



CONTRACT AMENDMENT COVER SHEET

Agency Tracking # 31865-00383	Edison ID	Contract # 71397	Amendment # 1		
Contractor Legal Entity Name Department of Human Services			Edison Vendor ID 0000000051		
Amendment Purpose & Effect(s) Exercise Renewal Option of 24 months and Add Funding for FY25 and FY26					
Amendment Changes Contract End Date: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		End Date: June 30, 2026			
TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A):			\$ 25,000,000.00		
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2022	\$6,250,000.00	\$6,250,000.00			\$12,500,000.00
2023	\$6,250,000.00	\$6,250,000.00			\$12,500,000.00
2024	\$6,250,000.00	\$6,250,000.00			\$12,500,000.00
2025	\$6,250,000.00	\$6,250,000.00			\$12,500,000.00
2026	\$6,250,000.00	\$6,250,000.00			\$12,500,000.00
TOTAL:	\$31,250.00	\$31,250.00.00			\$62,500,000.00
<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 style="font-size: 24pt; font-weight: bold; margin-top: 10px;">Crystal G. Allen</p> <p style="font-size: 10pt; margin-top: 5px;">Digitally signed by: Crystal G. Allen DN: CN = Crystal G. Allen email = Crystal.G.Allen@tn.gov C = US O = TennCare OU = TennCare/ Budget Date: 2024.03.18 15:32:15 -05'00'</p>			<p><i>CPO USE</i></p>		
Speed Chart (optional)		Account Code (optional)			

**AMENDMENT #1
OF CONTRACT 71397**

This Interagency Agreement Amendment is made and entered by and between the State of Tennessee, Department of Finance and Administration, Division of TennCare, hereinafter referred to as the "Procuring State Agency" or "TennCare" and the Department of Human Services, hereinafter referred to as the "Contracting State Agency" or "DHS." For good and valuable consideration, the sufficiency of which is hereby acknowledged, it is mutually understood and agreed by and between said, undersigned contracting parties that the subject Agreement is hereby amended as follows:

1. Interagency Agreement Section B.1 is deleted in its entirety and replaced with the following:
 - B.1. This Interagency Agreement shall be effective for the period beginning on July 1, 2021 ("Effective Date") and ending on June 30, 2026 ("Term"). The Procuring State Agency shall have no obligation for goods or services provided by the Contracting State Agency prior to the Effective Date.

2. Interagency Agreement Section B.2 is deleted in its entirety and replaced with the following:
 - B.2. Renewal Options. This Interagency Agreement may be renewed upon satisfactory completion of the Term. The Procuring State Agency reserves the right to execute up to zero (0) renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the Procuring State Agency, at the Procuring State Agency's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.


3. Interagency Agreement Section C.1 is deleted in its entirety and replaced with the following:
 - C.1. Maximum Liability. In no event shall the maximum liability of the Procuring State Agency under this Agreement exceed Sixty-Two Million Five Hundred Thousand Dollars (\$62,500,000.00). The payment rates in Section C.3 and the Travel Compensation provided in Section C.4 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 rates include, but are 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.

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

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

IN WITNESS WHEREOF:

DEPARTMENT OF HUMAN SERVICES:

Clarence H. Carter


CLARANCE H. CARTER, COMMISSIONER

DATE

DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF TENNCARE:


JIN BRYSON, COMMISSIONER

3/19/2024

DATE



INTERAGENCY AGREEMENT SUMMARY

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

Begin Date July 8, 2021	End Date June 30, 2024	Agency Tracking # 31865-00383	Edison ID 71397		
Contracting State Agency Name Department of Human Services		Edison Supplier ID 0000000051			
CFDA # 93.778 Dept of Health & Human Services/Title XIX					
Service Caption TennCare Eligibility Determination Services					
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Agreement Amount
2022	\$6,250,000.00	\$6,250,000.00			\$12,500,000.00
2023	\$6,250,000.00	\$6,250,000.00			\$12,500,000.00
2024	\$6,250,000.00	\$6,250,000.00			\$12,500,000.00
TOTAL:	\$18,750,000.00	\$18,750,000.00			\$37,500,000.00
<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 style="font-size: 1.2em; font-family: cursive;"><i>Zane Seals</i></p>				<p>CPO USE - IA</p>	
Speed Chart (optional)		Account Code (optional)			

**INTERAGENCY AGREEMENT BETWEEN THE STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF TENNCARE
AND
DEPARTMENT OF HUMAN SERVICES**

This Interagency Agreement ("Agreement"), by and between the State of Tennessee, Department of Finance and Administration, Division of TennCare hereinafter referred to as the "Procuring State Agency" or "TennCare" and the State of Tennessee, Department of Human Services, hereinafter referred to as the "Contracting State Agency," or "DHS" is for the provision of eligibility determination services, as further defined in the "Scope of Services."

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 Agreement.
- A.2. TennCare authorizes DHS and its designated contract agencies to assist in the administration of the TennCare program authorized under Title XIX and under Section 1115 of the Social Security Act. This designation is to perform certain eligibility assistance for the TennCare population to include, but not limited to:
- a. assisting applicants in the completion of TennCare applications and redeterminations;
 - b. exchange information on Medicaid enrollees who may be participants in the child support program.
 - c. notifying enrollees of their appeal rights by disseminating brochures and other informational materials as approved by TennCare;
 - d. explaining to applicants in simple terms the TennCare program and its benefits;
 - e. referring TennCare applicants and enrollees, when needed, to TennCare for assistance in filing appeals;
 - f. provide read only access to ACCENT or any successor system for some TennCare staff.
 - g. ensuring that appropriate accommodations are offered to individuals with disabilities and limited English proficiency and comply with the TennCare policies and procedures related to accommodations;
 - h. providing assistance to applicants through the use of computer kiosks in each DHS county office that facilitate applications filed with TennCare or the Federally Facilitated Marketplace. Such assistance will include access to a phone and guidance from DHS staff in each county;
 - i. accepting applications, renewal packets and verification documents on behalf of TennCare and scan such documents to TennCare within 2 days of receipt; and
 - j. providing assistance to enrollees in the process of redetermination by making copies of renewal packet pages upon request.
- A.3. DHS agrees to maintain records necessary for the proper and efficient administration of Title XIX functions performed under this Agreement. The records shall include, but not be limited to, eligibility records, documentation of quality control, and records needed to meet other State and Federal requirements.

- A.4. DHS shall provide TennCare a Monthly report on county office activities to include TennCare applicant and redetermination interactions and kiosk usage.
- A.5. TennCare shall provide DHS trainers with basic Medicaid training no later than December 31, 2021. TennCare will notify and provide training to DHS staff regarding TennCare program issues and changes that pertain to the implementation of this Agreement. No later than sixty (60) days after any changes in state laws or regulations, federal laws or regulations, or changes in TennCare policies and procedures that may affect the delivery of services under this Agreement, TennCare shall inform DHS of such changes and provide any necessary training to DHS trainers.
- A.6. Reserved.
- A.7. The parties to this Agreement agree to comply with all applicable obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Health Information Technology for Economic and Clinical Health Act (HITECH) under the American Recovery and Reinvestment Act of 2009 (ARRA) and their accompanying regulations, and as amended and as dictated within the Federal Register by their designated due dates.
- A.8. TennCare hereby authorizes and designates DHS, through the Division of Childcare and Community Services and its designated contract agencies, to assist in the provision of health-related services for Medicaid eligible adults, provided that:
- a. such services meet the definition of health-related services for Medicaid-eligible adults specified in Attachment A, the terms of which are incorporated herein; and
 - b. these services are performed for adults served by the Protective Services Program and its designated contract agencies under the provisions of Tenn. Code Ann. § 71-6-101 et seq.
- A.9. In addition to the responsibilities set forth elsewhere in this Agreement, DHS shall:
- a. provide administrative support to the TennCare program and submit claims to TennCare, in accordance with TennCare's CMS-approved administrative cost allocation plan approved by DHS and the Department of Finance and Administration;
 - b. document this allocation for Title XIX on the basis of an approved Random Moment Time Study conducted in accordance with the State's Federally approved Cost Allocation Plan;
 - c. instruct its administrators and staff in the above authorizations and responsibilities, and shall provide the training and monitoring necessary to assure capture of the required Random Moment Time Study documentation;
 - d. provide to the administrators and staff of its own offices and its designated contract agencies any other advice and instructions that TennCare deems necessary to the proper and efficient conduct of the Medicaid activities described in this Agreement;
 - e. provide to TennCare the quarterly statewide results of the Random Moment Time Study governing its allocations for Title XIX and other federal programs; and
 - f. continually monitor and provide all required services according to this Agreement, including but not limited to, sufficient quality review to assure that all applicable state and federal laws, TennCare rules and policies, and state and federal court orders are being complied with by DHS and its designated contract agencies.
- A.10. In addition to TennCare responsibilities set forth elsewhere in this Agreement, TennCare shall be responsible for performing services to meet the following requirements and obligations under this Agreement:

- a. provide DHS with the claim categories and other information to which expenditure data must adhere for billing to TennCare;
- b. make payments to DHS for coordination of Medicaid services to Medicaid eligible adults served by the Division of Family Assistance and Child Support, in accordance with an approved administrative cost allocation plan submitted by DHS;
- c. meet with DHS as needed to review the performance of the activities under this Agreement. TennCare shall notify DHS in writing of any specific performance deficiencies and request corrective action. DHS shall respond in writing with a corrective action plan within thirty (30) days of receipt of such notification and implement and monitor the plan upon approval by TennCare; and
- d. Should DHS fail or refuse to undertake corrective action as requested by TennCare, TennCare may withhold payment for that portion of the DHS program that TennCare deems deficient.

B. TERM OF AGREEMENT:

- B.1. This Agreement shall be effective on July 8, 2021 (“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 Contracting State Agency prior to the Effective Date.
- B.2. Renewal Options. This Interagency Agreement may be renewed upon satisfactory completion of the Term. The Procuring State Agency reserves the right to execute renewal options under the same terms and conditions for a period not to exceed twenty-four (24) months each by the Procuring State Agency, at the Procuring State Agency'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 Thirty-Seven Million Five Hundred Thousand Dollars (\$37,500,000.00). The payment rates in Section C.3 and the Travel Compensation provided in Section C.4 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 rates include, but are 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 Interagency Agreement, and at least on a quarterly basis, the Contracting State Agency shall be compensated based on actual expenditures for staff providing Title XIX determinations and redeterminations, including their support costs billed in accordance with DHS federally approved cost allocation plan and charges specified in Attachment A.
- C.4. Travel Compensation. The Contracting State Agency shall not be compensated or reimbursed for travel, meals, or lodging.
- 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 thereto. A 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 Contracting State Agency'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 Contracting State Agency under this or any Interagency Agreement between the Contracting State Agency and the Procuring State Agency any amounts, which are or shall become due and payable to the Procuring State Agency by the Contracting State Agency.

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:

Stephen M. Smith
Deputy Commissioner
Department of Finance and Administration

Division of TennCare
310 Great Circle Road
Nashville, Tennessee 37247-6501
Phone: (615) 507-6362
FAX: (615) 532-5236

The Contracting State Agency:

Commissioner Clarence H. Carter
Department of Human Services
James K. Polk Building
505 Deaderick Street
Nashville, TN 37219
Telephone # (615) 313-4702

- 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 Contracting State Agency by the Procuring State Agency or acquired by the Contracting State Agency on behalf of the Procuring State Agency that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit the Contracting State Agency to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contracting State Agency due to intentional or negligent actions or inactions of agents of the Procuring State Agency or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. The Contracting State Agency shall only use Confidential information for activities pursuant to and related to the performance of the Agreement. The Contracting State Agency 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 Agreement.

- E.2. HIPAA Compliance. The Procuring State Agency and Contracting State Agency 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 Agreement.
- a. Contracting State Agency warrants to the Procuring State Agency that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Agreement.
 - b. Contracting State Agency warrants that it will cooperate with the Procuring State Agency, including cooperation and coordination with Procuring State Agency privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Agreement so that both parties will be in compliance with the Privacy Rules.
 - c. The Procuring State Agency and the Contracting State Agency 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 Procuring State Agency and Contracting State Agency in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this 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.
- E.3. Business Associate. As the Contracting State Agency will provide services to TennCare pursuant to which the Contracting State Agency will have access to, receive from, create, or receive on behalf of TennCare Protected Health Information, or Contracting State Agency will have access to, create, receive, maintain or transmit on behalf of TennCare Electronic Protected Health Information (as those terms are defined under HIPAA and HITECH), Contracting State Agency hereby acknowledges its designation as a business associate under HIPAA and agrees to comply with all applicable HIPAA regulations and the terms in the associated Business Associate Agreement (See Attachment B).
- E.4. Notification of Breach and Notification of Suspected Breach. The Contracting State Agency shall notify TennCare’s Privacy Office immediately upon becoming aware of and in no case later than forty-eight (48) hours after discovery of any incident, either confirmed or suspected, that represents or may represent unauthorized access, use or disclosure of encrypted or unencrypted computerized data that materially compromises the security, confidentiality, or integrity of enrollee PHI maintained or held by the Contracting State Agency, including any unauthorized acquisition of enrollee PHI by an employee or otherwise authorized user of the Contracting State Agency’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.5. Authority. If other State or local agencies or offices perform services for TennCare, including the Contracting State Agency, these entities do not have the authority to change or disapprove any administrative decision of TennCare, or otherwise substitute their judgment for that of TennCare with respect to the application of policies, rules and regulations issued by TennCare.
- E.6. Applicable Laws, Rules, Policies, and Court Orders. The Contracting State Agency agrees to comply with all applicable federal and State laws, rules, regulations, sub-regulatory guidance, executive orders, TennCare waivers, and all current, modified or future Court decrees, orders or judgments applicable to the State’s TennCare program. Such compliance shall be performed at no additional cost to the Procuring State Agency.
- E.7. Personally Identifiable Information. While performing its obligations under this Agreement, the Contracting State Agency may have access to Personally Identifiable Information (“PII”) held by the Procuring State Agency. For the purposes of this Agreement, “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”). The Contracting State Agency agrees it shall not do or omit to do anything which would cause the Procuring State Agency to be in breach of any Privacy Laws. The Contracting State Agency 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 the Contracting State Agency and in accordance with this Agreement, 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. The Contracting State Agency shall immediately notify the Procuring State Agency: (1) of any disclosure or use of any PII by the Contracting State Agency or any of its employees, agents and representatives in breach of this Agreement; and (2) of any disclosure of any PII to the Contracting State Agency or its employees, agents and representatives where the purpose of such disclosure is not known to the Contracting State Agency or its employees, agents and representatives. The Procuring State Agency reserves the right to review the Contracting State Agency’s policies and procedures used to maintain the security and confidentiality of PII and the Contracting State Agency shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the Procuring State Agency to enable the Procuring State Agency to verify or ensure that the Contracting State Agency is in full compliance with its obligations under this Agreement in relation to PII. Upon termination or expiration of the Agreement or at the Procuring State Agency’s direction at any time in its sole discretion, whichever is earlier. The Contracting State Agency shall immediately return to the Procuring State Agency any and all PII which it has received under this Agreement and shall destroy all records of such PII.

The Contracting State Agency shall report to the Procuring State Agency any instances of unauthorized access to or potential disclosure of PII in the custody or control of the Contracting State Agency (“Unauthorized Disclosure”) that come to the Contracting State Agency’s attention. Any such report shall be made by the Contracting State Agency within forty-eight (48) hours after the Unauthorized Disclosure has come to the attention of the Contracting State Agency. The Contracting State Agency shall take all necessary measures to halt any further Unauthorized Disclosures. The Contracting State Agency, at the sole discretion of the Procuring State Agency, shall provide no cost credit monitoring services for individuals whose PII was affected by the Unauthorized Disclosure. The Contracting State Agency 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 Procuring State Agency under this Agreement or otherwise available at law. The obligations set forth in this Section shall survive the termination of this Agreement.

- E.8. 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.9. Records. The Contracting State Agency shall maintain documentation for all charges under this Agreement. The books, records, and documents of the Contracting State Agency, for work performed or money received under this Agreement, shall be maintained for a period of ten (10) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the Procuring State Agency, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- E.10. Social Security Administration (SSA) Required Provisions for Data Security. The Contracting State Agency 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 Contracting State Agency shall have in place administrative, physical, and technical safeguards for data.

- a. The Contracting State Agency shall specify in its agreements with any agent or subcontractor that will have access to data that such agent or subcontractor agrees to be bound by the same restrictions, terms and conditions that apply to the Contracting State Agency pursuant to this Section;
- b. The Contracting State Agency shall not duplicate in a separate file or disseminate, without prior written permission from TennCare, the data governed by the Agreement for any purpose other than that set forth in this Agreement for the administration of the TennCare program. Should the Contracting State Agency propose a redisclosure of said data, the Contracting State Agency must specify in writing to TennCare the data the Contracting State Agency proposes to redisclose, to whom, and the reasons that justify the redisclosure. TennCare will not give permission for such redisclosure unless the redisclosure is required by law or essential to the administration of the TennCare program.
- c. The Contracting State Agency agrees to abide by all relevant federal laws, restrictions on access, use, and disclosure, and security requirements in this Agreement.
- d. The Contracting State Agency shall maintain a current list of the employees of such contractor with access to SSA data and provide such lists to TennCare upon request and at any time there are changes.
- e. The Contracting State Agency 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 Agreement. The Contracting State Agency shall not further duplicate, disseminate, or disclose such data without obtaining TennCare's prior written approval.
- f. The Contracting State Agency shall ensure that its employees:
 - (1) Properly safeguard SSA-supplied data furnished by TennCare under this Agreement from loss, theft or inadvertent disclosure;
 - (2) Receive regular, relevant and sufficient SSA data related training, including use, access and disclosure safeguards and information regarding penalties for misuse of information;
 - (3) Understand and acknowledge that they are responsible for safeguarding this information at all times, regardless of whether or not the Contracting State Agency's employee is at his or her regular duty station;
 - (4) Ensure that laptops and other electronic devices/ media containing SSA-supplied data are encrypted and/or password protected;
 - (5) Send emails containing SSA-supplied data only if the information is encrypted or if the transmittal is secure; and,
 - (6) Limit disclosure of the information and details relating to a SSA-supplied data loss only to those with a need to know.

The Contracting State Agency employees who access, use, or disclose TennCare or TennCare SSA-supplied data in a manner or purpose not authorized by this Agreement may be subject to civil and criminal sanctions pursuant to applicable federal statutes.

- g. Loss or Suspected Loss of Data - If an employee of the Contracting State Agency becomes aware of suspected or actual loss of SSA-supplied data, the Contracting State Agency must notify TennCare immediately upon becoming aware to report the actual or suspected loss. The Contracting State Agency must provide TennCare with timely updates as any additional information about the loss of SSA-supplied data becomes available.

If the Contracting State Agency 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 Contracting State Agency shall bear any costs associated with the notice or any mitigation.

- h. TennCare may immediately and unilaterally suspend the data flow under this Agreement, or terminate this Agreement, if TennCare, in its sole discretion, determines that the Contracting State Agency 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 Agreement.
- i. This Section further carries out Section 1106(a) of the Act (42 U.S.C. 1306), the regulations promulgated pursuant to that section (20 C.F.R. Part 401), the Privacy of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, related Office of Management and Budget ("OMB") guidelines, the Federal Information Security Management Act of 2002 ("FISMA") (44 U.S.C. 3541 et seq.), and related National Institute of Standards and Technology ("NIST") guidelines, which provide the requirements that the SSA stipulates that the Contracting State Agency must follow with regard to use, treatment, and safeguarding data in the event data is exchanged with a federal information system.
- j. Definitions. "SSA-supplied data" or "data" as used in this section means an individual's personally identifiable information (e.g. name, social security number, income), supplied by the Social Security Administration to TennCare to determine entitlement or eligibility for federally-funded programs pursuant to a Computer Matching and Privacy Protection Act Agreement and Information Exchange Agreement between SSA and the State of Tennessee.

E.11. Nondiscrimination

- a. The Contracting State Agency agrees that it shall comply 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. As part of this compliance no person on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classifications protected under federal or state laws shall be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance of the Contracting State Agency's obligation under its agreement with TennCare or in the employment practices of the Contracting State Agency.
- b. The Contracting State Agency agrees that its civil rights compliance staff member will work directly with TennCare's Nondiscrimination Compliance Director in order to implement and coordinate nondiscrimination compliance activities. The Contracting State Agency shall provide to TennCare, within ten (10) days of signing this Agreement, the name and contact information of its civil rights compliance staff member. If at any time that position is reassigned to another staff member, the new staff member's name and contact information shall be reported in writing to TennCare within ten (10) calendar days of assuming these duties

E.12. Discovery and Litigation Hold Requirements. TennCare is frequently involved in litigation as either a party or a non-party with relevant information. The Contracting State Agency shall

reasonably cooperate with TennCare requests to aid in data and document retention, and collection, as required for litigation. The Contracting State Agency will also provide subject matter experts as needed for depositions or as witnesses at trial. These services will be provided at no cost to the Procuring State Agency. TennCare and its attorneys will exert all reasonable efforts to limit the scope and cost of discovery and litigation requests.

IN WITNESS WHEREOF,

DEPARTMENT OF HUMAN SERVICES:

Clarence H. Carter (T.L.) Digitally signed by Clarence H. Carter (T.L.)
Date: 2021.07.06 17:14:49 -05'00'

CLARENCE H. CARTER, COMMISSIONER

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

Butch Eley Digitally signed by Butch Eley
Date: 2021.07.08 08:19:41 -05'00'

BUTCH ELEY, COMMISSIONER

DATE

DESCRIPTION OF ADULT PROTECTIVE SERVICES

The Adult Protective Services (APS) Program is a statewide service provided under a legislative mandate to investigate reports of abuse, neglect or exploitation of adults who are unable to protect themselves due to mental or physical impairments. The APS Intake Call Center receives reports. The reports are investigated by APS staff, who are stationed across the state. Services are provided to decrease health risks to victims in need of protective services.

The program is administered by a program director, who is responsible for program development, evaluation, coordination, and supervision of field staff.

The four (4) primary components of this program are as follows:

- Intake Call Center
- Investigations
- Service Provision
- Custody Cases

DEFINITION OF HEALTH-RELATED SERVICES FOR MEDICAID-ELIGIBLE ADULTS

Health-Related Services for Medicaid-Eligible Adults provided by APS are any activities which help Medicaid-eligible adults who are clients of APS gain access to medical services and/or attain or maintain a favorable physical or mental health condition by assisting them in identifying and understanding their health needs, or in securing and using treatment and health maintenance services.

- Examples of activities which are considered to be part of Health-Related Services include:
- Arranging for medical, health, or mental health services for clients who are TennCare eligible;
- Arranging admission to hospitals or medical facilities;
- Providing liaison with medical providers and local health departments, including providing transportation to a medical provider;
- Providing outreach through training hospital staff, nursing home staff, coalitions and advocates for the elderly on special needs of APS clients;
- Providing assistance in utilizing Medicaid services and understanding Medicaid benefits, services, coverage, forms, and rules;
- Providing case management, including explaining the TennCare managed care system to TennCare eligible clients;
- Assisting in implementing prescribed health plans and regimens, and providing instruction on appropriately following medical directions and prescriptions;
- Discussing generic drug options with enrollee's pharmacy;
- Developing and monitoring health plans;
- Assessing the need for and arranging for admission to long-term care facilities or alternatives to institutional care;
- Compiling individually applicable lists of physicians and other providers of medical and mental health services;
- Making referrals to other agencies and programs for health and mental health needs;
- Performing activities related to pre-admission screening for inpatient or nursing home care, prior authorization for services, medical second opinions, or utilization review;
- Conducting outreach activities to inform Medicaid eligible adults about available services and programs;
- Investigations by APS of referrals involving vulnerable adults, to determine the need for TennCare/Medicaid services; and
- Legal services to assist in obtaining TennCare/Medicaid services.



HIPAA Business Associate Agreement

THIS HIPAA BUSINESS ASSOCIATE AGREEMENT (“Agreement”) is between The State of Tennessee, Division of TennCare (“TennCare” or “Covered Entity”), located at 310 Great Circle Road, Nashville, TN 37243 and _____ (“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:

Interagency Agreement #71397

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

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

1. DEFINITIONS

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

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

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

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

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

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

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

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

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

2.4 Privacy Safeguards and Policies. Business Associate shall use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by the Service Agreement(s), this Agreement or as required by law. This includes the implementation of Administrative, Physical, and Technical Safeguards to reasonably and appropriately protect the Covered Entity’s PHI against any reasonably anticipated threats or hazards, utilizing the

technology commercially available to the Business Associate (See also Section 3.2). The Business Associate shall maintain appropriate documentation of its compliance with the Privacy Rule, including, but not limited to, its policies, and procedures, records of training and sanctions of members of its Workforce.

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) If Covered Entity directs Business Associate to provide an accounting of disclosures of the Individual's PHI directly to the Individual, the Business Associate shall have sixty (60) days from the date of the Individual's request to provide access to or deliver such information to the Individual or Individual's designee. The Covered Entity shall provide notice to the Business Associate in time to allow the Business Associate a minimum of thirty (30) days to timely complete the Individual's request.
- (b) If the Covered Entity elects to provide the accounting to the Individual, the Business Associate shall have thirty (30) days from date of Covered Entity's notice of request to provide information for the Accounting to the Covered Entity so that the Covered Entity may timely respond to the Individual within the sixty (60) day period.
- (c) If either of the Parties is unable to complete the response to the request in the times provided above, that Party shall notify the Individual with a written statement of the reasons for the delay and the date by which the Party will complete its action on the request. The Parties may extend the response time once for no more than thirty (30) additional days.
- (d) The accounting of disclosures shall include at least the following information:

- (1) date of the disclosure;
 - (2) name of the third party to whom the PHI was disclosed,
 - (3) if known, the address of the third party;
 - (4) brief description of the disclosed information; and
 - (5) brief explanation of the purpose and basis for such disclosure.
- (e) The Parties shall provide one (1) accounting in any twelve (12) months to the Individual without charge. The Parties may charge a reasonable, cost-based fee, for each subsequent request for an accounting by the same Individual if he/she is provided notice and the opportunity to modify his/her request. Such charges shall not exceed any applicable State statutes or rules.

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

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

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

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

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

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

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

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

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

3.3 Security Provisions in Business Associate Contracts. Business Associate shall ensure that any agent to whom it provides Electronic PHI received from, maintained, or created for Covered Entity or that carries out any

duties for the Business Associate involving the use, custody, disclosure, creation of, or access to PHI supplied by Covered Entity, shall execute a bilateral contract (or the appropriate equivalent if the agent is a government entity) with Business Associate, incorporating substantially similar, but not less stringent restrictions and conditions in this Agreement with Business Associate regarding PHI except for the provision in Section 4.6.

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

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

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

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

TennCare Privacy Officer
310 Great Circle Rd.
Nashville Tennessee 37243
Phone: (615) 507-6697
Facsimile: (615) 734-5289
Email: Privacy.TennCare@tn.gov

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

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

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

4. USES AND DISCLOSURES BY BUSINESS ASSOCIATE

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

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

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

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

4.5 Covered Entity Authorization for Additional Uses. Any use of PHI or other confidential TennCare information by Business Associate, its Subcontractors, its affiliate or Contractor, other than those purposes of this Agreement, shall require express written authorization by the Covered Entity, and a Business Associate agreement or amendment as necessary. Activities which are prohibited include, but not are not limited to, Marketing or the sharing for Commercial Use or any purpose construed by Covered Entity as Marketing or Commercial use of TennCare enrollee personal or financial information with affiliates, even if such sharing would be permitted by federal or state laws.

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

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

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

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

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

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

5. OBLIGATIONS OF COVERED ENTITY

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

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

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

5.4 Reciprocity for Requests Received by Business Associate. The Parties agree that this Section (Section 5) is reciprocal to the extent Business Associate is notified or receives an inquiry from any Individual within Covered Entity's covered population.

6. TERM AND TERMINATION

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

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

Rules.

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

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

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

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

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

6.3.3 The Parties agree to anticipate the return and/or the destruction of PHI and other TennCare confidential information, and understand that removal of the confidential information from Business Associate's information system(s) and premises will be expected in almost all circumstances. The Business Associate shall notify the Covered Entity whether it intends to return and/or destroy the confidential with such additional detail as requested. In the event Business Associate determines that returning or destroying the PHI and other confidential information received by or created for the Covered Entity at the end or other termination of the Service Agreement is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction unfeasible.

6.3.4 Except for Business Associate Agreements in effect prior to April 21, 2005 when the Security Rule became effective, for the renewal or amendment of those same Agreements, or for other unavoidable circumstances, the Parties contemplate that PHI and other confidential information of the Covered Entity shall not be merged or aggregated with data from sources unrelated to that Agreement, or Business Associate's other business data, including for purposes of data backup and disaster recovery, until the parties identify the means of return or destruction of the TennCare data or other confidential information of the Covered Entity at the conclusion of the Service Agreement, or otherwise make an express alternate agreement consistent with the provisions of Section 6.3 and its subsections.

6.3.5 Upon written mutual agreement of the Parties that return or destruction of PHI is unfeasible and upon express agreement as to the means of continued protection of the data, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction unfeasible, for so long as Business Associate maintains such PHI.

7. MISCELLANEOUS

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

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

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

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

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

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

Notifications relative to Sections 2.8 and 3.4 of this Agreement must also be reported to the Privacy Officer pursuant to Section 3.5.

COVERED ENTITY:

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

BUSINESS ASSOCIATE:

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

7.7 Transmission of PHI or Other Confidential Information. Regardless of the transmittal methods permitted above, Covered Entity and Business Associate agree that all deliverables set forth in this Agreement that are required to be in the form of data transfers shall be transmitted between Covered Entity and Business Associate via the data transfer method specified in advance by Covered Entity. This may include, but shall not be limited to,

transfer through Covered Entity's SFTP system. Failure by the Business Associate to transmit such deliverables in the manner specified by Covered Entity may, at the option of the Covered Entity, result in liquidated damages if and as set forth in one (1) or more of the Service Agreements between Covered Entity and Business Associate listed above. All such deliverables shall be considered effectively submitted upon receipt or recipient confirmation as may be required.

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

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

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

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

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

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

DIVISION OF TENNCARE:

By: **Stephen Smith**
Stephen M. Smith, Director
Digitally signed by Stephen Smith
Date: 2021.07.08 08:20:24 -05'00'

BUSINESS ASSOCIATE:

By: *Clarence H. Carter (T.L.)*
Digitally signed by Clarence H. Carter (T.L.)
Date: 2021.07.07 11:52:59 -05'00'

Date: _____

Date: _____

TennCare Address:
Division of TennCare
310 Great Circle Road
Nashville, TN 37243

Business Associate Address:

Fax: (615) 253-5607
