, all property furnished by the State shall be returned to the State in the same condition as when received, less reasonable wear and tear. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the fair market value of the property at the time of loss.
- E.6 Work Papers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis work papers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.
- E.7 Prohibited Advertising or Marketing. The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.
- E.8. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:
- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

- E.9 Intellectual Property. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof, however, the failure of the State to give such notice shall only

relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.

- E.10. Liquidated Damages. If failure to comply with requirements of this contract occurs, ("Liquidated Damages Event"), the State may assess damages on Contractor ("Liquidated Damages") per Attachment C. The State shall notify the Contractor of amounts to be assessed as Liquidated Damages. The Parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for Contractor's failure to fulfill its obligations regarding the Liquidated Damages Event as these amounts are likely to be uncertain and not easily proven. The Contractor agrees that the Liquidated Damages are in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or any other sections of this Contract.

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

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

disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify and/or procure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

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

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

The Contractor shall comply with the following:

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

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

- (2) Total compensation means the cash and noncash dollar value earned by the

executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 C.F.R. § 229.402(c)(2)):

- i. Salary and bonus.
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - v. Above-market earnings on deferred compensation which is not tax qualified.
 - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.
- b. The Contractor must report executive total compensation described above to the State by the end of the month during which this Contract is awarded.
 - c. If this Contract is amended to extend the Term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the term extension becomes effective.
 - d. The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>

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

- E.15 Survival. The terms, provisions, representations, and warranties contained in Sections D.11 (Records), D.19 (Hold Harmless), D.20 (HIPAA Compliance), E.2 (Confidentiality of Records), E.7 (Prohibited Advertising), E.9 (Intellectual Property) E.13 (Personally Identifiable Information), E.19 (Notification of Breach), E.21 (SSA Data), and E.25 (IRS Data) of this Contract shall survive the completion of performance, termination or expiration of this Contract.
- E.16. Applicable Laws, Rules, Policies and Court Orders. The Contractor agrees to comply with all applicable federal and State laws, rules, regulations, sub-regulatory guidance, executive orders, HCFA waivers, and all current, modified or future Court decrees, orders or judgments applicable to the State's TennCare and CHIP programs. Such compliance shall be performed at no additional cost to the State.
- E.17. Business Associate. Contractor hereby acknowledges its designation as a business associate under HIPAA and agrees to comply with all applicable HIPAA regulations. In accordance with the HIPAA regulations, the Contractor shall, at a minimum:
 - a. Comply with requirements of the HIPAA, including, but not limited to, the transactions and code sets, privacy, security, and identifier regulations. Compliance includes meeting all

required transaction formats and code sets with the specified data sharing agreements required under the regulations;

- b. Transmit/receive from/to its providers, subcontractors, clearinghouses and HCFA all transactions and code sets required by HIPAA in the appropriate standard formats, utilizing appropriate and adequate safeguards, as specified under the law and as directed by HCFA so long as HCFA direction does not conflict with the law;
- c. Agree that if it is not in compliance with all applicable standards defined within the transactions and code sets, privacy, security and all subsequent HIPAA standards, that it will be in breach of this Contract and will then take all reasonable steps to cure the breach or end the violation as applicable. Since inability to meet the transactions and code sets requirements, as well as the privacy and security requirements can bring basic business practices between HCFA and the Contractor and between the Contractor and its providers and/or subcontractors to a halt, if for any reason the Contractor cannot meet the requirements of this Section, HCFA may terminate this Contract.
- d. Ensure that Protected Health Information (PHI) exchanged between the Contractor and HCFA is used only for the purposes of treatment, payment, or health care operations and health oversight and its related functions. All PHI not transmitted for these purposes or for purposes allowed under the federal HIPAA regulations shall be de-identified to secure and protect the individual enrollee's PHI;
- e. Report to HCFA's Privacy Office immediately upon becoming aware of any use or disclosure of PHI in violation of this Contract by the Contractor, its officers, directors, employees, subcontractors or agents or by a third party to which the Contractor disclosed PHI;
- f. Specify in its agreements with any agent or subcontractor that will have access to PHI that such agent or subcontractor agrees to be bound by the same restrictions, terms and conditions that apply to the Contractor pursuant to this Section;
- g. Make its internal policies and procedures, records and other documentation related to the use and disclosure of PHI available upon request to the U.S. Secretary of Health and Human Services for the purposes of determining compliance with the HIPAA regulations;
- h. Create and adopt policies and procedures to periodically audit adherence to all HIPAA regulations;
- i. Agree to ensure that any agent, including a subcontractor, to whom it provides PHI that was created, received, maintained, or transmitted by or on behalf of HCFA agrees to use reasonable and appropriate safeguards to protect the PHI.
- j. If feasible, return or destroy all PHI, in whatever form or medium (including any electronic medium) and all copies of any data or compilations derived from and allowing identification of any individual who is a subject of that PHI upon termination, cancellation, expiration or other conclusion of the Agreement, and in accordance with this Section of this Contract. The Contractor shall complete such return or destruction as promptly as possible, but not later than thirty (30) days after the effective date of the termination, cancellation, expiration or other conclusion of the Agreement. The Contractor shall identify any PHI that cannot feasibly be returned or destroyed. Within such thirty (30) days after the effective date of the termination, cancellation, expiration or other conclusion of the Agreement, the Contractor shall: (1) certify an oath in writing that such return or destruction has been completed; (2) identify any PHI which cannot feasibly be returned or destroyed; and (3) certify that it will only use or disclose such PHI for those purposes that make its return or destruction infeasible;

- k. Implement all appropriate administrative, physical and technical safeguards to prevent the use or disclosure of PHI other than pursuant to the terms and conditions of this Contract and, including, but not limited to, privacy, security and confidentiality requirements in 45 CFR Parts 160 and 164;
 - l. Set up appropriate mechanisms to limit use or disclosure of PHI to the minimum necessary to accomplish the intended purpose of the use or disclosure;
 - m. Create and implement policies and procedures to address present and future HIPAA regulatory requirements as needed, including, but not limited to: use and disclosure of data; de-identification of data; minimum necessary access; accounting of disclosures; enrollee's right to amend, access, request restrictions; notice of privacy practices and right to file a complaint;
 - n. Provide an appropriate level of training to its staff and employees regarding HIPAA related policies, procedures, enrollee rights and penalties prior to the HIPAA implementation deadlines and at appropriate intervals thereafter;
 - o. Track training of Contractor staff and employees and maintain signed acknowledgements by staff and employees of the Contractor's HIPAA policies;
 - p. Be allowed to use and receive information from HCFA where necessary for the management and administration of this Contract and to carry out business operations where permitted under the regulations;
 - q. Be permitted to use and disclose PHI for the Contractor's own legal responsibilities;
 - r. Adopt the appropriate procedures and access safeguards to restrict and regulate access to and use by Contractor employees and other persons performing work for the Contractor to have only minimum necessary access to PHI and personally identifiable data within their organization;
 - s. Continue to protect and secure PHI and personally identifiable information relating to enrollees who are deceased; and
 - t. Track all security incidents as defined by HIPAA and, as required by the HIPAA Reports. The Contractor shall periodically report in summary fashion to HCFA such security incidents.
- E.18. Information Holders. HCFA and the Contractor are "information holders" as defined in TCA 47-18-2107. In the event of a breach of the security of Contractor's information system, as defined by TCA 47-18-2107, the Contractor shall indemnify and hold HCFA harmless for expenses and/or damages related to the breach. Such obligations shall include, but not be limited to, mailing notifications to affected enrollees. Substitute notice to written notice, as defined by TCA 47-18-2107(e)(2) and (3), shall only be permitted with HCFA's express written approval. The Contractor shall notify HCFA's Privacy Office immediately upon becoming aware of any security incident that would constitute a "breach of the security of the system" as defined in TCA 47-18-2107.
- E.19. Notification of Breach and Notification of Suspected Breach. - The Contractor shall notify HCFA's Privacy Office immediately upon becoming aware of any incident, either confirmed or suspected, that represents or may represent unauthorized access, use or disclosure of encrypted or unencrypted computerized data that materially compromises the security, confidentiality, or integrity of enrollee PHI maintained or held by the Contractor, including any unauthorized acquisition of enrollee PHI by an employee or otherwise authorized user of the Contractor's system. This includes, but is not limited to, loss or suspected loss of remote computing or

telework devices such as laptops, PDAs, Blackberrys or other Smartphones, USB drives, thumb drives, flash drives, CDs, and/or disks.

- E.20. Transmission of Contract Deliverables. All information or data that is necessary for one or more deliverable set forth in this Contract shall be transmitted between HCFA and Contractor via the data transfer method specified in advance by HCFA. This may include, but shall not be limited to, transfer through HCFA's SFTP system. Failure by the Contractor to transmit information or data that is necessary for a deliverable in the manner specified by HCFA, may, at the option of HCFA, result in liquidated damages as set forth on Contract Attachment C, hereto.
- E.21. Social Security Administration (SSA) Required Provisions for Data Security. The Contractor shall comply with limitations on use, treatment, and safeguarding of data under the Privacy Act of 1974 (5U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, related Office of Management and Budget guidelines, the Federal Information Security Management Act of 2002 (44 U.S.C. §3541, *et seq.*), and related National Institute of Standards and Technology guidelines. In addition, the Contractor shall have in place administrative, physical, and technical safeguards for data.
- a. The Contractor shall not duplicate in a separate file or disseminate, without prior written permission from HCFA, the data governed by the Contract for any purpose other than that set forth in this Contract for the administration of the HCFA program. Should the Contractor propose a redisclosure of said data, the Contractor must specify in writing to HCFA the data the Contractor proposes to redisclose, to whom, and the reasons that justify the redisclosure. HCFA will not give permission for such redisclosure unless the redisclosure is required by law or essential to the administration of the HCFA program.
 - b. The Contractor agrees to abide by all relevant federal laws, restrictions on access, use, and disclosure, and security requirements in this Contract.
 - c. The Contractor shall provide a current list of the employees of such contractor with access to SSA data and provide such lists to HCFA.
 - d. The Contractor shall restrict access to the data obtained from HCFA to only those authorized employees who need such data to perform their official duties in connection with purposes identified in this Contract. The Contractor shall not further duplicate, disseminate, or disclose such data without obtaining HCFA's prior written approval.
 - e. The Contractor shall ensure that its employees:
 - (1) properly safeguard PHI/PII furnished by HCFA under this Contract from loss, theft or inadvertent disclosure;
 - (2) understand that they are responsible for safeguarding this information at all times, regardless of whether or not the Contractor employee is at his or her regular duty station;
 - (3) ensure that laptops and other electronic devices/ media containing PHI/PII are encrypted and/or password protected;
 - (4) send emails containing PHI/PII only if encrypted or if to and from addresses that are secure; and,
 - (5) limit disclosure of the information and details relating to a PHI/PII loss only to those with a need to know.

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

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

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

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

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

- i. Definitions

- (1) "SSA-supplied data" – information, such as an individual's social security number, supplied by the Social Security Administration to HCFA to determine entitlement or eligibility for federally-funded programs (CMPPA between SSA and F&A; IEA between SSA and HCFA).
- (2) "Protected Health Information/Personally Identifiable Information" (PHI/PII)(45 C.F.R. 160.103; OMB Circular M-06-19) – Protected health information means individually identifiable health information that is: (i) Transmitted by electronic media; (ii) Maintained in electronic media; or (iii) Transmitted or maintained in any other form or medium.
- (3) "Individually Identifiable Health Information"— information that is a subset of health information, including demographic information collected from an individual, and: (1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) identifies the individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

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

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

- a. Purposes directly related to the administration of Medicaid and CHIP include:
 - (1) establishing eligibility;
 - (2) determining the amount of medical assistance;
 - (3) providing services for beneficiaries; and,
 - (4) conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to Medicaid or CHIP administration.
- b. The Contractor must have adequate safeguards to assure that:
 - (1) Information is made available only to the extent necessary to assist in the valid administrative purposes of those receiving the information, and information received under 26 USC is exchanged only with parties authorized to receive that information under that section of the Code; and,
 - (2) the information is adequately stored and processed so that it is protected against unauthorized disclosure for other purposes.
- c. The Contractor must have criteria that govern the types of information about applicants and beneficiaries that are safeguarded. This information must include at least--
 - (1) Names and addresses;
 - (2) Medical services provided;
 - (3) Social and economic conditions or circumstances;
 - (4) Contractor evaluation of personal information;
 - (5) Medical data, including diagnosis and past history of disease or disability
 - (6) Any information received for verifying income eligibility and amount of medical assistance payments, including income information received from SSA or the Internal Revenue Service;
 - (7) Any information received for verifying income eligibility and amount of medical assistance payments;
 - (8) Income information received from SSA or the Internal Revenue Service must be safeguarded according to Medicaid and CHIP requirements;
 - (9) Any information received in connection with the identification of legally liable third party resources; and,
 - (10) Social Security Numbers.
- d. The Contractor must have criteria approved by HCFA specifying:
 - (1) the conditions for release and use of information about applicants and beneficiaries;
 - (2) Access to information concerning applicants or beneficiaries must be restricted to persons or Contractor representatives who are subject to standards of confidentiality that are comparable to those of HCFA;
 - (3) The Contractor shall not publish names of applicants or beneficiaries;
 - (4) The Contractor shall obtain permission from a family or individual, whenever possible, before responding to a request for information from an outside source, unless the information is to be used to verify income, eligibility and the amount of medical assistance payment to an authorized individual or entity;

- (5) If, because of an emergency situation, time does not permit obtaining consent before release, the Contractor shall notify HCFA, the family or individual immediately after supplying the information.
- (6) The Contractor's policies must apply to all requests for information from outside sources, including governmental bodies, the courts, or law enforcement officials.
 - i. The Contractor shall notify HCFA of any requests for information on applicants or beneficiaries by other governmental bodies, the courts or law enforcement officials ten (10) days prior to releasing the requested information.
- (7) If a court issues a subpoena for a case record or for any Contractor representative to testify concerning an applicant or beneficiary, the Contractor must notify HCFA at least ten (10) days prior to the required production date so HCFA may inform the court of the applicable statutory provisions, policies, and regulations restricting disclosure of information.
- (8) The Contractor shall not request or release information to other parties to verify income, eligibility and the amount of assistance under Medicaid or CHIP, prior to express approval from HCFA.

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

E.24. Offer of Gratuities. By signing this contract, the Contractor signifies that no member of or a delegate of Congress, nor any elected or appointed official or employee of the State of Tennessee, the federal General Accounting Office, federal Department of Health and Human Services, the Center for Medicare and Medicaid Services, or any other state or federal agency has or will benefit financially or materially from this Contract. This Contract may be terminated by HCFA as provided in Section D.6, if it is determined that gratuities of any kind were offered to or received by any of the aforementioned officials or employees from the Contractor, its agent, or employees.

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

- a) Performance - In performance of this contract, the contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:
 - (1) This provision shall not apply if information received or delivered by the Parties under this Contract is NOT "federal tax returns or return information" as defined herein.
 - (2) All work will be done under the supervision of the contractor or the contractor's employees.
 - (3) Any Federal tax returns or return information (hereafter referred to as returns or return information) made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Disclosure to anyone other than an officer or employee of the contractor will be prohibited.
 - (4) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.

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

b) Criminal/Civil Sanctions

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

result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC section 7213A and 7431.

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

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

- E.26. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's Response to RFP 31865-00400 (Attachment 6.2, Section B.15) and resulting in this Contract.

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

- E.27. Nondiscrimination Compliance Requirements. The Contractor shall comply with all applicable federal and state civil rights laws, regulations, rules, and policies and Contract Section D.9 of this Contract.
- a) In order to demonstrate compliance with the applicable federal and State civil rights laws and regulations, which may include, but are not limited to, Title VI of the Civil Rights Act of 1964,

Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, and 42 U.S.C. § 18116 the Contractor shall designate a staff person to be responsible for nondiscrimination compliance.

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

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

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

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

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

of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain whether the Contractor is complying with the applicable civil rights laws.

- (6) The Contractor shall make available to beneficiaries and participants in HCFA's programs and other interested persons information regarding the provisions of the applicable civil rights laws as set forth in the implementing regulations, including 45 C.F.R. § 80.6 and 45 C.F.R. § 84.8. For example, a notification shall state, where appropriate, that the Contractor does not discriminate in admission or access to, or treatment or employment in, its programs or activities. The notification shall also include an identification of the responsible employee designated for its nondiscrimination compliance. This notice shall be considered a vital document and shall be available at a minimum in the English and Spanish languages.
- (7) The Contractor shall use and have available to individuals HCFA's discrimination complaint forms for the HCFA program or programs covered under this contract. These discrimination complaint forms shall be provided to individuals upon request and be available on the Contractor's website. HCFA's discrimination complaint forms are vital documents and must be available at a minimum in the English and Spanish languages. HCFA's Director of Non-Discrimination Contract Compliance shall work with the Contractor's NCC on providing the Contractor with the HCFA program's or programs' discrimination complaint forms that are required under this contract.

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

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

- (ii) If there are fewer than fifty (50) individuals in a language group that is part the population targeted under this Contract that reaches the five percent (5%) trigger in (a), the Contractor shall inform those individuals that it does not provide written translation of vital documents but provides written notice in that group's primary language of the right to receive competent oral interpretation of those written materials, free of cost.
- (iii) At a minimum, all vital Contractor documents shall be translated and available in Spanish.
- (12) In accordance with the requirements set forth in 42 U.S.C. § 300kk, the Contractor must develop and maintain the ability to collect and report data on race, ethnicity, sex, primary language, and disability status for the population targeted under this Contract and the parents or legal guardians of minors or legally incapacitated individuals targeted under this Contract. In collecting this data the Contractor shall use the Office of Management and Budget (OMB) standards, at a minimum, for race and ethnicity measures. Data collection standards for Race, Ethnicity, Sex, Primary Language, and Disability Status are available from the Office of Minority Health and on its website located at: <http://www.minorityhealth.hhs.gov/templates/content.aspx?ID=9227&lvl=2&lvlID=208>.
- b) The Contractor shall submit the following nondiscrimination compliance deliverables to HCFA as follows:

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

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

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

- c) Discrimination Complaint Investigations. All discrimination complaints against the Contractor and its employees and its subcontractors that are considered to be recipients of federal financial assistance under this contract shall be resolved according to the provisions of this Section and the below subsections:
 - (1) Discrimination Complaints against the Contractor and/or Contractor's Employees. When complaints concerning alleged acts of discrimination committed by the Contractor and/or its

employees related to the provision of and/or access to one of HCFA's programs are reported to the Contractor, the Contractor's NCC shall send such complaints within two (2) business days of receipt to HCFA. HCFA shall investigate and resolve all alleged acts of discrimination committed by the Contractor and/or its employees. The Contractor shall cooperate with HCFA during the investigation and resolution of such complaints. HCFA reserves the right to request that the Contractor's NCC assist with conducting the initial investigations and to suggest resolutions of alleged discrimination complaints. If HCFA requests that the Contractor's NCC assist HCFA with conducting the initial investigation, the Contractor's NCC within five (5) business days from the date of the request shall start the initial investigation. The Contractor's NCC shall provide HCFA with all requested information, including but not limited to, the identity of the party filing the complaint; the complainant's relationship to the Contractor; the circumstances of the complaint; date complaint filed; and the Contractor's suggested resolution. HCFA shall review the Contractor's initial investigations and determine the appropriate resolutions for the complaints as set forth in subsection c below. During the complaint investigation, the Contractor shall have the opportunity to provide HCFA with any information that is relevant to the complaint investigation. Any documentation or materials related to such investigation shall be considered confidential and not subject to disclosure to any third party, unless disclosure is otherwise required by law.

- (2) Discrimination Complaints against the Contractor's Subcontractors that are recipients of federal financial assistance under this Contract. Should complaints concerning alleged acts of discrimination committed by the Contractor's subcontractors related to the provision of and/or access to one of HCFA's programs be reported to the Contractor, the Contractor's nondiscrimination compliance officer shall inform HCFA of such complaints within two (2) business days from the date Contractor learns of such complaints. If HCFA requests that the Contractor's nondiscrimination compliance officer assist HCFA with conducting the initial investigation, the Contractor's nondiscrimination compliance officer within five (5) business days from the date of the request shall start the initial investigation. Once an initial investigation has been completed, the Contractor's nondiscrimination compliance officer shall report his/her determinations to HCFA. At a minimum, the Contractor's nondiscrimination compliance officer's report shall include the identity of the party filing the complaint; the complainant's relationship to the Contractor; the circumstances of the complaint; date complaint filed; and the Contractor's suggested resolution. HCFA shall review the Contractor's initial investigations and determine the appropriate resolutions for the complaints as set forth in subsection (3) below. HCFA reserves the right to investigate and resolve all complaints concerning alleged acts of discrimination committed by the Contractor's subcontractors that are recipients of federal financial assistance under this Contract. The Contractor's Providers and Subcontractors that are recipients of federal financial assistance under this Contract shall cooperate with HCFA and the Contractor during discrimination investigations and resolutions.
- (3) Corrective Action Plans to Resolve Discrimination Complaints. If a discrimination complaint against the Contractor or its employees or one of its subcontractors who are recipients of federal financial assistance under this contract, is determined by HCFA to be valid, HCFA shall, at its option, either (i) provide the Contractor with a corrective action plan to resolve the complaint, or (ii) request that the Contractor submit a proposed corrective action plan to HCFA for review and approval that specifies what actions the Contractor proposes to take to resolve the discrimination complaint. Upon provision of the corrective action plan to Contractor by HCFA, or approval of the Contractor's proposed corrective action plan by HCFA, the Contractor shall implement the approved corrective action plan to resolve the discrimination complaint. HCFA, in its sole discretion, shall determine when a satisfactory discrimination complaint resolution has been reached and shall notify Contractor of the approved resolution. A discrimination complaint resolution corrective action plan may consist of approved nondiscrimination training on relevant discrimination topics. Prior to use, the nondiscrimination training material shall be reviewed and approved by HCFA. Time periods for the implementation of the corrective action plan nondiscrimination training shall be designated by HCFA.

- d) Electronic and Information Technology Accessibility Requirements. Contractor agrees to comply with the electronic and information technology accessibility requirements under the federal civil rights laws including Section 504 and Section 508 of the Rehabilitation Act of 1973 ("Section 508") and the Americans with Disabilities Act. To comply with the accessibility requirements for Web content and non-Web electronic documents and software, the Contractor shall use W3C's Web Content Accessibility Guidelines ("WCAG") 2.0 AA (For the W3C's guidelines see: <http://www.w3.org/TR/WCAG20/>) (Two core linked resources are Understanding WCAG 2.0 <http://www.w3.org/TR/UNDERSTANDING-WCAG20/> and Techniques for WCAG 2.0 <http://www.w3.org/TR/WCAG20-TECHS/>).

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

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

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

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

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

IN WITNESS WHEREOF,

CONTRACTOR LEGAL ENTITY NAME:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

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

LARRY B. MARTIN, COMMISSIONER

DATE

ATTACHMENT A**Applicable Terms and Definitions**

1. Access – an enrollee’s ability to obtain medical care. The ease of access is determined by components such as the availability of medical services and their acceptability to the enrollee, the location of health care facilities, transportation, hours of operation, and cost of care.
2. (The) Act – The Social Security Act. Title XIX of the Act governs the federal Medicaid program.
3. Administrative Cost – All costs related to the administration of this Contract.
4. Adverse Action - Any action taken by the MCC and CoverKids HPA(s) and DBM to deny, reduce, terminate, delay or suspend a covered service as well as any other acts or omissions of the MCC and CoverKids HPA(s) and DBM which impair the quality, timeliness or availability of such benefits.
5. Appeal Procedure - The process to resolve an enrollee’s right to contest verbally or in writing, any adverse action taken by the MCC and CoverKids HPA(s) and DBM to deny, reduce, terminate, delay, or suspend a covered service as well as any other acts or omissions of the MCC and CoverKids HPA(s) and DBM which impair the quality, timeliness or availability of such benefits. The appeal procedure shall be governed by TennCare rules 1200-13-12-.11, 1200-13-13-.11, 1200-13-14-.11, CoverKids rule 0620-05-01-.05 and any and all applicable court orders. Complaint shall mean an enrollee’s right to contest any other action taken by the MCC and CoverKids HPA(s) and DBM or service provider other than those that meet the definition of an adverse action.
6. Balanced Budget Act (BBA) – A congressional law and a set of statutes that amends and modifies Medicaid regulations. The rules can be found in 42 CFR Part 438, Subparts A-J.
7. Baseline Assessment Tool (BAT) – Tool provided by the National Committee for Quality Assurance to complete and forward to the approved Health Employer Data and Information Set auditing firm as the initial step in the HEDIS audit.
8. Behavioral Health Services – Generally recognized and accepted mental health and substance abuse services.
9. Benefits - A schedule of health care services to be delivered to enrollees covered in the Contractor Risk Agreement.
10. Best Practice Guidelines—Guidelines for provision of health and behavioral health services to children in state custody.
11. Best Practice Network (BPN)—A group of Best Practice Providers.
12. Best Practice Provider (BPP)—A provider (primary care, behavioral health, or dental) who has been determined by the state to have the interest, commitment, and competence to provide appropriate care for children in state custody, in accordance with the Remedial Plan and statewide Best Practice Guidelines, and who has agreed to be in the MCO and CoverKids HPA(s) and DBM network.
13. Business Associate – A vendor as defined in 45 CFR 160.103 that provides a service or performs or assists in the performance of an activity, for or on behalf of the Covered Entity that involves the use or disclosure of protected health information (PHI). Any reference to Business Associate includes the Business Associate’s employees, agents, officers, subcontractors, third party contractors, volunteers, or directors.
14. Case Manager - An organization or a provider responsible for supervising or coordinating the provision of initial and primary care to patients; for initiating and/or authorizing referrals for specialty care; and for monitoring the continuity of patient care services.
15. Center of Excellence for Children in or at Risk of State Custody - Tertiary care academic medicine center designated by the state as possessing, or being in a position to quickly develop, expertise in pediatrics, child behavioral health issues (including aggression, depression, attachment disorders and sexualized behaviors), and the unique health care needs of children in or at risk of state custody.

16. Center of Excellence for AIDS – Integrated networks designated by the State as able to provide a standardized and coordinated delivery system encompassing a range of services needed by TennCare eligibles with HIV disease.
17. CFR - Code of Federal Regulations.
18. Children At Risk of State Custody - Children who are determined to belong in one of the following two groups:
 - a. Children at imminent risk of entering custody - Children who are at risk of entering state custody as identified pursuant to TCA 37-5-103(10).
 - b. Children at serious risk of entering custody - Children whom DCS has identified as a result of a CPS referral; or children whose parents or guardians are considering voluntary surrender (who come to the attention of DCS); and who are highly likely to come into custody as a result of being unable to access behavioral health services.
19. Clean claim - A claim received by the MCO and CoverKids HPA(s) and DBM for adjudication, and which requires no further information, adjustment, or alteration by the provider of the services in order to be processed and paid by the MCO and CoverKids HPA(s) and DBM.
20. Clinical Practice Guidelines - Systematically developed tools that help practitioners make decisions about appropriate health care for specific clinical circumstances. Such guidelines are usually evidence-based. **See practice guidelines.**
21. CMS - Centers for Medicare & Medicaid
22. Community Service Area - one (1) or more counties in a defined geographical area in which the MCC is authorized to enroll and serve TennCare members in exchange for a monthly capitation fee.
 - a. The following geographical areas shall constitute the twelve (12) Community Service Areas in Tennessee:
 - b. Northwest CSA - Lake, Obion, Weakley, Henry, Dyer, Crockett, Gibson, Carroll and Benton
 - c. Southwest CSA - Lauderdale, Haywood, Madison, Henderson, Decatur, Tipton, Fayette, Hardeman, Hardin, Chester and McNairy
 - d. Shelby CSA - Shelby County
 - e. Mid-Cumberland CSA - Stewart, Montgomery, Robertson, Sumner, Trousdale, Houston, Dickson, Cheatham, Wilson, Humphreys, Williamson and Rutherford
 - f. Davidson CSA - Davidson County
 - g. South Central CSA - Perry, Hickman, Maury, Marshall, Bedford, Coffee, Wayne, Lewis, Lawrence, Giles, Lincoln and Moore
 - h. Upper Cumberland CSA - Macon, Clay, Pickett, Smith, Jackson, Overton, Fentress, Dekalb, Putnam, Cumberland, White, Cannon, Warren and Van Buren
 - i. Southeast CSA - Franklin, Grundy, Sequatchie, Bledsoe, Rhea, Meigs, McMinn, Polk, Bradley and Marion
 - j. Hamilton CSA - Hamilton County
 - k. East Tennessee CSA - Scott, Campbell, Claiborne, Morgan, Anderson, Union, Grainger, Hamblen, Jefferson, Cocke, Sevier, Blount, Monroe, Loudon and Roane
 - l. Knox CSA - Knox County
 - m. First Tennessee CSA - Hancock, Hawkins, Sullivan, Greene, Washington, Unicoi, Carter and Johnson
23. Complaint – The process to resolve an enrollee’s right to contest any action taken by the MCC and CoverKids HPA(s) and DBM or service provider other than an adverse action. The MCC and CoverKids HPA(s) and DBM shall not treat anything as a complaint that falls within the definition of adverse action.
24. Consumer Assessment of Health Plans Study (CAHPS) - A set of standardized surveys that measure patient satisfaction with experience of care. CAHPS is sponsored by the Agency for Health Care Quality.
25. Contractor Risk Agreement (CRA) – The Agreement between the MCCs, CoverKids HPA(s), CoverKids DBM and TennCare and CoverKids that outlines TennCare and CoverKids Benefits, the scope of work, fiscal agreement, etc.
26. Covered Service - See Benefits.

27. CoverKids - The State of Tennessee and any entity authorized by statute or otherwise to act on behalf of the State of Tennessee in administering and/or enforcing the terms of this Contract.
28. CoverKids Enrollee - an enrollee who qualifies and has been determined eligible for benefits in the CoverKids program through eligibility criteria designated in the CoverKids Eligibility Manual.
29. Dental Benefits Manager (DBM) - An entity responsible for the provision and administration of dental services, as defined by TennCare and CoverKids.
30. Department of Children's Services (DCS) – The state agency responsible for child protective services, foster care, adoption, programs for delinquent youth, probation, aftercare, treatment and rehabilitation programs for identified youth, and licensing for all child-welfare agencies, except for child (day) care agencies and child support.
31. DCS Custody Children - Children who have been identified by DCS as belonging in one of the following groups:
 - a. Children in the custody of DCS—Children in the legal and physical custody of DCS whose living arrangement is provided by DCS.
 - b. Children in the legal, but not physical, custody of DCS—Children who are in DCS's legal custody but who reside with parents or guardians or other caretakers.
32. DHHS - United States Department of Health and Human Services.
33. Disenrollment - The discontinuance of a member's entitlement to receive covered services under the terms of this Contract, and deletion from the approved list of members furnished by TennCare to the MCC.
34. Early and Periodic Screening Diagnosis and Treatment (EPSDT) - Federally required Program requiring Medicaid-eligible individuals under twenty-one (21) years of age be provided early and periodic screening, diagnostic and treatment services, involving a comprehensive process in which children and adolescents are screened for health deficiencies, diagnosed, and then treated to the extent that medically necessary services are covered.
35. Eligible Person - Any person certified by TennCare and CoverKids as eligible to receive services and benefits under the TennCare and CoverKids Program.
36. Emergency Medical Condition - A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.
37. Enrollee - Any person who has enrolled in the MCC's and CoverKids HPA(s) and DBM plan in accordance with the provisions of this Contract. (See Member, also).
38. Enrollee Month - A month of health care coverage for a TennCare eligible enrolled in an MCO plan.
39. Enrollees with Special Health Care Needs – Enrollees with special health care needs shall refer to enrollees identified through the Department of Children's Services (DCS).
40. Enrollment - The process by which a person becomes a member of the MCC's plan.
41. EQRO Systems - The technological environment, consisting, of but not limited to, all hardware, software, firmware, network connectivity, and documentation of such, that is utilized and necessary for the collection, creation, and maintenance of data associated with EQRO reporting responsibilities, and the creation and maintenance of reports necessary to meet the EQRO reporting responsibilities.
42. Essential Hospital Services – Hospital services to which it is essential for an MCO and CoverKids HPA(s) to provide access. Essential Hospital services include, but are not limited to, neonatal, perinatal, pediatric, trauma and burn services.
43. External Quality Review (EQR) - The review and evaluation by an External Quality Review Organization of information on quality, timeliness, and access to the health care and services that an MCO and CoverKids HPA(s) and DBM, or their contractor(s) furnish to Medicaid and CoverKids recipients.

44. External Quality Review Organization (EQRO) - An organization that meets the competence and independence requirements set forth in 42 CFR § 438.354, and performs external quality review, and other EQR-related activities as set forth in 42 CFR § 438.358, or both.
45. External Quality Review Protocols - A series of procedures or rules to monitor, measure, and document information on quality, timeliness, and access to the health care and services that an MCO and CoverKids HPA(s) and DBM or their contractors furnish to Medicaid and CoverKids recipients.
46. Facility – Any premises (a) owned, leased, used or operated directly or indirectly by or for the MCC and CoverKids HPA(s) or its affiliates for purposes related to this Contract; or (b) maintained by a subcontractor or provider to provide services on behalf of the MCC and CoverKids HPA(s).
47. Fee-for-Service - A method of making payment for health services based on a fee schedule that specifies payment for defined services.
48. Fixed Administrative Fee Payment - The fee which is paid by TennCare and CoverKids to a MCC and CoverKids HPA(s) for each enrollee covered under a plan for the administration of this Contract and arrangement of medical services, whether or not the enrollee utilizes services during the payment period.
49. FTE - Full time equivalent position.
50. Grand Region – A defined geographical region that include specified Community Service Areas in which a MCC is authorized to enroll and serve TennCare members in exchange for a monthly capitation fee. The following Community Service Areas constitute the three (3) Grand Regions in Tennessee:
- | | | |
|------------------------------|----------------------------|--------------------------|
| 51. <u>East Grand Region</u> | <u>Middle Grand Region</u> | <u>West Grand Region</u> |
| First Tennessee | Upper Cumberland | Northwest |
| East Tennessee | Mid Cumberland | Southwest |
| Knox | Davidson | Shelby |
| Southeast Tennessee | South Central | |
| Hamilton | | |
52. Health Maintenance Organization (HMO) - An entity certified by the Department of Commerce and Insurance under applicable provisions of Tennessee Code Annotated (T.C.A.) Title 56, Chapter 32.
53. Health Care Finance and Administration (HCFA) is a state agency that oversees all of the health care related divisions within the Tennessee Department of Finance and Administration. HCFA includes the Bureau of TennCare, the Office of eHealth, and the Strategic Planning and Innovation Group which includes all of the Cover Tennessee Programs, including CoverKids, CoverTN, AccessTN, and CoverRx.
54. HPA – Health Plan Administrator. The Health Plan Administrator(s) provides medical, vision, behavioral health and pharmacy services to the CoverKids program.
55. HEDIS – HealthCare Effectiveness Data and Information Set (HEDIS) – The most widely used set of performance measures used in the managed care industry, designed to allow reliable comparison of the performance of managed health care plans. HEDIS is developed and maintained by the National Committee for Quality Assurance.
56. HEDIS Compliance Audit - A comprehensive assessment by a HEDIS Certified Auditor using findings from the HEDIS Baseline Assessment Tool (BAT), from audits in prior years (if applicable) and the HEDIS logical measure groups to select a core set of measures from all MCO-reported measures. The auditor evaluates the core set of measures across all applicable domains described in the HEDIS specifications and extrapolates findings from the core set to all measures reported by the MCO.
57. HIPAA - Health Insurance Portability and Accountability Act of 1996, as codified at 42 USCA §1320d-d8
58. Home Health Services - Home health services are a mandatory benefit for individuals entitled to nursing facility services under the State's Medicaid and CoverKids plan. Services must be provided at a recipient's place of residence and must be ordered by a physician as part of a plan of care that the physician reviews every sixty days. Home health services must include nursing services, as defined in the State's Nurse Practice Act, that are provided on a part-time or

- intermittent basis by a home health agency, home health aide services provided by a home health agency, and medical supplies, equipment, and appliances suitable for use in the home. Physical therapy, occupational therapy, speech pathology, and audiology services are optional services States may choose to provide. To participate in the Medicaid and CoverKids program, a home health agency must meet the conditions of participation for Medicare.
59. Hospice - Services as described in Medicaid Rule 1200-13-10 and the Code of Federal Regulations 42 CFR Part 418 which are provided to terminally ill individuals who elect to receive hospice services provided by a certified hospice agency.
 60. IRS - Drugs that are Identical, Related or Similar to LTE drugs.
 61. Institutes for Mental Diseases (IMD) - In 1988, P.L. 100-360 defined an institution for mental diseases as a hospital, nursing facility, or other institution of more than 16 beds primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services. This definition is in §1905(i) of the Act and in 42 CFR § 435.1009. The regulations also indicate that an institution is an IMD if its overall character is that of a facility established and maintained primarily for the care and treatment of individuals with mental diseases.
 62. Inter-rater Reliability – the ability of two individuals to review and analyze the same information and come up with substantially consistent results.
 63. Key Personnel – Vendor staff being proposed to do the work under this proposal.
 64. Long-term care (LTC) – the services of one of the following: a nursing facility (NF); An Intermediate Care Facility for the Mentally Retarded (ICF/MR), or a Home and Community-Based Services (HCBS) waiver program. (Services provided under a HCBS waiver program are considered to be alternatives to long-term care
 65. LTE - Drugs that the Food and Drug Administration (FDA) considers to be Less Than Effective because there is a lack of substantial evidence of effectiveness for all labeled indications and for which there is no compelling justification for their medical need.
 66. MCC – Managed Care Contractor. Collectively this refers to all entities contracted to provide care to TennCare enrollees, including the managed care organizations, behavioral health organizations, and dental benefit manager.
 67. Managed Care Organization (“MCO”) - An HMO which participates in the TennCare program.
 68. Marketing - Any activity conducted by or on behalf of the MCC where information regarding the services offered by the MCC is disseminated in order to persuade eligible persons to enroll or accept an application for enrollment in the MCC's plan operated pursuant to this Contract.
 69. Market Area - One (1) or more community service areas in which the MCC is authorized, by terms of this Contract, to market eligible persons for enrollment in the MCC's plan.
 70. Medical Loss Ratio – The percentage of capitation payment received from TennCare that is paid for medical expenses (covered medical services).
 71. Medical Management Policies and Procedures – All policies and procedures related to the coordination and provision of services including, but not limited to:
 - a. Utilization Management policies and procedures, including prior authorization policies and procedures
 - b. Referral and Exemption Requirements
 - c. Out of Area or Out of Plan Use policies and procedures
 - d. Transplant policies and procedures established in accordance
 - e. Prescription Drug Formulary
 - f. Prenatal Care policies and procedures
 - g. Quality Monitoring/Quality Improvement Program
 - h. Management of Medical Care and Coordination of Care policies and procedures
 72. Medical Record - A single complete record kept at the site of the member's treatment(s), which documents all of the treatment plans developed, medical services ordered for the member and medical services received by the member.
 73. Medically Necessary – Defined by Tennessee Code Annotated, Section 71-5-144, and shall describe a medical item or service that meets the criteria set forth in that statute. The term “medically necessary,” as defined by TCA Section 71-5-144 applies to TennCare enrollees. Implementation of the term “medically necessary” is provided for in these rules, consistent with

- the statutory provisions, which control in case of ambiguity. No enrollee shall be entitled to receive and TennCare and/or CoverKids shall not be required to pay for any items or services that fail fully to satisfy all criteria of “medically necessary” items or services, as defined either in the statute or in the Medical Necessity rule chapter 1200-13-16.
74. Member - A person who enrolls in the MCC's and CoverKids HPA(s) and DBM plan under the provisions of this Contract with TennCare and CoverKids. (See Enrollee, also).
 75. NAIC – National Association of Insurance Commissioners.
 76. National Committee for Quality Assurance (NCQA) – A nonprofit organization committed to assessing, reporting on and improving the quality of care provided by organized delivery systems. Useful information on NCQA may be accessed at the NCQA website: www.ncqa.org
 77. Non-TennCare and/or CoverKids Provider – A provider who is not enrolled in TennCare and/or CoverKids and who accepts no TennCare and CoverKids reimbursement for any service, including Medicare crossover payments.
 78. OIG – The agency formed outside of TennCare and CoverKids to help prevent, identify and investigate fraud and abuse within the healthcare system, most notably the TennCare system.
 79. Out-of-Plan Services - Services provided by a non-contract provider.
 80. OIR – The Office for Information Resources is a division within the Department of Finance and Administration (F&A) that provides direction, planning, resources, execution and coordination in managing the information systems needs of the State of Tennessee.
 81. Performance Improvement Project (PIP) – Activities conducted by managed care organizations designed to improve the quality of care or services received by Medicaid managed care recipients and CoverKids HPA(s) and DBM enrollees.
 82. Performance Indicators – A preset criteria which involve the recipient or provider and show the outcomes and impact level of Contract performance on specified sets of the population.
 83. Pharmacy Benefits Manager (PBM) – An entity responsible for the provision and administration of pharmacy services.
 84. Population Health (PH) – A Population Health Management Program (PHMP) strives to address health needs at all points along the continuum of health and well-being through participation of, engagement with, and targeted interventions for the population. The goal of a PHMP is to maintain or improve the physical and psychosocial well-being of individuals through cost-effective and tailored solutions
 85. PH Level 0 Program - members are considered well and have no identified health risks. The criteria for stratification into Level zero is no identified health risk such as tobacco use, substance abuse or weight management problems; no identified chronic conditions [as identified by the Chronic Condition tool created by the Agency for Healthcare Research and Quality's (AHRQ) HCUP database]; no indication of pregnancy; or no claims history. Members identified as well are automatically enrolled in the level zero wellness program
 86. PH Level 1 Program - members in this level are considered to have low to moderate health risk. All members that do not meet the level zero or level two criteria are placed in level one. There are three programs within the Population Health (PH) level one stratification. Members who are pregnant but have no or low risks for pregnancy are passively enrolled in the Low Risk Maternity program. For members who have identified health risks or chronic conditions and do not stratify in the top 3% are passively enrolled in the Health Risk Management program which is similar to the previous disease management programs. Level one also includes the Care Coordination program which is the PH program which addresses members with acute health needs or risks which need immediate attention but do not meet the requirements for Complex Case Management.
 87. PH Level 2 Program - members in this stratification are considered to be the sickest of the sick and are in the top three percent of the predictive modeling pool. These members can also be identified for level two by referrals or health risk assessments. These members are considered to be the most at risk for adverse health outcomes. There are three PH programs in level two. The first is the High Risk Maternity program. Pregnant members are identified for this program either by referrals or an OB risk assessment. Chronic Care Management and Complex Case Management are the two other PH programs in this level. Members must actively enroll in these voluntary programs. The goal of the Chronic Care Management program is to improve the quality

- of life, health status and utilization of services of members with multiple conditions by providing intense self-management education and support. The expectation is that members will remain in this program for 6-12 months or until they have the skills and self-efficacy to self-manage their multiple conditions. The goal of the Complex Case Management program is to move members to optimal levels of health and well-being by providing timely coordination of quality services and self-management support. The expectation is for members to be enrolled in this program for 3-4 months for stabilization of their immediate critical needs and then move them to the Chronic Care Management program if appropriate.
88. Post-stabilization Care Services - Non-emergency services subsequent to an emergency that a treating physician views as medically necessary to maintain the stabilized condition after an emergency medical condition has been stabilized or to improve or resolve the enrollee's condition. An MCOs financial responsibility for post stabilization care services shall end when one of the following are met:
- A plan physician with privileges at the treating hospital assumes responsibility for the enrollee's care
 - A plan physician assumes responsibility for the enrollee's care through transfer
 - An MCO representative and the treating physician reach an agreement concerning the enrollee's care
 - The enrollee is discharged.
89. Practice Guidelines – Systematically developed descriptive tools or standardized specifications for care to assist practitioner and patient decisions about appropriate health care for specific clinical circumstances. Practice guidelines are typically developed through a formal process and are based on authoritative sources that include clinical literature and expert consensus. Practice guidelines may also be called practice parameters, treatment protocols, clinical criteria, or clinical guidelines.
90. Presumptive Eligibility - Temporary eligibility granted to a pregnant woman whose family income is at or below a specified percentage of the federal poverty level in order for the woman to receive prenatal care services.
91. Primary Care Physician - A physician responsible for supervising, coordinating, and providing initial and primary care to patients; for initiating referrals for specialist care; and for maintaining the continuity of patient care. A primary care physician is a physician who has limited his practice of medicine to general practice or who is a Board Certified or Eligible Internist, Pediatrician, Obstetrician/Gynecologist, or Family Practitioner.
92. Primary Care Provider - A primary care physician or registered professional nurse or physician assistant practicing in accordance with state law who is responsible for supervising, coordinating, and providing initial and primary care to patients; for initiating referrals for specialist care; and for maintaining the continuity of patient care.
93. Primary Treatment Center (PTC)—A center developed by DCS for the purpose of providing short-term evaluation and treatment to children who have just come into custody, children already in state custody, children who have been released from state custody and who have been recommitted, and children who are at imminent risk of entering custody.
94. Prior Authorization - The act of authorizing specific services or activities before they are rendered or activities before they occur.
95. Privacy/Security Incident - Any use or disclosure that is not permitted under the Privacy and Security rules that compromises the protected health information (PHI) that poses a potential for significant risk of financial, reputational, or other harm to the enrollee as determined by TennCare.
96. Program Integrity – The Program Integrity unit is responsible for assisting with the prevention, identification and investigation of fraud and abuse within the health care system.
97. Protected Health Information (PHI) - information created or received by Business Associate from or on behalf of Covered Entity that relates to the provision of health care to an individual; the past, present, or future physical or mental health or condition of an individual; or past, present, or future payment for provision of health care to an individual. 45 CFR §160.103. PHI includes demographic information that identifies the individual or about which there is reasonable basis to believe, can be used to identify the individual. 45 CFR § 160.103. PHI is information transmitted

- or held in any form or medium. 45 CFR §160.103. PHI does not include education records covered by the Family Educational Rights and Privacy Act, as amended, 20 USCA §1232g(a)(4)(B)(iv).
98. Provider - An appropriately licensed institution, facility, agency, person, corporation, partnership, or association that delivers health care services. Providers are categorized as either TennCare and CoverKids Providers or Non-TennCare and CoverKids Providers. TennCare and CoverKids Providers may be further categorized as being one of the following:
 - a. Participating Providers or In-Network Providers;
 - b. Non-Participating Providers or Out-of-Network Providers
 - c. Out-of-State Emergency Providers
 99. Provider Agreement - An agreement between an MCO and CoverKids HPA(s) and DBM and a provider or an MCO's subcontractor and a provider of health care services which describes the conditions under which the provider agrees to furnish covered services to the MCO's and CoverKids HPA(s) and DBM members.
 100. Quality Assurance (QA) - A formal set of activities to review and affect the quality of services provided. Quality assurance includes quality assessment and corrective actions to remedy any deficiencies identified in the quality of direct patient, administrative and support services.
 101. Quality Improvement (QI) - The effort to assess and improve the performance of a program or organization. Quality Improvement includes quality assessment and implementation of corrective actions to address any deficiencies identified. The ongoing process of responding to data gathered through quality monitoring efforts, in such a way as to improve the quality of health care delivered to individuals. This process necessarily involves follow-up studies of the measures taken to effect change in order to demonstrate that the desired change has occurred.
 102. Quality Monitoring (QM) - The ongoing process of assuring that the delivery of health care is appropriate, timely, accessible, available, and medically necessary and in keeping with established guidelines and standards and reflective of the current state of medical knowledge.
 103. Risk Stratification - The act or process of dividing TennCare members into different levels of need based on their health risk. For TennCare's Population Health program, risk stratification is accomplished by predictive modeling which is based on claims, pharmacy, lab and other data. Information from health risk assessments is also used to identify member's risk level. Through this process members are identified for one of three health risk stratification levels. Level zero is wellness, level one is low to moderate health risk, and level two is the top three percent or the sickest of the sick.
 104. Routine Care - Non urgent medical care such as screenings, immunizations, or health assessments.
 105. Seriously Emotionally Disturbed (SED) - This determination can only be made by a qualified provider on behalf of a minor child.
 106. Serious Mental Illness (SMI) - This determination can only be made by a qualified provider on behalf of an adult.
 107. Service Location - Any location at which an enrollee obtains any health care service covered by the MCC and CoverKids HPA(s) and DBM pursuant to the terms of this Contract.
 108. Service Site - The locations designated by the MCC and CoverKids HPA(s) and DBM at which members shall receive primary care provider and preventive services.
 109. Shall - Indicates a mandatory requirement or a condition to be met.
 110. Specialty Services - Includes Essential Hospital Services, services provided by a Center of Excellence, and specialty physician services.
 111. State - State of Tennessee.
 112. State Plan - The State Plan is a comprehensive statement submitted by the state Medicaid and CHIP agency describing the nature and scope of its program and giving assurance that it will be administered in conformity with the specific requirements stipulated in the pertinent title of the Act, and other applicable official issuances of the Department of Health and Human Services (HHS). The State Plan contains all information necessary for the Department to determine whether the plan can be approved, as a basis for Federal Financial Participation (FFP) in the State program. The State Plan consists of written documents furnished by the State to cover each of its programs under the Act including the medical assistance program (Title XIX) or Title XXI. After approval of

- the original plan by HHS, all relevant changes, required by new statutes, rules, regulations, interpretations, and court decisions, are required to be submitted currently so HHS may determine whether the plan continues to meet federal requirements and policies. Determinations regarding State Plans (including plan amendments and administrative practice under the plans) originally meet, or continue to meet, the requirements for approval based on relevant federal statutes and regulations. (may be accessed from the TennCare website <http://www.tn.gov/tenncare/> or CoverKids website <http://www.covertn.gov/web/stateplan.html>)
113. Subcontract - An agreement entered into by the Contractor with any other organization or person who agrees to perform any administrative function or service for the Contractor specifically related to securing or fulfilling the Contractor's obligations to TennCare and CoverKids under the terms of this Contract, when the intent of such an agreement is to delegate the responsibility for any major service or group of services required by the TennCare and CoverKids /Contractor Contract. This shall also include any and all agreements between any and all subcontractors for the purposes related to securing or fulfilling the Contractor's obligations to TennCare and CoverKids under the terms of this Contract.
 114. Subcontractor - Any organization or person who provides any function or service for the Contractor specifically related to securing or fulfilling the Contractor's obligations to HCFA under the terms of this Contract.
 115. TennCare – TennCare is the state of Tennessee's Medicaid program that provides health care for approximately 1.3 million Tennesseans, and is located within the Department of Finance and Administration, Division of Health Care Finance and Administration (HCFA).
 116. TennCare Medicaid Enrollee – An enrollee who qualifies and has been determined eligible for benefits in the TennCare program through Medicaid eligibility criteria as described in the Medicaid/TennCare Rules and Regulations.
 117. TennCare and CoverKids Provider - A provider who accepts as payment in full for furnishing benefits to a TennCare and CoverKids enrollee, the amounts paid pursuant to an approved agreement with an MCC and/or CoverKids HPA(s) and DBM or TennCare and/or CoverKids. Such payment may include copayments from the enrollee or the enrollee's responsible party. Except in the case of Out-of-State Emergency Providers, a TennCare and/or CoverKids HPA(s) provider must be enrolled with TennCare and/or CoverKids HPA(s). TennCare providers must abide by all TennCare rules and regulations, including the rules regarding provider billing of patients as found in Rule 1200-13-13.08. TennCare and CoverKids HPA(s) Providers must be appropriately licensed for the services they deliver and must not be providers who have been excluded from participation in Medicare or Medicaid.
 118. TennCare Standard Enrollee – an enrollee who qualifies and has been determined eligible for benefits in the TennCare program through eligibility criteria designated as "TennCare Standard" as described in the February 12, 2002 TennCare Program Design and Waiver Modifications as submitted to CMS and the TennCare Rules and Regulations. (This eligibility category is scheduled to be disenrolled as part of the proposed TennCare Reform.
 119. Tennessee Bureau of Investigation, Medicaid Fraud Control Unit (TBI MFCU) – The State agency responsible for the investigation of provider fraud and abuse in the State Medicaid Program.
 120. Tennessee Department of Mental Health and Developmental Disabilities ("TDMHDD") - The State agency having the statutory authority to provide care for persons with mental illness and persons with developmental disabilities. For the purposes of this Contract, TDMHDD shall mean the State of Tennessee and any entity authorized by statute or otherwise to act on behalf of the State of Tennessee in administering and/or enforcing the terms of this Contract.
 121. Third Party Resource - Any entity or funding source other than the enrollee or his/her responsible party, which is or may be liable to pay for all or part of the cost of medical care of the enrollee.
 122. Third Party Liability (TPL) – Any amount due for all or part of the cost of medical care from a third party.
 123. Urgent Care – Any request for medical care or treatment with respect to which the application of the time periods for making non-urgent care determinations:
 - a. Could seriously jeopardize the life or health of the member or the member's ability to regain maximum function, based on a prudent layperson's judgment, or

- b. In the opinion of a practitioner with knowledge of the member's medical condition, would subject the member to severe pain that cannot be adequately managed without the care or treatment that is the subject of the request.
124. Vital MCC Documents – Consent forms and notices pertaining to the reduction, denial, delay, suspension or termination of services. All vital documents must be available in Spanish.

ATTACHMENT B**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

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

CONTRACTOR SIGNATURE

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

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION

ATTACHMENT C**LIQUIDATED DAMAGES**

A general liquidated damage of up to One Thousand Dollars (\$1,000.00) per calendar day/occurrence, as applicable, may be assessed at the sole discretion of the State for any violation of a Contract provision that is not specifically listed in the following table.

HCFA may elect to apply the following liquidated damages remedies in the event the Contractor fails to perform its obligations under this Contract in a proper and/or timely manner. Upon determination by HCFA that the Contractor has failed to meet any of the requirements of this Contract in a proper and/or timely manner, HCFA will notify the Contractor in writing of the deficiency and of the potential liquidated damages to be assessed. Liquidated damages shall be assessed for any part of each week during which the deficiency occurs or remains uncorrected, unless the amount of liquidated damages is otherwise designated as "per occurrence" or "per incident" in the following table. Should the deficiency remain uncorrected for more than thirty (30) days from the date of the original notification of the deficiency by HCFA, HCFA may impose an additional liquidated damage of Five Hundred Dollars (\$500) per day from the date of the original notification to Contractor until said deficiency is resolved.

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

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

	<u>PROGRAM ISSUES</u>	<u>DAMAGE</u>
1.	Failure by the Contractor to meet the standards for privacy, security, and confidentiality of individual data as evidenced by a breach of the security per Section E. 2. and E.19	\$1,000 per affected member per occurrence.
2.	Failure by the Contractor to execute the appropriate agreements to effectuate transfer and exchange of HCFA enrollee PHI or HCFA confidential information including, but not limited to, a data use agreement, trading partner agreement, business associate agreement or qualified protective order prior to the use	\$1,000 per affected member per occurrence.

	or disclosure of PHI to a third party. (See E.17. and Business Associate Agreement between the parties)		
3.	Failure by the Contractor to seek express written approval from HCFA prior to the use or disclosure of HCFA enrollee data or HCFA confidential information in any form via any medium with any third party beyond the boundaries and jurisdiction of the United States. (See E.13 and Business Associate Agreement between the parties)		\$1,000 per affected member per occurrence.
4.	Failure by the Contractor to timely report violations in the access, use and disclosure of PHI or timely report a security incident or timely make a notification of breach or notification of suspected breach per Sections (See E.19 and Business Associate Agreement between the parties)		\$1,000 per affected member per occurrence.

RFP ATTACHMENT 6.7

**HEALTH CARE FINANCE AND ADMINISTRATION
HIPAA BUSINESS ASSOCIATE AGREEMENT
IN COMPLIANCE WITH PRIVACY AND SECURITY RULES**

THIS HIPAA BUSINESS ASSOCIATE AGREEMENT ("Agreement") is between **The State of Tennessee, Department of Finance and Administration, Health Care Finance and Administration** ("HCFA" or "Covered Entity"), 310 Great Circle Road, Nashville, TN 37243 and _____

_____ ("Business Associate"), located at _____, 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:**

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 “Breach of the Security of the [Business Associate’s Information] System” shall mean the unauthorized acquisition, including, but not limited to, access to, use, disclosure, modification or destruction, of unencrypted computerized data that materially compromises the security, confidentiality, or integrity of personal information maintained by or on behalf of the Covered Entity under the terms of Tenn. Code Ann. § 47-18-2107 and this Agreement. Good faith acquisition of personal information by an employee or agent of the Information Holder for the purposes of the Information Holder is not a Breach of the Security of the System; provided, that the personal information is not used or subject to further unauthorized disclosure.

1.2 “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.

1.3 “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 HCFA 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 HCFA program (“HCFA enrollees”), or relating to individuals who may be potentially enrolled in the HCFA 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.

1.4 “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.

1.5 “Information Holder” means any person or business that conducts business in this state, or any agency of the state of Tennessee or any of its political subdivisions, that owns or licenses computerized data that includes personal information

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

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 HCFA, 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, 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 HCFA information, to agree, by written agreement with Business Associate, to the same 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, 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 HCFA 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 Covered Entity does not have the requested PHI onsite and directs Business Associate to provide access to or a copy of his/her PHI directly to the Individual, or Individual's designee, the Business Associate shall have sixty (60) days from the date of the Individual's request to provide access to PHI or deliver a copy of such information to the Individual. The Business Associate shall notify the Covered Entity when it completes the response.
- (c) 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 thirty (30) days from date of Covered Entity's notice to provide access or deliver such information to the Covered Entity so that the Covered Entity may timely respond to the Individual within the sixty (60) day requirement of 45 C.F.R. § 164.524.
- (d) 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.
- (e) Business Associates 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.

- (f) Business Associate shall develop forms that are designed to collect the necessary written, signed designation that is required in order to permit Individuals to designate recipients of PHI.

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 to 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 the same restrictions and conditions in this Agreement with Business Associate regarding PHI except for the provision in Section 4.6.

3.4 Tennessee Consumer Notice of System Breach. Business Associate understands that the Covered Entity is an "Information Holder" (as may be Business Associate) under the terms of Tenn. Code Ann. § 47-18-2107, and that in the event of a breach of the Business Associate's security system as defined by that statute and Definition 1.1 of this agreement, the Business Associate shall indemnify and hold the Covered Entity harmless for expenses and/or damages related to the breach. Such obligation shall include, but is not limited to, the mailed notification to any Tennessee resident whose personal information is reasonably believed to have been acquired by an unauthorized individual. In the event that the Business Associate discovers circumstances requiring notification of more than one thousand (1,000) persons at one time, the person shall also notify, without unreasonable delay, all consumer reporting agencies and credit bureaus that compile and maintain files on consumers on a nationwide basis, as defined by 15 U.S.C. § 1681a, of the timing, distribution and content of the notices. Substitute notice, as defined by Tenn. Code Ann. § 47-18-2107(e)(2) and (3), shall not be permitted except as approved in writing in advance by the Covered Entity. The parties agree that PHI includes data elements in addition to those included by "personal information" under Tenn. Code Ann. § 47-18-2107, and agree that Business Associate's responsibilities under this paragraph shall include all PHI.

3.5 Reporting of Security Incidents. The Business Associate shall track all Security Incidents as defined by HIPAA and shall periodically report such Security Incidents in summary fashion as may be requested by the Covered Entity, but not less than annually within sixty (60) days of the anniversary of this Agreement. 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 Security Incident, including any "breach of the security of the system" under Tenn Code Ann. § 47-18-2107, 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.

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

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.

3.6 Contact for Security Incident Notice. Notification for the purposes of Sections 2.9, 3.4 and 3.5 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:

Privacy Officer
 HCFA
 310 Great Circle Rd.
 Nashville Tennessee 37243
 Phone: (615) 507-6855 Facsimile: (615) 532-7322

3.7 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.

3.8 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.

3.9 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 HCFA 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 HCFA 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 HCFA 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 HCFA 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 HCFA 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 HCFA 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 HCFA 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 2.7, 3.4 and 3.5 of this Agreement must be reported to the Privacy Officer pursuant to Section 3.6.

COVERED ENTITY:

Darin J. Gordon, Director
 Department of Finance and Adm.
 Health Care Finance & Admin.
 310 Great Circle Rd.
 Nashville, TN 37243
 Phone: (615) 507-6443
 Fax: (615) 253-5607

BUSINESS ASSOCIATE:

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 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 preempted 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:

HEALTH CARE FINANCE & ADMINISTRATION BUSINESS ASSOCIATE

By: _____
Darin Gordon, Director
Date: _____

By: _____

Date: _____

State of Tennessee, Dept. of Finance & Adm.
310 Great Circle Road Nashville, TN 37243
Phone: (615) 507-6443 Fax: (615) 253-5607

