



INTERAGENCY AGREEMENT SUMMARY

(Interagency Agreement between state agencies, including the University of Tennessee or Board of Regents colleges and universities)

Begin Date July 1, 2015	End Date June 30, 2018	Agency Tracking # 31865-00083	Edison ID 46294
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Contracting State Agency Name
Department of Commerce and Insurance

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

Service Caption
Financial and Compliance Oversight of TennCare HMOs, PLHSOs, and Third Party Administrators

Funding —

FY	State	Federal	Interdepartmental	Other	TOTAL Agreement Amount
2016	\$1,238,600.00	\$1,238,600.00			\$2,477,200.00
2017	\$1,238,600.00	\$1,238,600.00			\$2,477,200.00
2018	\$1,238,600.00	\$1,238,600.00			\$2,477,200.00
TOTAL:	\$3,715,800.00	\$3,715,800.00			\$7,431,600.00

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

<p>Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.</p>	<p>CPO USE - IA</p>
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Speed Chart (optional)	Account Code (optional)
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**INTERAGENCY AGREEMENT BETWEEN THE STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION,
DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION,
BUREAU OF TENNCARE
&
DEPARTMENT OF COMMERCE AND INSURANCE**

This Interagency Agreement ("Agreement"), by and between the State of Tennessee Department of Finance and Administration, Division of Health Care Finance and Administration, Bureau of TennCare, hereinafter referred to as the "Procuring State Agency" or "HCFA" and Department of Commerce and Insurance (TDCI), hereinafter referred to as the "Contracting State Agency," or "Contractor" is for the provision of financial and compliance oversight of the TennCare Health Maintenance Organizations (HMOs), Prepaid Limited Health Services Organizations (PLHSOs), and Third Party Administrators (TPAs) as further defined in the "Scope of Services."

WHEREAS, TennCare is the single State agency designated by Tennessee law to administer the State medical assistance program as provided for in Title XIX of the Social Security ACT as amended, or as provided by any federal waiver received by the State that waives any or all of the provisions of Title XIX or pursuant to any other federal law as adopted by amendment to the required Title XIX State plan; and,

WHEREAS, Executive Order No. 1, dated January 26, 1995, required that the duties relating to oversight, examination and monitoring for compliance with requirements relating to the financial responsibility, stability and integrity and management of managed care organizations contracting with the State to provide TennCare services be performed by TDCI.

NOW, THEREFORE, in consideration of mutual promises herein contained, the parties have agreed and do hereby enter into this contract according to the provisions set out herein.

A. SCOPE OF SERVICES:

- A.1. The Contracting State Agency shall provide all goods, services or deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Interagency Agreement.
- A.2. The Contracting State Agency shall provide the following services to HCFA:
 - a. Reports of the periodic on-site financial and compliance examinations of TennCare Health Maintenance Organization (HMOs), Prepaid Limited Health Services Organizations (PLHSOs), and Third Party Administrators (TPAs) conducted by TDCI. [HMOs, PLHSOs and TPAs may be referred to as "Managed Care Contractors" (MCCs) or "Managed Care Organizations (MCOs)];
 - b. Copies of the TDCI review and analysis of the National Association of Insurance Commissioners (NAIC) annual and quarterly financial statements submitted by the HMOs and PLHSOs and the companies' independent annual audit reports to ensure that these companies have maintained the required minimum levels of statutory net worth;
 - c. Upon request from the HCFA, TDCI will provide written confirmation of the annual registration of the HMOs/PLHSOs/MCCs that are members of a health maintenance organization holding company and the transactions within such holding company systems as required by statute;
 - d. Copies of reviews of the HMO/ PLHSO/MCC claims processing systems that determine compliance with the TennCare Contractor Risk Agreement and the Prompt Pay Statute, and copies of reviews of the Dental Program and Pharmacy Program managed care contractors to determine compliance with their contracts with TennCare;



- e. Access to the TDCI reports of the TDCI administration of the independent review for provider claims payment disputes in accordance with the Prompt Pay Statute can be accomplished by TDCI placing these reports on the TDCI TennCare Division web site;
 - f. Copies of HMO/PLHSO/MCC supervision, rehabilitation, liquidation and conservation, administrative and judicial Notices and Orders placing a plan in supervision, rehabilitation, liquidation and conservation;
 - g. Notice of HMO/PLHSO/MCC Certificate of Authority licensure application approval and disapproval, approval and disapproval of modification of license and suspension or revocation of license;
 - h. Notice of Third Party Administrator (TPA) licensure application approval and disapproval, levy of fines and suspension or revocation of license;
 - i. Notice of approval/disapproval of mergers, acquisitions, and changes in control or ownership of an HMO/PLHSO/MCC;
 - j. Copies of the annual review of the HMO/PLHSO/MCC networks for adequacy, and
 - k. Copies of the TDCI review and analysis of the quarterly and annual premium tax returns submitted by the HMOs and PLHSOs.
 - l. Copies of TDCI approval/disapproval HMO/PLHSO/MCC operational documents, such as provider agreements, subcontracts, and member handbooks, and material changes thereto.
 - m. Copies of TDCI approval/disapproval of Medicare Advantage D-SNP provider agreements and provider manuals/handbooks, and amendments thereto, reviewed for compliance with the Medicare Improvements for Patients and Providers Act contract executed between TennCare and the Medicare Advantage D-SNP plans.
- A. 3. The Contractor may examine and investigate the affairs of an HMO, an affiliate of the parent of the HMO or an affiliate of the HMO as authorized by TCA 56-32-132. Any such reports are confidential and may not be shared by TDCI without the approval of the Commissioner as provided at TCA 56-32-135.
- A.4. The Contractor shall submit, as directed by HCFA, such reports as may be required to provide information as requested by the Centers for Medicare & Medicaid Services (CMS).
- A.5. HCFA, in its daily activities, may monitor various aspects of the Contractor's operations for compliance with the provisions of this Contract. Further, HCFA shall at least annually, monitor the operation of the Contractor for compliance with the provisions of this Contract and applicable federal and state laws and regulations. Such monitoring activities may include, but are not limited to, inspection of Contractor's facilities and review of records developed under this Contract. If HCFA identifies any specific performance deficiencies in the Contractor's performance under this Contract, HCFA shall notify the Contractor of these specific performance deficiencies in writing, and request corrective action plans be submitted in writing within thirty (30) days from such notice.
- A.6. The Contractor shall develop, implement, and monitor plans of correction for any deficiencies that TennCare may identify in the performance of this Contract.
- A.7. Both Parties agree to:



- a. Coordinate their efforts to meet reporting dates and deadlines determined by the federal agencies and to develop methods of easy exchange of information between two on regular dates and as otherwise established by mutual agreement on the basis of experience, needs and federal or other requirements, and
- b. The Parties to this Contract shall meet as requested by HCFA to review the performance of the activities under this Contract. HCFA shall notify the Contractor in writing of any specific performance deficiencies and request corrective action. The Contractor shall respond in writing with a corrective action plan within thirty (30) days of receipt of such notification and implement the plan upon approval by HCFA. Should the Contractor fail or refuse to undertake corrective action as requested by HCFA, HCFA may withhold payment for that portion of the Contractor's program that HCFA deems deficient.

B. INTERAGENCY AGREEMENT TERM:

- B.1. This Interagency Agreement shall be effective on July 1, 2015 ("Effective Date"), and extend for a period of thirty-six (36) months after the Effective Date ("Term"). The Procuring State Agency shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.
- B.2. Renewal Options. This Interagency Agreement may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to two (2) renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the Procuring State Agency under this Agreement exceed Two Million Four Hundred Seventy-Seven Thousand Two Hundred Dollars (\$2,477,200.00) for FY 2016, Two Million Four Hundred Seventy-Seven Thousand Two Hundred Dollars (\$2,477,200.00) for FY 2017, and Two Million Four Hundred Seventy-Seven Thousand Two Hundred Dollars (\$2,477,200.00) for FY 2018, with a total maximum liability of Seven Million Four Hundred Thirty-One Thousand Six Hundred Dollars (\$7,431,600.00). The compensation provided in Section C.3 shall constitute the entire compensation due the Contracting State Agency for the goods delivered and accepted or for services performed and all of the Contracting State Agency's obligations hereunder regardless of the difficulty, materials or equipment required. The payment compensation includes, but is not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contracting State Agency.
- C.2. Compensation Firm. The payment rates and the maximum liability of the Procuring State Agency under this Agreement are firm for the duration of the Agreement and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. Upon completion of the work described in Section A of this Contract, the Contractor shall be compensated based on actual expenditures.
- C.4. Travel Compensation. Compensation to the Contracting State Agency for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time.

The Contracting State Agency must provide a complete itemization of travel compensation requested in accordance with and attach documentation and receipts as required by the above-referenced "State Comprehensive Travel Regulations."



- C.5. Payment of Invoice. A payment by the Procuring State Agency shall not prejudice the Procuring State Agency's right to object to or question any payment, invoice, or matter in relation to the payment by the Procuring State Agency shall not be construed as acceptance of any part of the work or service provided or as approval of any amount invoiced.
- C.6. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the Procuring State Agency, on the basis of audits conducted in accordance with the terms of this Interagency Agreement, not to constitute proper remuneration for compensable services.
- C.7. Deductions. The Procuring State Agency reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any Interagency Agreement between the Contractor and the Procuring State Agency any amounts, which are or shall become due and payable to the Procuring State Agency by the Contractor.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The Procuring State Agency and the Contracting State Agency are not bound by this Agreement until it is signed by the agency head or the agency head's designee. Each agency's legal counsel shall review and approve the Agreement as to form and legality.
- D.2. Modification and Amendment. Any modifications, amendments, renewals or extensions shall be in writing, signed, and approved by all parties who signed and approved this Agreement.
- D.3. Termination for Convenience. This Agreement may be terminated by either party by giving written notice to the other, at least thirty (30) days before the effective date of termination. Should the Procuring State Agency exercise the option of terminating this Agreement for convenience, the Contracting State Agency shall be entitled to compensation for all goods delivered and accepted or satisfactory and authorized services completed as of the termination date. Should the Contracting State Agency exercise this provision, the Procuring State Agency shall have no liability to the Contracting State Agency except for those goods delivered and accepted or those units of service that were satisfactorily completed by the Contracting State Agency. The final decision as to the acceptability of goods or whether units of service were satisfactorily completed shall be determined by the Procuring State Agency in its sole discretion.
- D.4. Subject to Funds Availability. This Agreement is subject to the appropriation and availability of state and/or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the Procuring State Agency reserves the right to terminate this Agreement upon written notice to the Contracting State Agency. Said termination shall not be deemed a breach of this Agreement by the Procuring State Agency. Upon receipt of the written notice, the Contracting State Agency shall cease all work associated with this Agreement. Should such an event occur, the Contracting State Agency shall be entitled to compensation for all satisfactory and goods delivered and accepted or authorized services completed as of the termination date. Upon such termination, the Contracting State Agency shall have no right to recover from the Procuring State Agency any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.5. Completeness. This Agreement is complete and contains the entire understanding between the parties relating to this subject matter, including all the terms and conditions of the parties' agreement. There are no other prior or contemporaneous agreements that modify, supplement, or contradict any of the express terms of the agreement.
- D.6. Communications and Contacts. All instructions, notices, consents, demands, or other communications shall be made in writing and directed to the following designated contact persons:



The Procuring State Agency:

Darin J. Gordon, Deputy Commissioner
Department of Finance and Administration
Bureau of TennCare
310 Great Circle Road
Nashville, Tennessee 37247-6501
Telephone # (615) 507-6362
FAX # (615) 532-5236

The Contractor:

Lisa Jordan, Assistant Commissioner
Department of TennCare Oversight
Department of Commerce and Insurance
Davy Crockett Tower, 5th Floor
500 James Robertson Parkway
Nashville, TN
Phone: (615)741-2677
Fax: (615) 401-6834

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

- D.7. Termination for Cause. If the Contracting State Agency fails to properly perform its obligations under this Interagency Agreement in a timely or proper manner, or if the Contracting State Agency violates any terms of this Interagency Agreement, the Procuring State Agency shall have the right to immediately terminate the Agreement and withhold payments in excess of fair compensation for completed services.
- D.8. Subcontracting. The Contracting State Agency shall not assign this Interagency Agreement or enter into a subcontract for any of the services performed under this Interagency Agreement without obtaining the prior written approval of the Procuring State Agency. Notwithstanding any use of approved subcontractors, the Contracting State Agency shall be the prime contractor and shall be responsible for all work performed.
- D.9. Monitoring. The Contracting State Agency's activities conducted and records maintained pursuant to this Interagency Agreement shall be subject to monitoring and evaluation by the Procuring State Agency, the Comptroller of the Treasury, or their duly appointed representatives.
- D.10. Progress Reports. The Contracting State Agency shall submit brief, periodic, progress reports to the Procuring State Agency as requested.
- D.11. State and Federal Compliance. The Contracting State Agency shall comply with all applicable state and federal laws and regulations in the performance of this Agreement.
- D.12. Headings. Section headings are for reference purposes only and shall not be construed as part of this Agreement.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. 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



Procuring State Agency or acquired by the Contractor on behalf of the Procuring State Agency shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

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

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

E.2. 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 undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Interagency Agreement, 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 section 1352, title 31, *U.S. Code*.

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

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

E.4. Federal Funding Accountability and Transparency Act (FFATA). This Interagency Agreement requires the Contractor to provide supplies and/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. Eighty percent (80%) 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. Twenty Five Thousand Dollars (\$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/excomp.htm>.)

Executive means officers, managing partners, or any other employees in management positions.



- (2) Total compensation means the cash and noncash dollar value earned by executive during the Contractor's preceding fiscal year and includes the (for more information see 17 CFR 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 Ten Thousand Dollars (\$10,000).
- b. The Contractor must report executive total compensation described above to the State by the end of the month during which this Interagency Agreement is awarded.
- c. If this Interagency Agreement is amended to extend its term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the amendment to this Interagency Agreement becomes effective.
- d. The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Interagency Agreement. 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 Interagency Agreement for which the State may terminate this Interagency Agreement 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.5. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Interagency Agreement to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Interagency Agreement.
- E.6. HIPAA Compliance. The State and the 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 Interagency Agreement.
- a. The 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 Interagency Agreement.



- b. The Contractor warrants that it will cooperate with the State, including cooperative coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of this Interagency Agreement 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 the Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Interagency Agreement 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.

E.7. 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 Interagency Agreement 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 Interagency Agreement.
- 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 Interagency Agreement 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 such agent or subcontractor agrees to be bound by the same restrictions, to 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 Interagency Agreement. 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 Interagency Agreement 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's 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 Interagency Agreement 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 and use by Contractor's employees and other persons performing work for the Cor 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.8. 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.9. 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.10. 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.11. Disclosure of Personal Identity Information. The Contractor shall report to the State any instances of unauthorized disclosure of confidential information that come to the attention of the Contractor. Any such report shall be made by the Contractor within twenty-four (24) hours after the instance has come to the attention of the Contractor. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals that are deemed to be part of a potential disclosure. The Contractor shall bear the cost of notification to individuals having personal identity information involved in a potential disclosure event, including individual letters and/or public notice.
- E.12. Severability. If any terms and conditions of this Interagency Agreement are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Interagency Agreement are declared severable.
- E.13. Records. The Contractor shall maintain documentation for all charges under this Interagency Agreement. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Interagency Agreement, shall be maintained for a period of six (6) 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.

E.14. Social Security Administration (SSA) Required Provisions for Data Security. The Contractor shall comply with limitations on use, treatment, and safeguarding of data under the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, related Office of Management and Budget guidelines, the Federal Information Security Management Act of 2002 (44 U.S.C. § 3541, *et seq.*), and related National Institute of Standards and Technology guidelines. In addition, the Contractor shall have in place administrative, physical, and technical safeguards for data.

- a. The Contractor shall not duplicate in a separate file or disseminate, without prior written permission from TennCare, the data governed by the Interagency Agreement for any purpose other than that set forth in this Interagency Agreement for the administration of the TennCare program. Should the Contractor propose a redisclosure of said data, the Contractor must specify in writing to TennCare the data the Contractor proposes to redisclose, to whom, and the reasons that justify the redisclosure. TennCare will not give permission for such redisclosure unless the redisclosure is required by law or essential to the administration of the TennCare program.
- b. The Contractor agrees to abide by all relevant federal laws, restrictions on access, use, and disclosure, and security requirements in this Interagency Agreement.
- c. The Contractor shall provide a current list of the employees of such Contractor with access to SSA data and provide such lists to TennCare.
- d. The Contractor shall restrict access to the data obtained from TennCare to only those authorized employees who need such data to perform their official duties in connection with purposes identified in this Interagency Agreement. The Contractor shall not further duplicate, disseminate, or disclose such data without obtaining TennCare's prior written approval.
- e. The Contractor shall ensure that its employees:
 - (1) properly safeguard PHI/PII furnished by TennCare under this Interagency Agreement from loss, theft or inadvertent disclosure;
 - (2) understand that they are responsible for safeguarding this information at all times, regardless of whether or not the Contractor's 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 TennCare or TennCare SSA-supplied data in a manner or purpose not authorized by this Interagency Agreement may be subject to civil and criminal sanctions pursuant to applicable federal statutes.

- f. **Loss or Suspected Loss of Data** – If an employee of the Contractor becomes aware of suspected or actual loss of PHI/PII, he or she must immediately contact TennCare **within 1 hour** to report the actual or suspected loss. The Contractor will use the Loss



Worksheet located at http://www.tn.gov/tenncare/forms/phi_piiworksheet.pdf to gather and organize information about the incident. The Contractor must provide TennCare with timely updates as any additional information about the loss of PHI/PII becomes available.

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

- g. TennCare may immediately and unilaterally suspend the data flow under this Interagency Agreement, or terminate this Interagency Agreement, if TennCare, in its sole discretion, determines that the Contractor has: (1) made an unauthorized use or disclosure of TennCare SSA-supplied data; or (2) violated or failed to follow the terms and conditions of this Interagency Agreement.
- h. Legal Authority – Federal laws and regulations giving SSA the authority to disclose data to TennCare and TennCare's authority to collect, maintain, use and share data with Contractor is protected under federal law for specified purposes:
- (1) Sections 1137, 453, and 1106(b) of the Act (42 U.S.C. 1320b-7, 653, and 1306(b)) (income and eligibility verification data);
 - (2) 26 U.S.C. 6103(l)(7) and (8) (tax return. data);
 - (3) Section 202(x)(3)(B)(iv) of the Act (42 U.S.C. 401(x)(3)(B)(iv))(prisoner data);
 - (4) Section 205(r)(3) of the Act (42, U.S.C. 405(r)(3)) and Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108-458, 7213(a)(2) (death data);
 - (5) Sections 402, 412, 421, and 435 of Pub. L. 104-193 (8 U.S.C. 1612, 1622, 1631, and 1645) (quarters of coverage data);
 - (6) Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. 111-3 (citizenship data); and
 - (7) Routine use exception to the Privacy Act, 5 U.S.C. 552a(b)(3)(data necessary to administer other programs compatible with SSA programs).

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 Contractor must follow with regard to use, treatment, and safeguarding data.

- i. Definitions
- (1) "SSA-supplied data" – information, such as an individual's social security number, supplied by the Social Security Administration to TennCare to determine



entitlement or eligibility for federally-funded programs (CMPPA between S F&A; IEA between SSA and TennCare).

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

IN WITNESS WHEREOF:

DEPARTMENT OF COMMERCE AND INSURANCE:

Julie Mix McPeak *6/1/15*

 JULIE MIX MCPEAK, COMMISSIONER DATE

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

Larry B. Martin / cd *6/13/2015*

 LARRY B. MARTIN COMMISSIONER DATE