



CONTRACT

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

Begin Date July 1, 2015	End Date December 31, 2018	Agency Tracking # 31865-00395	Edison Record ID 46432
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Contractor Legal Entity Name Automated Health Systems	Edison Vendor ID 184832
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Goods or Services Caption (one line only)
Eligibility Determination for the CoverKids Program

Subrecipient or Contractor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Contractor	CFDA # 93.778 Dept of Health & Human Services/Title XIX
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Funding — FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2016	\$423,970.89	\$423,970.89			\$847,941.78
2017	\$847,941.78	\$847,941.78			\$1,695,883.56
2018	\$847,941.78	\$847,941.78			\$1,695,883.56
2019	\$423,970.89	\$423,970.89			\$847,941.78
TOTAL:	\$2,543,825.34	\$2,543,825.34			\$5,087,650.68

Contractor Ownership Characteristics:

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

Woman Business Enterprise (WBE)

Tennessee Service Disabled Veteran Enterprise (SDVBE)

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

Other: For-Profit Corporation

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

Competitive Selection RFP

Other

Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.



Speed Chart (optional) TN00000345	Account Code (optional) 70803000
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**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION
AUTOMATED HEALTH SYSTEMS**

This Contract, by and between the State of Tennessee, Department of Finance and Administration, Division of Health Care Finance and Administration, hereinafter referred to as the "State" or "HCFA" and Automated Health Systems, hereinafter referred to as the "Contractor," is for eligibility determination for the CoverKids Program, as further defined in the "SCOPE OF SERVICES."

The Contractor is a for profit corporation
Contractor Place of Incorporation or Organization: Pennsylvania
Contractor Edison Registration ID # 184832

A. SCOPE OF SERVICES:

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Contract.
- A.2. The Contractor shall assist the Department of Finance and Administration, Division of Health Care Finance and Administration (HCFA), with the eligibility administration and other designated aspects of the CoverKids program (CoverKids), including the HealthyTNBabies program (HealthyTNBabies) as set forth in this Scope of Services. CoverKids is operated under Title XXI of the Social Security Act enacted in 1997 and the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) which requires states to apply "certain managed care quality safeguards" to their Children's Health Insurance Programs (CHIPs). Under Tennessee's CHIP program, this is known as CoverKids, HCFA contracts with licensed medical and dental plan administrators to provide a specified health and dental benefit package to enrollees. Through a part of the CoverKids program known as "HealthyTNBabies", the State also provides "unborn" maternity health benefits, including prenatal, delivery and sixty (60) days of post-partum care, with no monthly premiums, to eligible pregnant women who do not have maternity coverage. Unless otherwise indicated in this Contract, all references to CoverKids shall also include HealthyTNBabies. All capitalized terms and acronyms used herein shall have the meanings set forth on Attachment C, unless otherwise indicated.

CoverKids and HealthyTNBabies Enrollment Information

- A.3. The Contractor shall build and implement a process to accept eligibility records from the State where the child has been determined eligible for CoverKids and/or HealthyTNBabies through the Federally Facilitated Marketplace (FFM). The State shall receive the transaction from the FFM, extract the information pertaining to CoverKids eligible children and HealthyTNBabies pregnant mothers and send these files to the Contractor on a daily basis through a secure file transfer (SFTP) process. The Contractor shall develop a system that shall accept files from the State, configure the information as an approved CoverKids and/or HealthyTNBabies account, and upload the account to the eligibility database for processing, reporting and monitoring as follows:
- a. an intake process designed specifically for FFM referrals;
 - b. an identifier for FFM referral records;
 - c. an internal nightly process to prevent identification of FFM referrals as "partial" records requiring additional information;
 - d. an eligibility process to recognize FFM referrals as complete records, and
 - e. an ongoing internal processes to only cancel eligibility on the FFM records for specific reasons.



- A.4. The Contractor shall implement a mutually agreed format to receive the state's FFM inconsistency files to upload to the database for processing, reporting and monitoring as referenced above:
- a. Establish a process to pull the FFM inconsistency file from the SFTP site, and
 - b. Establish a process to drop the FFM inconsistency file into the eligibility database.
- A.5. The Contractor shall implement query to monitor the FFM accounts in the CoverKids system so they are not adversely affected by existing processes, implement a notification within the account so that users are able to distinguish the FFM accounts from other existing accounts, and analyze existing daily/weekly/monthly reports for changes required for reporting purposes.
- A.6. The Contractor shall provide ongoing maintenance projected to require a monthly estimate of development and operational staff to maintain and manage the daily referral process for the FFM records, provide reporting and support the accounts once enrolled, as identified below:
- a. Establish a process to pull the FFM transfer records from the SFTP site;
 - b. Establish a process to drop the referral files into the eligibility database;
 - c. Establish a daily batch intake process to import the new FFM referral files;
 - d. Provide analytical support to track and report on the FFM records, and
 - e. Provide data maintenance support to ensure the FFM records are stored and administered as intended.
- A.7. The Contractor shall process the files within one (1) business day, load the records into the CoverKids system and produce an 834 transaction to the medical and dental plan administrator(s) for CoverKids. The Contractor is responsible for monitoring the file transfer and loading to insure that all records sent from the State are loaded into the system and eligibility is communicated to the medical and dental plan administrator(s) in a timely manner. Any issues in file receipt and processing should be reported to the State within four (4) hours.

CoverKids Program Activities

- A.8. The Contractor will assist HCFA in the eligibility administration of the CoverKids program.
- A.9. The Contractor will perform required administrative functions under the direction of HCFA, including, but not limited to, the following as described in the CoverKids Eligibility Manual in effect as of the Contract start date, and as amended from time to time by HCFA.
- a. Processing of eligibility files from the State
 - b. Case maintenance activities per HCFA's policies and procedures
 - c. Develop and maintain eligibility and enrollment databases
- A.10. The Contractor shall have the capability to process all CoverKids applications received from the FFM. As a part of the eligibility determination process for CoverKids, Medicaid eligible families or children shall be referred to the FFM to apply for Medicaid coverage. The Contractor's data system must be able to detect overlaps in eligibility and process the appropriate disenrollments based upon a mutually agreed upon hierarchy and data received from the TennCare Bureau Interface.
- A.11. The Contractor shall develop and maintain a complete and accurate database of demographic eligibility data related to CoverKids enrollees. The required data elements that the database must include are specified in the following link and may be updated as applicable throughout the term of the contract:
- http://www.tn.gov/tenncare/RFP/CHAS_Core_Data_Elements.xlsx.



The Contractor shall comply with all medical and dental plan administrators(s) enrollment regulations of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). HCFA shall have on-line access to the Contractor's CoverKids database, and any software used for calculating budgets, for audit and for quality assurance activities.

CoverKids Eligibility

- A.12. The Contractor's data systems shall be compatible or have the capability to utilize the enrollment information provided by the State in the format of HIPAA 834 or 837 or other mutually agreed upon format by the state, to transmit and accept data as required. The Contractor shall ensure that CoverKids enrollees are not receiving Medicaid benefits and maintain the integrity of the application and enrollment process. The Contractor shall develop and maintain the capability for HCFA to have on-line access to the Contractor's CoverKids database, including all software used in the Contractor's eligibility determination. The access must allow HCFA to perform audit and quality assurance functions, to carry out ad hoc queries on the data, and to generate reports. The Contractor shall provide instructions and training to HCFA on the operation of the database and any associated reporting software.
- A.13. The Contractor is required to have performed an annual Statement on Standards for Attestation Engagements No. 16 (SSAE) review of the CoverKids Contract for submission to HCFA.
- A.14. The Contractor shall provide the following eligibility activities and procedures:
- a. The Contractor will be responsible for all eligibility for the CoverKids program related to applicants approved through the Federally Facilitated Marketplace. All enrollees of the CoverKids program must meet all eligibility factors established for the CoverKids program as determined by HCFA.
 - b. The Contractor shall enter files from the state into the eligibility system within one (1) business day of receipt of the file.
 - c. The Contractor shall transmit daily electronic enrollment files to inform the medical and dental plan administrator(s) of the plan enrollee's address change, enrollee is deceased, aged out, or no longer meet the eligibility or residency requirement and the effective date of coverage. The electronic interface shall be compatible or have the capability to utilize the enrollment information provided by the state in the format of HIPAA, 834 or 837 or other mutually agreed upon format by the state, to transmit and accept data as required.
 - d. The Contractor shall base all eligibility determination solely upon policy and procedures approved by HCFA. HCFA shall have access to all case files to perform monthly random enrollee post-eligibility audits. HCFA shall conduct random samples of the Contractor's eligibility determinations to ensure that the Contractor is adhering to policy adopted by HCFA and the State Plan submitted to the Centers for Medicare and Medicaid Services.
 - e. Once eligibility is determined, CoverKids coverage will continue for 12 months from the effective date of coverage unless the enrollee dies, ages out of the program, or no longer meets the state residency requirement. Changes in family circumstances will not terminate coverage within a 12 month eligibility period unless such change would result in the child being Medicaid eligible. The contractor will refer the enrollee to the Marketplace to apply for Medicaid coverage.
 - f. The Contractor shall resolve incomplete accounts from the file from the State within twenty (20) business days of receipt of the file. The Contractor shall contact the



applicant/member to obtain the missing or needed information to resolve the account, such as pay stubs, social security number, estimated due date, etc.

- g. The Contractor shall receive CoverKids Birth Reporting Form (Permission to Release Protected Health Information) from the medical facility treating the mother and newborn to make a determination from the pregnant woman's CoverKids account to determine whether the newborn shall be enrolled in the CoverKids or TennCare Medicaid program.
- h. The Contractor shall add the newborn's eligibility data to the TennCare Newborn Presumptive Eligibility database if the newborn is deemed eligible for TennCare Medicaid coverage. The State shall upload the newborn in the TennCare Medicaid system for coverage and assign the newborn to a TennCare Medicaid Managed Care Organization (MCO).
- i. The contractor shall activate the newborn's eligibility in the CoverKids eligibility database if the newborn is deemed eligible for CoverKids coverage.
- j. The Contractor shall receive FFM applications or a different application as directed by CoverKids by U.S. mail or fax from applicants applying for HealthyTNBabies. The Contractor shall use these applications to manually enter data into a web-based MAGI rules engine provided by the State and to determine applicants' eligibility for HealthyTNBabies. The Contractor shall scan copies of each application and the MAGI rules results from the MAGI rules engine into the eligibility system and into the applicant's account consistent with Section A.46 of this Contract. All HealthyTNBabies eligibility determinations must be made within 14 business days of receipt of the application.
- k. If the eligibility determination indicates that the individual is eligible for HealthyTNBabies, the Contractor will enroll the individual in HealthyTNBabies and send the appropriate approval notice to the applicant. The Contractor shall mail approval and denial notices as required by CoverKids to HealthyTNBabies applicants within three (3) business days of an eligibility determination. If, however, the eligibility determination results indicate that the applicant is potentially Medicaid eligible (and, thus, not eligible for HealthyTNBabies), the application and a copy of the results from the MAGI rules engine must be provided to TennCare within one (1) business day of such indication.
- l. The Contractor shall establish a process for individuals enrolled in CoverKids to be reverified every twelve (12) months. Since reverification should occur every twelve (12) months, the eligibility database should maintain records of who has been reverified and re-approved each year and maintain the previous years (household income, size and Federal Poverty Level percentage) data for historical purposes. The Contractor shall provide thirty (30) days for the individual to respond. Selection criteria for monthly reverification mailings shall be provided by CoverKids. Responses shall be accepted by U.S. Mail or fax.
- m. The Contractor shall use these applications to manually enter data into a web-based MAGI rules engine provided by the State to determine the applicants' eligibility for CoverKids. The Contractor shall scan copies of each application and the MAGI rule results from the MAGI rules engine into the eligibility system and into the applicant's account consistent with Section A.46 of this Contract. All CoverKids eligibility determinations shall be made within fourteen (14) business days of receipt of the application.
- n. If the eligibility determination indicates that the individual is eligible for CoverKids, the Contractor shall re-enroll the individual in CoverKids and send the appropriate approval notice to the applicant. If the individual respond and is not eligible for CoverKids or potentially eligible for Medicaid, the Contractor shall send an advance notice of



termination to the member and termination benefits. If, however, the eligibility determination results indicate that the applicant is potentially Medicaid eligible (and, thus, not eligible for CoverKids), the application and a copy of the results from the MAGI rules engine shall be provided to TennCare on a weekly basis. The Contractor shall establish a separate interface to send these documents to TennCare. If the individual does not respond, the Contractor shall send an advance notice of termination to the member and terminate benefits. The Contractor shall mail approval and denial notices as required by CoverKids to applicants within three (3) business days of an eligibility determination.

- o. If the member is determined Medicaid eligible, the Contractor shall not terminate benefits until the member is enrolled in TennCare and eligibility is available through normal eligibility verification processes established in A.49 of this contract. If the member is determined over the Medicaid income standard, TennCare will send information back to the Contractor to update the income reflecting the member is CoverKids eligible and the enrollment in CoverKids will continue.

Customer Service Call Center

- A.15. The Contractor shall maintain an appropriately staffed customer service call center to provide information and answer questions regarding the CoverKids program in a consistent, timely, and culturally-competent manner. This customer service call center will adhere to standards established by HCFA regarding knowledge of policies and practices as they relate to enrollees, promptness of response, accuracy of information, and ability to provide information to HCFA in a mutually agreed upon manner. This function also includes mailing informational pamphlets/literature/forms/notices to families at their request or as directed by HCFA.
- A.16. The Contractor shall manage a toll-free Customer Service Call Center capable of handling over 5,000 calls per month. The call center's phone counselors shall be trained to identify the caller's issue and provide accurate responses to inquiries regarding CoverKids or refer the call appropriately. The calls will cover various subject matters, such as, but not limited to, the following:
 - a. Requests for FFM applications or a different application as directed by CoverKids, renewal form, copy of documents within their account (prior notices, applications, etc.) that require the Contractor's call center to mail the requested information;
 - b. Complaints that must be transferred to HCFA or the medical or dental plan administrator(s) via a method to be mutually agreed upon;
 - c. General information requests regarding CoverKids including the application process through the Federally-Facilitated Marketplace, eligibility and enrollment, appeals, contact information for the health or dental plan, and contact information for programs or services outside of CoverKids such as contact phone numbers for TennCare, and
 - d. Requests requiring the Contractor to provide information regarding additional resources available to assist enrollees.
- A.17. The Contractor's Predictive Dialer (the "Predictive Dialer") shall make three (3) attempts to contact each family that includes a CoverKids enrollee by telephone for any missing information or returned mail as follows:
 - a. If the Predictive Dialer contacts an automated message system, then the Predictive Dialer shall leave a pre-recorded message on such system;



- b. If the Predictive Dialer contacts a family member, then a Customer Service Representative ("CSR") of the Contractor shall verify all information necessary to complete the eligibility determination, to be followed up with audit documentation provided to the state on a monthly basis, and
 - c. If the family member is unable during the call to verify all such information, then a call back from the family member to the Call Center will be required.
- A.18. The Contractor will maintain the existing toll-free number for the CoverKids Program. The Contractor is responsible for maintaining the local line. The Contractor's telephone center(s) shall be capable of handling the expected volume of calls. The phone center shall be available to accept calls Monday through Friday from 7:00 a.m. to 6:00 p.m. (Central Standard Time). The Contractor will not be expected to provide services on state holidays including New Year's Eve, New Year's Day, Martin Luther King Day, President's Day, Memorial Day, July 4th, Labor Day, Veterans Day, Thanksgiving Day, and Christmas, or on other days when the State is officially closed pursuant to written notification from the State.
- A.19. The Contractor shall provide a customer service operation that includes a toll-free line abandon rate not to exceed five percent (5%) of incoming calls throughout the contract.
- A.20. The Contractor shall retain an adequate staff of specially trained phone counselors to perform the education, enrollment and data collection functions for the targeted populations as delineated in the State approved counselors' position description. The Contractor shall ensure the availability of phone counselors trained to address questions or issues regarding the CoverKids program. Phone counselors must be sensitive to the cultural differences and special medical needs of these populations.
- A.21. The Contractor shall develop written policies and procedures for the provision of language assistance services, including providing language interpreter and translation services and auxiliary aids and services to any enrollee who needs such services, including but not limited to, enrollees with Limited English Proficiency and enrollees who are hearing and speech impaired.
- A.22. The Contractor shall provide language assistance services, including interpreter and translation services and auxiliary aids and services available at no expense to the enrollee. The Contractor shall have a contract with a translation service.
- A.23. Language assistance services shall ensure effective communication with enrollees. This effective communication assistance should be available in the form of auxiliary aids or services.
- A.24. The Contractor shall make free of charge TRS/TDD/TDY services available to enrollees.
- A.25. The Contractor shall ensure that telephone operators treat all callers with dignity. The callers' need for privacy shall be respected and HIPAA guidelines followed. All operators shall be able to process enrollments and disenrollments over the telephone, be able to answer/handle general inquiries/complaints, and mail, at the enrollee's request, information brochures/pamphlets. A voice mailbox shall be available for after hours with a callback the next working day. Contractor telephone lines shall be equipped with a telecommunications device for the hearing impaired and translation services shall be available.
- A.26. The Contractor shall ensure that the call center telephone staffing level is adequate to fulfill the standards of promptness and quality listed below:
- a. 100% of telephone calls must be answered within four rings (a call pick-up system which places the call in a queue may be used);



- b. Telephone calls should be of sufficient length to assure adequate information is imparted to the enrollee;
 - c. The wait time in the queue should not exceed three (3) minutes, and
 - d. The abandoned (dropped) call rate should not exceed 5% of the call volume funded by HCFA. Calls terminated in fewer than 30 (thirty) seconds will not be included in the abandoned call rate.
- A.27. The Contractor shall develop position descriptions which shall be submitted to the State for approval for the phone counselors, which shall include the following criteria:
- a. Education/experience in working with consumers, including working with special needs populations and/or working with families of special needs children;
 - b. Background/training in a health care related field;
 - c. Demonstrated knowledge of health care insurance, Medicaid and CoverKids, and
 - d. Education/experience working with computers.
- A.28. All calls involving CoverKids eligibility will be logged in the Contractor's processing system. Calls involving application requests will be reported in the Call Center report including repeat requests due to non-receipt of application.
- a. System(s) used for call tracking, managing, monitoring, recording, and reporting of both inbound and outbound calls shall have web-based accessibility.
 - b. All Recorded calls should be maintained for Quality of Care purposes.
 - c. The Contractor shall retrieve recorded calls for the State; within two (2) hours during normal operating hours of receiving the request from the State; and any call within the previous ninety (90) days and retrieve for the State, within one (1) business day of receiving the request from the State. The Contractor shall store all recorded calls older than 90 days and retrieve for the State, within (7) business day of receiving the request from the State.
- A.29. The Contractor shall have a desk reference available for counselors to access necessary information to respond to callers regarding general inquiries and complaints, as well as HCFA's program policies and procedures regarding CoverKids. HCFA has authority to review and comment on the desk reference.
- A.30. HCFA and/or enrollees may request FFM applications or a different application as directed by CoverKids, renewal form, copy of documents within their account (prior notices, applications, etc.) some of which shall be prepared and maintained by the Contractor and some to be ordered from HCFA, and a supply maintained by the Contractor for mailing purposes.
- A.31. The Contractor shall ensure all calls to the CoverKids toll-free number are answered in a timely manner and consistent and accurate information provided to all callers. Contractor staff shall have general knowledge of Medicaid and how to apply as well as CoverKids policy and procedures and the CoverKids plan administrator(s).
- A.32. The Contractor shall provide an Interactive Voice Response System – IVRS (Enrollee) to respond to inquiries regarding CoverKids eligibility and medical and dental plan administrators enrollment status. Enrollees shall be able to access the Contractor's system to obtain the information using identifying information, e.g. birth date and/or social security number. The IVRS must inform the enrollee if the enrollee has active CoverKids coverage for the current month and/or provide the plan administrator(s)' toll free number, if applicable. This system shall



be available 24 (twenty-four) hours per day, seven (7) days per week, except for scheduled preventive maintenance or downtime necessary to correct/restore functionality. The Contractor shall notify HCFA when this occurs.

Quality Assurance Activities

- A.33. The Contractor shall develop internal policies and procedures that ensure the quality of the services that it provides to HCFA and CoverKids applicants and enrollees. HCFA has authority to review and approve all Contractor policies and procedures prior to implementation. Internal procedures shall include audits to ensure all quality standards set forth in this contract are met, including but not limited to the following:
- a. Standards of promptness, timelines for enrollment and notification of enrollment from the FFM
 - b. Eligibility determination accuracy
 - c. Record retention
 - d. Phone service standards
 - e. Data system maintenance requirements
- A.34. The Contractor shall be familiar with the grievance and complaint processes available to enrollees as adopted by HCFA. The Contractor shall provide assistance to a CoverKids enrollee in completing a complaint or grievance filing necessary to appeal a medical and dental plan administrator(s) decision under the applicable law. The Contractor shall not act as the enrollee's legal counsel, but shall assist the enrollee's family in understanding the steps to grieve a decision and to complete the applicable grievance process.
- A.35. The Contractor shall record and conduct a review of all eligibility grievance and complaint requests by the enrollee, such as denial of eligibility or termination of enrollment. The enrollee may request a review by submitting correspondence in writing to the Contractor. The enrollee can report additional information or clarify information pertaining to their review by contacting the Contractor. The Contractor will document the call and any additional information/clarification provided by the enrollee. The Contractor staff will review the grievance or complaint request. If the Contractor's review does not result in the child and/or unborn child being eligible, the enrollee parent will be notified of the reason the denial was upheld. The notification letter will inform the enrollee that they may submit a formal request in writing to the Division of Health Care Finance and Administration, to be reviewed by HCFA. The State shall provide the Contractor with the approved notice templates to send to the enrollee.

HCFA will perform the following oversight and monitoring activities to ensure that the Contractor maintains compliance with the quality standards set forth in this Contract:

- a. Review reports and logs submitted by Contractor
- b. Monitor compliance with contract requirements
- c. Conduct unscheduled site visits for performance auditing purposes
- d. Conduct an independent evaluation of the Client Service Representative process at least annually
- e. Evaluate effectiveness of educational materials and activities
- f. Meet with the Contractor on a periodic basis to review and discuss project activities and functions. For purposes of this contract, telephone conference calls may meet this requirement with the State's approval.
- g. Monitor the Contractor to ensure provision of adequate levels of service
- h. Facilitate open communication and prompt resolution of issues between the Contractor, HCFA, the TennCare Bureau and the medical and dental plan administrator(s)
- i. Collaborate with the Contractor to improve services, and



- j. Identify errors, discrepancies in enrollee information, and enrollment requests that are not able to be processed in data transmitted by Contractor

Project Management

- A.36. The Contractor will carry out this project under the direction and guidance of HCFA. Although there will be continuous liaison during the Contract term, HCFA's project director will confer biweekly at a minimum, with the Contractor's project manager.
- A.37. The Contractor will submit brief written monthly summaries of progress, which outline the work accomplished during the reporting period; work to be accomplished during the subsequent reporting period; issues, real or anticipated, which should be brought to the attention of HCFA's project director; and notification of any significant deviation from previously agreed-upon work statements.
- A.38. Within ten (10) days of the Contract start date, the Contractor shall submit to HCFA's project director for final approval a work implementation statement. This final implementation plan shall be in agreement with the implementation plan as proposed in the Contractor's technical proposal submitted in response to contract competitive procurement and accepted by HCFA for Contract, and shall include the following:
 - a. The Contractor's project organizational structure;
 - b. The Contractor's staffing table with names and title of personnel assigned to this project according to staffing proposal submitted in response to competitive procurement. Necessary substitutions due to change of employment status and other unforeseen circumstances may only be made with prior approval by HCFA;
 - c. The project breakdown showing sub-projects, activities and tasks, and resources required and allocated to each, and
 - d. The time-phased plan in the form of a graphic display, showing each event, task and decision point in the work statement.
- A.39. Control Memorandum(a) (CM) Process - The CM process shall be utilized by the State to clarify Contract requirements, issue instruction to the Contractor, document action required of the Contractor, or request information from the Contractor. In addition, the CM process shall be used by the State to impose assessments of damages, either actual or liquidated. This process will be used to address issues or matters that do not require a contract amendment. Each CM must be in writing and indicate the date on which it was issued. CMs may provide relevant history, background, and other pertinent information regarding the issue(s) being addressed in the CM. Each CM will establish a deadline or timeframe for the Contractor's reply or other action. All CMs submitted to the Contractor must be signed and approved by the State's Project Director (or his/her designee). When the CM pertains to damages, either actual or liquidated, the State may issue consecutive CMs, as may be necessary or appropriate.
 - a. A CM may include one (1) or more of the following five (5) components of the CM process described below:
 - (1) On Request Report (ORR) - a request directing the Contractor to provide information by the time and date set out in the CM.
 - (2) Control Directive (CD) - instructions that require the Contractor to complete, within a designated timeframe, one (1) or more deliverables or to perform any other request from the State that is within the scope of the Contract. A CD may also provide clarification of certain Contract terms. Once a CM/CD has been issued, it shall be considered to be incorporated into this Contract.



- (3) Notice of Potential Damages (Actual or Liquidated) (NPD) – notification to the Contractor that the State has determined that a potential Contract performance or compliance issue exists and that the State is contemplating assessing damages, actual and/or liquidated. The NPD shall identify the Contract provision(s) on which the State determination rests.
 - (4) Notice of Calculation of Potential Damages (Actual or Liquidated) (NCPD) – notification to the Contractor that provides a calculation of the amount of potential damages, actual and/or liquidated, that the State is contemplating assessing against the Contractor. NPDs and NCPDs may be issued consecutively or simultaneously.
 - (5) Notice of Intent to Assess Damages (Actual or Liquidated) (NIAD) – notification to the Contractor that the State is assessing damages and specifying whether the damages are actual damages, liquidated damages, or both. The NIAD shall identify the NPD and NCPD upon which it is based. The NIAD shall specify the total amount and type of damages, whether actual or liquidated, the State intends to assess. Following the issuance of an NIAD, the State may elect to withhold damages from payments due to Contractor. The State may not Issue a NIAD without first issuing a NPD and a NCPD.
- b. Damages for failure to comply with CM. Contractor shall fully comply with all CMs. Failure to do so may result in sanctions, including liquidated damages as listed in Attachment B (Liquidated Damages) and/or termination of the Contract.
- c. Appeal of Damages by Contractor. Contractor may appeal either the basis for NPD or calculation of NCPD potential damages, either actual or liquidated. To do so, the Contractor shall submit to the State's Project Director (or his/her designee) a written response to the NPD and/or NCPD within ten (10) business days of receipt of a CM which includes a NPD or a NCPD. The State's Project Director (or his/her designee) shall review the appeal and provide notice of his/her determination to the Contractor through a CM. If the Contractor disagrees with the State's Project Director's (or his/her designee) initial appeal determination or the State's Project Director (or his/her designee) is unable to resolve the appeal, the Contractor may submit a written request to the State's Project Director (or his/her designee) that the matter be escalated to senior management of the Agency. Contractor shall submit such a request for escalation within ten (10) business days of its receipt of the initial appeal determination from the State's Project Director (or his/her designee) or of notification by the State's Project Director that he/she is unable to resolve the appeal. The State's senior management shall provide written notice of its final determination to the Contractor. Upon appeal or escalation, the State shall not increase the amount of the potential damages.

Administrative Requirements

- A.40. The Contractor shall be incorporated in the State of Tennessee or authorized to conduct business in Tennessee. The Contractor and its subcontractors shall not have any affiliation with a health care organization or provider of health, dental, mental health or substance abuse care services under CoverKids, Medicaid, or any other health care program administered by the state.
- A.41. The Contractor shall maintain an appropriately staffed office. Senior management personnel of the Contractor responsible for day-to-day operations based outside Tennessee also shall be available to CoverKids management by the beginning of the next business day following HCFA's request and in person in Tennessee within forty-eight (48) hours' notice. In addition to the Customer Service Call Center staff required in Section A.15, the Contractor shall have the following full-time positions and Key Personnel designated for this Contract:



- a. Client Service Representative
 - b. Senior Client Service Representative/Director of Call Center Operations
 - c. Supervisor
 - d. Admin 1 – Document Processing
 - e. Director of Document Management
 - f. Project Manager Training Specialist
 - g. Program Manager
 - h. Information Technology (IT) Manager/Director
 - i. Privacy Officer
- A.42 If, during the term of this Contract, any Call Center and/or Key Personnel should leave the Contractor's employment or the State requests that a specific Call Center and/or Key Personnel no longer work on this contract, the Contractor shall fill the vacant Call Center and/or Key Personnel position, within thirty (30) days from the date of the Call Center and/or Key Personnel leaving his/her position with the Contractor or being barred from working onsite, with a replacement that is satisfactory to the State. Until a qualified and acceptable replacement is available, Contractor shall temporarily fill such Call Center and/or Key Personnel position, within three (3) business days of a vacancy occurring, with a qualified Contractor corporate staff resource who shall perform the Call Center and/or Key Personnel duties. Failure to timely replace Call Center and/or Key Personnel may result in Liquidated Damages as set forth in Attachment B.
- A.43. The Contractor shall maintain an office in Tennessee to process all incoming CoverKids mail received from the enrollee or legal representative. The Contractor must scan and image all incoming mail via United States Postal Service or facsimile to the applicant's account within the eligibility system.
- A.44. The Contractor shall comply with the following administrative requirements:
- a. Furnish and supply offices at Contractor expense including telephones, paper supplies, postage machines, furniture, and other necessary items for the work force;
 - b. Develop written policies and procedures, employee manuals, external and internal communications and training materials necessary to fulfill the requirements of the contract;
 - c. Develop detailed procedures for the security and safeguarding of documents and files including the loss, misuse, or dissemination of confidential information to unauthorized personnel. The Contractor is responsible for full compliance with all provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) with respect to privacy and security regulations;
 - d. Maintain strict adherence to HCFA's HIPAA security procedures, and
 - e. Notify HCFA of all employee terminations and the user IDs and passwords of the terminated employee so that these may be removed from HCFA's information system.
- A.45. The Contractor shall also maintain sufficient storage capability for a 12-month supply of all materials sent by the Contractor to the enrollees, including materials prepared by HCFA.

Technical Environment

- A.46. The Contractor's management information system shall meet the following requirements:
- a. The Contractor's data system shall be compatible or have the capability to utilize the enrollment information provided by the state in the format of HIPAA, 834 or 837 or



other mutually agreed upon format by the state, to transmit and accept data as required as well as any subsequent eligibility system utilized by HCFA. When the State implements a new Medicaid/CHIP eligibility system it will be in scope, for the purpose of this contract, for the contractor to make the appropriate move to the three (3) month run-out period.

- b. All files prepared by the Contractor shall be in the record formats provided by HCFA.
- c. The Contractor shall utilize all files provided by HCFA in the formats prescribed.
- d. The Contractor system shall be flexible and able to utilize and integrate data sent by the State into their databases.
- e. The Contractor shall manage the data sent by HCFA appropriately. The Contractor will be charged for data refreshes that are requested for data mismanagement. Data refreshes necessary due to HCFA error will be provided free.
- f. The Contractor shall maintain a complete testing environment with a test database.
- g. The Contractor shall have written procedures to provide a secure computer room.
- h. The Contractor shall have a fire, flood, and theft-protected facility or computer room located away from the storage location of the original system and to store back-up files of the eligibility system, 834 electronic files, electronic images of all notices produced and mailed to the CoverKids enrollees.
- i. The Contractor shall have software control procedures that meet standard IT best practice security requirements. The Contractor shall create a detailed Security Plan describing how the CoverKids application security features shall be integrated with existing network user log- in IDs to provide the security requirements. Recommended levels of security, limitations of capabilities, and required rules shall be provided. The format and content of security tables shall be included, as well as the recommended starting phase for establishing security profiles.
- j. The Contractor shall develop and maintain disaster recovery policies and procedures that shall be approved by HCFA. The Contractor shall inform HCFA thirty (30) days prior to any change in these policies and procedures.
- k. The Contractor shall have back up procedures and the capability to fully restore their system without HCFA's intervention.
- l. The Contractor shall notify HCFA of any system or software failure within four (4) hours.
- m. The Contractor shall retain all data collected for a minimum of seven (7) years. The Contractor shall maintain data on line for a minimum of two (2) years. The Contractor may archive data after two (2) years of inactivity.
- n. The transmission submission error rate cannot exceed 5%. If the error rate for a file were above 5%, the file would be rejected and would not be loaded into the system.
- o. The Contractor shall maintain an electronic log records that will track data accessed in case of Security or Confidentiality breaches.
- p. The Contractor shall follow the HIPAA security and confidentiality rules consistent with



the State's policies and procedures. The Contractor shall provide documentation of staff training in HIPAA security and confidentiality. After the Contract start date and within thirty (30) days of implementation date of January 1, 2016, documentation of staff training and signed security and confidentiality agreements shall be available for review by HCFA upon request.

- A.47. All data provided to the Contractor by HCFA and all data collected by the Contractor in the performance of contractual duties is the property of HCFA and will be provided to HCFA or an entity designated by HCFA at the completion of this contract. The Contractor shall allow HCFA access to this data upon request. Further, the information collected by the Contractor in the performance of contractual duties is proprietary and may not be used for any other purpose without HCFA's permission.

Information Interface

- A.48. The development and maintenance of all systems interfaces will be the responsibility of the Contractor.
- A.49. The Contractor shall work with the CoverKids medical and dental plan administrator(s) to arrange transfer of the following data:
- a. Daily transmission of changes in the eligibility status of enrollees:
 - (1) The Contractor's data systems shall be compatible or have the capability to utilize the enrollment information provided by the state in the format of HIPAA, 834 or 837 or other mutually agreed upon format by the state, to transmit and accept data as required.
 - (2) The Contractor shall publish an implementation guide that has been approved by the State.
 - (3) The Contractor shall have a secure file transfer and retrieval process that shall be prior approved by HCFA.
 - (4) The Contractor shall be responsible for acquisition and maintenance of all communications equipment, including but not limited to, lease lines and data transmission lines, necessary to maintain the above communications and be responsible for the development and maintenance of the system's interface. Data System design analysis shall be approved by the State.
 - b. Data Transfers Sent From the State to the Contractor:
 - (1) The Contractor will use daily electronic files in a HIPAA compliant 270/271 eligibility verification process with HCFA to check that no family members are already enrolled in Medicaid.
 - (2) The Contractor will run a weekly and monthly HIPAA compliant 270/271 eligibility verification process with HCFA in order to conduct electronic matches to identify CoverKids enrollees who gained TennCare Medicaid after they became active CoverKids enrollees.
 - (3) The State of Tennessee Acceptable Use Policy for Network Access Rights and Obligations will be required. Signature of contracted users will be mandatory.
 - c. Contractor Data Transfers to the State:



- (1) The data transfers shall be in a mutually agreed upon format. The files will be 834 enrollment files for CoverKids medical and dental plan administrator(s). The Contractor's data systems shall be compatible or have the capability to utilize the enrollment information provided by the state in the format of HIPAA, 834 or 837 or other mutually agreed upon format by the state, to transmit and accept data as required.
 - (2) The Contractor shall provide to the plan administrator(s) the monthly and weekly enrollment files that contain the official enrollment and disenrollment notification. Enrollee choice of medical plan administrator when applicable shall be included on the daily enrollment file.
 - (3) The Contractor shall maintain the capability to provide to the State an extract file of CoverKids enrollee data on a scheduled or on demand basis in a mutually agreed upon format.
- d. Contractor Data Transfers to CoverKids medical and dental plan administrator(s):
- (1) The enrollment files for CoverKids plan administrator(s) shall be transferred via a secure site that has been approved by the HCFA, and
 - (2) The Contractor shall implement a single interface to exchange electronic information with the plan administrator(s).
- e. Contractor CoverKids - The Contractor shall maintain the following data in a standard database format. HCFA shall be provided on-line access to this data from outside the Contractor's location during business hours. Demographic data from the CoverKids applicant or other appropriate source per HCFA policy that includes, but is not limited to, the following information regarding each enrollee:
- (1) Name
 - (2) Address
 - (3) County and state of residence
 - (4) Citizenship
 - (5) Birth date
 - (6) Gender
 - (7) Race
 - (8) Pregnancy Status
 - (9) Parent or guardian names
 - (10) Countable Income
 - (11) Federal Poverty Level (FPL)
 - (12) Household Size
 - (13) Social security number
 - (14) Begin and end dates of medical and dental plan administrator(s)' enrollment provided by the plan administrator(s)
 - (15) Begin and end dates of CoverKids eligibility
 - (16) Status of application/predetermination - approval, pending missing information, denied with reason for denial, referred for Medicaid
 - (17) Type of application - on-line, paper, submitted by agency
 - (18) Complaint log regarding complaints about the Contractor's services and the resolution of all such complaints
 - (19) Unique identifiers assigned by the Contractor
- f. Conversion of Data Transfer from Existing Eligibility Contractor to New Eligibility Contractor - The Contractor and the State shall prepare a final conversion plan and



perform final conversion activities that include procedure for testing the conversion data. The conversion plan shall include loading nine (9) years of eligibility history from the existing Eligibility Contractor system into the Contractor's Eligibility system. The data transfers shall be in a mutually agreed upon format with the state. The conversion of data transfer shall be completed within four (4) months of the start of the contract.

CoverKids Communication

- A.50. The Contractor shall be responsible for producing, maintaining, updating and distributing the following documents as well as incurring all mailing costs. All materials shall be printed in prevalent languages of Spanish and English and written at a 6th grade reading level. HCFA will notify the Contractor of any changes in prevalent language status. All materials shall include State requirements such as the non-discrimination statement.
- a. Information regarding appeal procedures;
 - b. Approval/denial/missing information letters and forms, and
 - c. Program information to explain CoverKids benefits.

Deliverables

- A.51. Within ten (10) days of the contract start date, the Contractor shall submit to the State for its approval a project plan for to be implemented for all services provided by Contractor under this Contract. The project plan should comply with the Project Management Book of Knowledge (PMBOK).
- A.52. Within one hundred and twenty (120) days of the end date of the contract, the Contractor shall submit to the State for its approval a transition plan to be implemented for all services provided by Contractor under this contract in the event of the award of a contract for such services to a vendor in a subsequent procurement.
- A.53. The Contractor shall provide an automated enrollment/disenrollment system into the CoverKids program. The automated enrollment function shall be capable of managing enrollments for newly eligible enrollees enrolled through the Federally Facilitated Marketplace (FFM).
- A.54. The Contractor shall operate an interactive voice response system to provide enrollees information about eligibility including, but not limited to, current eligibility and enrollment status.
- A.55. The Contractor shall allow HCFA and other state or affiliated agencies access to all information maintained in the Contractor's database(s) that pertains to CoverKids.
- A.56. The Contractor shall maintain an information system capable of producing comprehensive reports for HCFA, including but not limited to, monthly enrollment reports, demographic reports as requested by HCFA, and any other management reports determined necessary by HCFA.
- A.57. The Contractor's management information system shall also have capacity to fully integrate with the current TennCare eligibility systems, as well as any new/replacement eligibility systems acquired by the State of Tennessee relating to Medicaid and/or CoverKids.
- A.58. The Contractor shall work closely with and be familiar with the CoverKids medical and dental plan administrator(s). The Contractor, HCFA, and the medical and/or dental plan administrator(s) will interact on a regular basis to assure open communication and prompt issue resolution.



- A.59. Social Security Administration (SSA). The State of Tennessee has entered into an electronic information sharing agreement with the Social Security Administration (SSA) as "Electronic Information Exchange partners (EIEP)s". The SSA must approve the following requirements prior to allowing access to SSA data. Contractor will provide an electronic record to Department of Human Services (DHS) on every new application to secure verification of citizenship or alien status.
- a. A Self-Certification Questionnaire (SCQ) and corresponding Security Design Plan (SDP) shall be submitted for approval to the SSA by the EIEP for access to SSA-provided data.
 - b. The EIEP shall document in the SCQ and SDP their compliance with the SSA's Systems Security Requirements (SSRS).
- A.60. The Contractor shall cooperate fully with federal and state audits. The State may conduct audits of any aspect of the program the State deems appropriate. The State may select any qualified persons, or organization to conduct the audits. To the extent allowed by applicable law, the State agrees that persons or organizations conducting audits of the Contractor shall be prohibited from disclosing confidential patient records or proprietary or confidential information reasonably designated as such by the Contractor.

Transition of Tennessee Eligibility Determination System (TEDS)

- A.61. Effective immediately upon notification from HCFA, the CoverKids eligibility application files process will be transitioned to a new Medicaid and CHIP Eligibility Determination System. At this time, the Contractor shall begin a three month run out period, whereby the Contractor shall complete the eligibility application files process for all CoverKids FFM applications that were received as of the date of transition notification by the State, which shall include processing all CoverKids FFM applications, acquiring any missing information, and supporting documents received. The Contractor shall upload and complete all eligibility application files from the State during the three month run out period. On a daily basis, the Contractor shall send an eligibility file to the State on all pending accounts that have a final determination. The Contractor shall not disseminate or cancel any enrollee's eligibility during the three month run out period. All such requests will be directed to the State's Service Center for processing. At the end of the eligibility run out period, the Contractor shall redirect the toll-free telephone number, toll-free facsimile, and CoverKids United States Postal Service mail box to the State. The Contractor shall load all determined eligible children and pregnant women from the FFM.
- A.62. The Contractor shall provide appropriate staff to be available from 8:00 a.m. through 5:00 p.m., CST, Monday through Friday, to provide assistance to the State pertaining to the Tennessee CoverKids. The Contractor shall designate specific personnel with appropriate expertise to provide the duties as follows:
- a. Respond to specific eligibility questions submitted in writing via e-mail to a designated e-mail address.
 - b. Participate in telephone calls following notice via e-mail requesting a conference call with the State.
 - c. Provide remote access to the TN CoverKids system on a read-only basis for review of eligibility screens, applications, notices/letters and supporting documentation housed in the system between 8:00 a.m. and 5:00 p.m., CST, Monday through Friday exclusive of holidays.
 - d. Provide CoverKids audit support.
 - e. Respond to e-mail notice of system inaccessibility.



- A.63. The Contractor shall send the State, in a mutually agreed format, test files prior to run-out period and implementation of the new TEDS for the Medicaid and CHIP programs.
- A.64. The Contractor shall continue to provide all existing aspects of the eligibility process as specified in this contract until the State notifies the Contractor that the new Tennessee Eligibility Determination System (TEDS) is ready for implementation. This notification of eligibility application transition to the TEDS shall be provided in writing by the State at which time the Contractor shall begin the process to transition, as directed by TennCare, all processes to TEDS.

Reports

- A.65. The Contractor shall develop methodologies for reporting to the HCFA. HCFA shall have authority to review, comment upon and approve the proposed methodologies. Reports shall be submitted to HCFA's project manager as directed by the contract. Reports shall be submitted electronically and by hard copy unless otherwise specified by HCFA.
 - a. Monthly Data Reports shall include a narrative to explain trends in eligibility, issues experienced in the month, recommendations to HCFA for policy and/or procedural changes, and any additional comments the Contractor may have.
 - b. CoverKids standardized summary reports shall provide the quantity for each of the following elements:
 - (1) Children applying;
 - (2) Persons disenrolled (including those disenrolled because enrollee has active Medicaid);
 - (3) Disenrollments for failure to cooperate with audits;
 - (4) Referrals to TennCare due to audit results;
 - (5) Telephone calls received, and
 - (6) Average abandon call rate.
 - c. CoverKids Standardized summary reports that include the following:
 - (1) The number of all children processed each month by CoverKids, including the number of children enrolled in CoverKids from the Federally Facilitated Marketplace, referred from Medicaid, referred to Medicaid, and denied;
 - (2) Program enrollment numbers based on eligibility information provided to the plan administrator(s);
 - (3) Total number of existing CoverKids enrollees enrolled with plan administrator(s) by county;
 - (4) Total number of CoverKids enrollees enrolled who applied from the FFM, by county;
 - (5) A breakdown of the CoverKids terminations, listing the reasons for termination and the percentage and number for each termination reason ;
 - (6) Breakdown of percentages enrolled by gender, age, race/ethnicity, and FPL;
 - (7) A breakdown of the sources of information about CoverKids, and
 - (8) Monthly CoverKids call volume and abandon rates.
 - d. The Contractor shall not release any reports or data about this contract without permission from the state.
- A.66. The Contractor shall provide the time frame for CoverKids eligibility determinations by the Contractor including the standard of promptness reports:
 - a. Ad Hoc Reports as requested by HCFA;



- b. Telephone Log Report;
 - (1) Logs shall be maintained for the CoverKids calls, showing the number of calls answered per day/week/month.
 - (2) Extensive reporting by the telephone company of telephone activity will be required to assure that the Contractor is fulfilling the promptness and quality standard requirements of the contract. The Contractor shall submit monthly reports obtained from its phone company to HCFA , which shall include but are not limited to the following:
 - i. Total number of telephone calls received per month
 - ii. Average Wait time for all calls in queue
 - iii. Average length of call
- c. Mail Log Report;
 - (1) Type of each mailing;
 - (2) Reason for each mailing;
 - (3) Date of mailing.
- d. Other contacts:
 - (1) Method of contact (phone, mail, etc.)
 - (2) Source;
 - (3) Reason for contact.

Business Continuity/Disaster Recovery Plan

- A.67 The Contractor shall submit a formal Business Continuity-Disaster Recovery Plan (BC-DR) by March 31, 2016. The Contractor will apply recognized industry standards governing disaster preparedness and recovery including the ability to continue operations during hours specified in A.15 in the event that the central site is rendered inoperable.
- a. The Contractor will maintain the ability to implement the BC-DR plan within a two (2) hour window from the time of the State's direction to implement such plan. Such plan must provide for seamless operation of all contracted activities and Service Center functionality as specified herein. Any/all back-up contract centers must have an IVR and Automated Call Distribution Capability (ACD) system and remote access via telephone and simple internet connection. Contractor employees must be familiar with emergency procedures.
 - b. Upon the State's request, the Contractor shall test the BC-DR with the results added to the BC-DR plan document. The BC-DR must be able to meet the requirements of any applicable state and federal regulations and policies of the State. The BC-DR must include sufficient information to show that following requirements are met.
 - c. Documentation of emergency procedures that include steps to take in the event of a natural disaster by fire, water damage, sabotage, mob action, bomb threats, etc. This documentation shall be in the form of a BC-DR plan. The Contractor shall apply recognized industry standards governing Disaster Preparedness and Recovery including the ability to continue processing in the event that the central site is rendered inoperable;
 - (1) Employees at the site shall be familiar with the emergency procedures;
 - (2) Smoking shall be prohibited at the site;



- (3) Heat and smoke detectors shall be installed at the site both in the ceiling and under raised floors (if applicable). These devices shall alert the local fire department as well as internal personnel;
- (4) Portable fire extinguishers shall be located in strategic and accessible areas of the site. They must be vividly marked and periodically tested;

Fraud and Abuse

- A.68. The Contractor shall assist the State in identifying fraud and perform fraud investigations of enrollees, in consultation with the State, for the purpose of recovery of overpayments due to fraud. The Contractor shall provide all documentation, records, and data to the Tennessee Office of Inspector General for the purpose of investigating suspected fraud and abuse cases. Reviews must include all possible actions necessary to locate and investigate cases of potential, suspected, or known fraud and abuse. In the event the Contractor discovers evidence that an unusual transaction has occurred that merits further investigation, the Contractor shall inform the Department of Finance and Administration, Division of Health Care Finance and Administration, the Bureau of TennCare, the Division of State Audit within the Office of the Comptroller of the Treasury, and the State of Tennessee Office of Inspector General.

Readiness Review

- A.69. The Contractor shall demonstrate to HCFA's satisfaction that it is able to meet the requirements of this Contract by cooperating in a readiness review conducted by HCFA to review the Contractor's readiness to begin operations. This review shall begin following the Contract start date of July 1, 2015 and be completed prior to the beginning of Contract implementation date of January 1, 2016. This review may include, but is not limited to, desk and on-site review of documents provided by the Contractor, a walk-through of the Contractor's operations, system demonstrations (including systems connectivity testing), and interviews with Contractor's staff. The scope of the review may include any and all requirements of this Contract as determined by HCFA.
- A.70. The Contractor shall work in cooperation with HCFA to ensure that their eligibility system eligibility files and all other systems, files and/or processes satisfy all functional and informational requirements of the CoverKids program. The Contractor will assist HCFA in the analysis and testing of these systems prior to the delivery of services. HCFA uses webex sessions to verify that test files are loaded correctly in the Contractor's system. The Contractor shall provide system access to allow HCFA to test the Contractor's system through the HCFA CoverKids network. Any software or additional communications network required for access shall be provided by the Contractor.
- a. Based on the results of the review activities, HCFA will issue a letter of findings and, if needed, will request a corrective action plan from the Contractor. CoverKids enrollees may not be enrolled with the Contractor Eligibility System until HCFA has determined that the Contractor is able to meet the requirements of this Contract.
 - b. If the Contractor is unable to demonstrate its ability to meet the requirements of this Contract, as determined by HCFA, within the time frames specified by HCFA, HCFA may terminate this Contract in accordance with Section D.6 of this Contract and shall have no liability for payment to the Contractor.

B. CONTRACT PERIOD:

- B.1. This Contract shall be effective on July 1, 2015 ("Effective Date"), and extend for a period of Forty-Two (42) months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.



B.2. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to two (2) renewal options 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-six (66) months.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Five Million Eighty-Seven Thousand Six Hundred Fifty Dollars and Sixty-Eight Cents (\$5,087,650.68) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.

a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.

b. The Contractor shall be compensated based upon the following payment methodology:

(1) For service performed from January 1, 2016, through December 31, 2018, the following rates shall apply:

Service Description	Amount (per compensable increment)
General Administration and Operations (including all scopes of services and deliverables included in the pro forma)	\$ 141,323.63 per month

(2) Should term extension option be utilized, for services performed from January 1, 2019, through December 31, 2020, the following rates shall apply:

Service Description	Amount (per compensable increment)
General Administration and Operations (including all scopes of services and deliverables included in the pro forma)	\$ 120,035.20 per month



- c. Actual postage expenses associated with required Contractor mail outs will be reimbursed by the State as a pass thru cost.
- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:

Division of Health Care Finance and Administration
CoverKids Program
310 Great Circle Road
Nashville, TN 37243

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



- C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.
- C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.
- a. The Contractor shall complete, sign, and present to the State an "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, shall be made by automated clearing house.
 - b. The Contractor shall complete, sign, and present to the State a "Substitute W-9 Form" provided by the State. The taxpayer identification number in the Substitute W-9 Form must be the same as the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID.

D. MANDATORY TERMS AND CONDITIONS:

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

The State:

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



FAX # (615) 253-5607

The Contractor:

Joe W. Nocito, Chief Executive Officer
Automated Health Systems
300 Arcadia Court
9370 McKnight Road
Pittsburgh, PA 15237
ceo@automated-health.com
Telephone 412-367-3030, ext. 2203
FAX # 412-367-1213

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

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

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



D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.

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

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

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

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

a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.

b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.

c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.



- d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.



- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for intentional torts, criminal acts, fraudulent conduct, or omissions that result in personal injuries or death.
- D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State to enforce the terms of this Contract.

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

- D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.
- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
 - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
 - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
 - d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.
- D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this



Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.

- D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
 - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

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



payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.

- D.25. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract. In addition, the Contractor shall comply with the provisions of Contract Section E.16, (Applicable Laws, Rules, Policies and Court Orders), and this Section D.25 shall not be deemed to limit or abridge any requirement set forth in Section E.16.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 407.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
 - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below);
 - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
 - e. any technical specifications provided to proposers during the procurement process to award this Contract; and,
 - f. the Contractor's response seeking this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.
- E.2. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or



federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

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

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

E.4 Ownership of Software and Work Products.

a. Definitions.

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

b. Rights and Title to the Software

- (1) All right, title and interest in and to the Contractor-Owned Software shall at all times remain with Contractor, subject to any license granted under this Contract.
- (2) All right, title and interest in and to the Work Product, and to modifications thereof made by State, including without limitation all copyrights, patents, trade secrets and other intellectual property and other proprietary rights embodied by and arising out of the Work Product, shall belong to State. To the extent such rights do not automatically belong to State, Contractor hereby assigns, transfers, and conveys all right, title and interest in and to the Work Product, including without limitation the copyrights, patents, trade secrets, and other intellectual property rights arising out of or embodied by the Work Product. Contractor and its employees, agents, contractors or representatives shall execute any other



documents that State or its counsel deem necessary or desirable to document this transfer or allow State to register its claims and rights to such intellectual property rights or enforce them against third parties.

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

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



- E.9. Intellectual Property. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.
- E.10. Liquidated Damages. If failure to comply with requirements of this contract occurs, ("Liquidated Damages Event"), the State may assess damages on Contractor ("Liquidated Damages"). The State shall notify the Contractor of amounts to be assessed as Liquidated Damages as stipulated in Contract Attachment B. The Parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for Contractor's failure to fulfill its obligations regarding the Liquidated Damages Event as these amounts are likely to be uncertain and not easily proven. The Contractor agrees that the Liquidated Damages are in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or any other sections of this Contract.
- The State is not obligated to assess Liquidated Damages before availing itself of any other remedy. The State may choose to avail itself of any other remedy available under this Contract or at law or equity.
- E.11. Partial Takeover of Contract. The State may, at its convenience and without cause, exercise a partial takeover of any service that the Contractor is obligated to perform under this Contract, including any service which is the subject of a subcontract between Contractor and a third party (a "Partial Takeover"). A Partial Takeover of this Contract by the State shall not be deemed a breach of contract. The Contractor shall be given at least thirty (30) days prior written notice of a Partial Takeover. The notice shall specify the areas of service the State will assume and the date the State will be assuming. The State's exercise of a Partial Takeover shall not alter the Contractor's other duties and responsibilities under this Contract. The State reserves the right to withhold from the Contractor any amounts the Contractor would have been paid but for the State's exercise of a Partial Takeover. The amounts shall be withheld effective as of the date the State exercises its right to a Partial Takeover. The State's exercise of its right to a Partial Takeover of this Contract shall not entitle the Contractor to any actual, general, special, incidental, consequential, or any other damages irrespective of any description or amount.
- E.12. Unencumbered Personnel. The Contractor shall not restrict its employees, agents, subcontractors or principals who perform services for the State under this Contract from performing the same or similar services for the State after the termination of this Contract, either as a State employee, an independent contractor, or an employee, agent, subcontractor or principal of another contractor with the State.
- E.13. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its



employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify and/or procure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

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

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

The Contractor shall comply with the following:

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



the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).

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

- (2) Total compensation means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 C.F.R. § 229.402(c)(2)):
- i. Salary and bonus.
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - v. Above-market earnings on deferred compensation which is not tax qualified.
 - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.
- b. The Contractor must report executive total compensation described above to the State by the end of the month during which this Contract is awarded.
- c. If this Contract is amended to extend the Term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the term extension becomes effective.
- d. The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>

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

- E.15 Survival. The terms, provisions, representations, and warranties contained in Sections D.11 (Records), D.19 (Hold Harmless), D.20 (HIPAA Compliance), E.2 (Confidentiality of Records), E.7 (Prohibited Advertising), E.9 (Intellectual Property) E.13 (Personally Identifiable Information), E.19 (Notification of Breach), E.21 (SSA Data), and E.25 (IRS Data) of this Contract shall survive the completion of performance, termination or expiration of this Contract.
- E.16 Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's Response to 31865-00395 (Attachment 6.2, Section B) and resulting in this Contract.



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

E.17. Business Associate. Contractor hereby acknowledges its designation as a business associate under HIPAA and agrees to comply with all applicable HIPAA regulations. In accordance with the HIPAA regulations, the Contractor shall, at a minimum:

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



any individual who is a subject of that PHI upon termination, cancellation, expiration or other conclusion of the Agreement, and in accordance with this Section of this Contract. The Contractor shall complete such return or destruction as promptly as possible, but not later than thirty (30) days after the effective date of the termination, cancellation, expiration or other conclusion of the Agreement. The Contractor shall identify any PHI that cannot feasibly be returned or destroyed. Within such thirty (30) days after the effective date of the termination, cancellation, expiration or other conclusion of the Agreement, the Contractor shall: (1) certify an oath in writing that such return or destruction has been completed; (2) identify any PHI which cannot feasibly be returned or destroyed; and (3) certify that it will only use or disclose such PHI for those purposes that make its return or destruction infeasible;

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



shall notify HCFA's Privacy Office immediately upon becoming aware of any security incident that would constitute a "breach of the security of the system" as defined in TCA 47-18-2107.

- E.19. Notification of Breach and Notification of Suspected Breach. - The Contractor shall notify HCFA's Privacy Office immediately upon becoming aware of any incident, either confirmed or suspected, that represents or may represent unauthorized access, use or disclosure of encrypted or unencrypted computerized data that materially compromises the security, confidentiality, or integrity of enrollee PHI maintained or held by the Contractor, including any unauthorized acquisition of enrollee PHI by an employee or otherwise authorized user of the Contractor's system. This includes, but is not limited to, loss or suspected loss of remote computing or telework devices such as laptops, PDAs, Blackberrys or other Smartphones, USB drives, thumb drives, flash drives, CDs, and/or disks.
- E.20. Transmission of Contract Deliverables. All information or data that is necessary for one or more deliverable set forth in this Contract shall be transmitted between HCFA and Contractor via the data transfer method specified in advance by HCFA. This may include, but shall not be limited to, transfer through HCFA's SFTP system. Failure by the Contractor to transmit information or data that is necessary for a deliverables in the manner specified by HCFA, may, at the option of HCFA, result in liquidated damages as set forth on Contract Attachment B hereto.
- E.21. Social Security Administration (SSA) Required Provisions for Data Security. The Contractor shall comply with limitations on use, treatment, and safeguarding of data under the Privacy Act of 1974 (5U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, related Office of Management and Budget guidelines, the Federal Information Security Management Act of 2002 (44 U.S.C. §3541, *et seq.*), and related National Institute of Standards and Technology guidelines. In addition, the Contractor shall have in place administrative, physical, and technical safeguards for data.
- a. The Contractor shall not duplicate in a separate file or disseminate, without prior written permission from HCFA, the data governed by the Contract for any purpose other than that set forth in this Contract for the administration of the HCFA program. Should the Contractor propose a redisclosure of said data, the Contractor must specify in writing to HCFA the data the Contractor proposes to redisclose, to whom, and the reasons that justify the redisclosure. HCFA will not give permission for such redisclosure unless the redisclosure is required by law or essential to the administration of the HCFA program.
 - b. The Contractor agrees to abide by all relevant federal laws, restrictions on access, use, and disclosure, and security requirements in this Contract.
 - c. The Contractor shall provide a current list of the employees of such contractor with access to SSA data and provide such lists to HCFA.
 - d. The Contractor shall restrict access to the data obtained from HCFA to only those authorized employees who need such data to perform their official duties in connection with purposes identified in this Contract. The Contractor shall not further duplicate, disseminate, or disclose such data without obtaining HCFA's prior written approval.
 - e. The Contractor shall ensure that its employees:
 - (1) properly safeguard PHI/PII furnished by HCFA under this Contract from loss, theft or inadvertent disclosure;
 - (2) understand that they are responsible for safeguarding this information at all times, regardless of whether or not the Contractor employee is at his or her regular duty station;



- (3) ensure that laptops and other electronic devices/ media containing PHI/PII are encrypted and/or password protected;
- (4) send emails containing PHI/PII only if encrypted or if to and from addresses that are secure; and,
- (5) limit disclosure of the information and details relating to a PHI/PII loss only to those with a need to know.

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

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

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

- g. HCFA may immediately and unilaterally suspend the data flow under this Contract, or terminate this Contract, if HCFA, in its sole discretion, determines that the Contractor has: (1) made an unauthorized use or disclosure of HCFA SSA-supplied data; or (2) violated or failed to follow the terms and conditions of this Contract.
- h. This Section further carries out Section 1106(a) of the Act (42 U.S.C. 1306), the regulations promulgated pursuant to that section (20 C.F.R. Part 401), the Privacy of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, related Office of Management and Budget ("OMB") guidelines, the Federal Information Security Management Act of 2002 ("FISMA") (44 U.S.C. 3541 et seq.), and related National Institute of Standards and Technology ("NIST") guidelines, which provide the requirements that the SSA stipulates that the Contractor must follow with regard to use, treatment, and safeguarding data in the event data is exchanged with a federal information system.
- i. Definitions
- (1) "SSA-supplied data" – information, such as an individual's social security number, supplied by the Social Security Administration to HCFA to determine entitlement or eligibility for federally-funded programs (CMPPA between SSA and F&A; IEA between SSA and HCFA).
 - (2) "Protected Health Information/Personally Identifiable Information" (PHI/PII)(45 C.F.R. 160.103; OMB Circular M-06-19) – Protected health information means individually identifiable health information that is: (i) Transmitted by electronic media; (ii) Maintained in electronic media; or (iii) Transmitted or maintained in any other form or medium.
 - (3) "Individually Identifiable Health Information"— information that is a subset of health information, including demographic information collected from an



individual, and: (1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) Identifies the individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

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

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

- a. Purposes directly related to the administration of Medicaid and CHIP include:
 - (1) establishing eligibility;
 - (2) determining the amount of medical assistance;
 - (3) providing services for beneficiaries; and,
 - (4) conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to Medicaid or CHIP administration.
- b. The Contractor must have adequate safeguards to assure that:
 - (1) Information is made available only to the extent necessary to assist in the valid administrative purposes of those receiving the information, and information received under 26 USC is exchanged only with parties authorized to receive that information under that section of the Code; and,
 - (2) the information is adequately stored and processed so that it is protected against unauthorized disclosure for other purposes.
- c. The Contractor must have criteria that govern the types of information about applicants and beneficiaries that are safeguarded. This information must include at least--
 - (1) Names and addresses;
 - (2) Medical services provided;
 - (3) Social and economic conditions or circumstances;
 - (4) Contractor evaluation of personal information;
 - (5) Medical data, including diagnosis and past history of disease or disability
 - (6) Any information received for verifying income eligibility and amount of medical assistance payments, including income information received from SSA or the Internal Revenue Service;
 - (7) Any information received for verifying income eligibility and amount of medical assistance payments;
 - (8) Income information received from SSA or the Internal Revenue Service must be safeguarded according to Medicaid and CHIP requirements;
 - (9) Any information received in connection with the identification of legally liable third party resources; and.
 - (10) Social Security Numbers.
- d. The Contractor must have criteria approved by HCFA specifying:
 - (1) the conditions for release and use of information about applicants and enrollees;



- (2) Access to information concerning applicants or enrollees must be restricted to persons or Contractor representatives who are subject to standards of confidentiality that are comparable to those of HCFA;
- (3) The Contractor shall not publish names of applicants or enrollees;
- (4) The Contractor shall obtain permission from a family or individual, whenever possible, before responding to a request for information from an outside source, unless the information is to be used to verify income, eligibility and the amount of medical assistance payment to an authorized individual or entity;
- (5) If, because of an emergency situation, time does not permit obtaining consent before release, the Contractor shall notify HCFA, the family or individual immediately after supplying the information.
- (6) The Contractor's policies must apply to all requests for information from outside sources, including governmental bodies, the courts, or law enforcement officials.
 - i. The Contractor shall notify HCFA of any requests for information on applicants or enrollees by other governmental bodies, the courts or law enforcement officials ten (10) days prior to releasing the requested information.
- (7) If a court issues a subpoena for a case record or for any Contractor representative to testify concerning an applicant or enrollee, the Contractor must notify HCFA at least ten (10) days prior to the required production date so HCFA may inform the court of the applicable statutory provisions, policies, and regulations restricting disclosure of information.
- (8) The Contractor shall not request or release information to other parties to verify income, eligibility and the amount of assistance under Medicaid or CHIP, prior to express approval from HCFA.

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

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

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

- a) Performance - In performance of this contract, the contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:
 - (1) This provision shall not apply if information received or delivered by the Parties under this Contract is NOT "federal tax returns or return information" as defined herein.
 - (2) All work will be done under the supervision of the contractor or the contractor's employees.
 - (3) Any Federal tax returns or return information (hereafter referred to as returns or return information) made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material will



be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Disclosure to anyone other than an officer or employee of the contractor will be prohibited.

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

b) Criminal/Civil Sanctions

- (1) Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
- (2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return



information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC section 7213A and 7431.

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

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

- E.26. 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. 27. Nondiscrimination Compliance Requirements. The Contractor shall comply with all applicable federal and state civil rights laws, regulations, rules, and policies and Contract Section D.9 of this Contract.

- a. In order to demonstrate compliance with the applicable federal and state civil rights laws and regulations, which may include, but are not limited to, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, and 42 U.S.C. § 18116 the Contractor shall designate a staff person to be responsible for nondiscrimination compliance.

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

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

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

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

- (2) The Contractor shall, at a minimum, emphasize nondiscrimination in its personnel policies and procedures as it relates to hiring, promoting, operational policies, contracting processes and participation on advisory/planning boards or committees.
- (3) Prior to implementation of this Contract, Contractor shall provide its written policies and procedures that demonstrate nondiscrimination in the provision of services provided under this Contract to HCFA. These policies shall include topics, such as, the provision of language services to individuals with Limited English Proficiency and individuals requiring communication assistance in alternative formats and providing other forms of assistance to individuals with disabilities. These nondiscrimination policies and procedures shall be approved in writing by HCFA.
- (4) The Contractor shall keep such records as may be necessary in order to submit timely, complete and accurate compliance reports that may be requested by the U.S. Department of Health and Human Services ("HHS"), HCFA, and the Tennessee Human Rights Commission ("THRC") or their designees. If requested, the information shall be provided in a format and timeframe specified



by HHS, HCFA, or THRC. The requested information may be necessary to enable HHS, HCFA, or THRC to ascertain whether the Contractor is complying with the applicable civil rights laws. For example, the Contractor should have available data showing the manner in which services are or will be provided by the program in question, and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination. Further examples of data that could be requested can be found at 45 C.F.R. § 80.6 and 28 C.F.R. § 42.406.

- (5) The Contractor shall permit access as set forth in the applicable civil rights laws, such as, 45 C.F.R. § 80.6 to HHS, HCFA, and THRC or their designees during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain whether the Contractor is complying with the applicable civil rights laws.
- (6) The Contractor shall make available to enrollees and participants in HCFA's programs and other interested persons information regarding the provisions of the applicable civil rights laws as set forth in the implementing regulations, including 45 C.F.R. § 80.6 and 45 C.F.R. § 84.8. For example, a notification shall state, where appropriate, that the Contractor does not discriminate in admission or access to, or treatment or employment in, its programs or activities. The notification shall also include an identification of the responsible employee designated for its nondiscrimination compliance. This notice shall be considered a vital document and shall be available at a minimum in the English and Spanish languages.
- (7) The Contractor shall use and have available to enrollees and participants in HCFA's programs or other complainants discrimination complaint forms located at the links below:
<http://www.tn.gov/tenncare/forms/complaintform.pdf> and
http://www.covertn.gov/web/coverkids_fair_treatment.html

Discrimination complaint forms shall be provided to enrollees and participants in HCFA's programs and other complainants upon request and be available on the Contractor's website. HCFA's discrimination complaint forms are vital documents and must be available at a minimum in the English and Spanish languages.

Should individuals request that the Contractor assist them with filing discrimination complaints with HCFA, the Contractor shall provide assistance to these individuals. The Contractor shall inform its employees and its providers and subcontractors that are considered to be recipients of FFA under this contract about how to assist individuals with obtaining discrimination complaint forms and assistance with submitting the forms to HCFA.

- (8) Written materials provided pursuant to this Contract shall be in plain language and ensure effective communication with Limited English Proficiency ("LEP") individuals and individuals with disabilities at no expense to these individuals and/or their representatives and shall meet the standards set forth in the applicable civil rights laws and guidance. Effective Communication may be achieved by providing interpretation and translation services and other forms of auxiliary aids or services, including, Braille and large print and shall be based on the needs of the individual and/or the individual's representative. Written materials specific to one of HCFA's programs shall be prior approved in writing by HCFA prior to the materials being mailed or otherwise provided to individuals.



- (9) Written materials provided pursuant to this Contract shall include a toll free number Individuals can call for language assistance services. This information shall be considered a vital document and shall be available at a minimum in the English and Spanish languages.
- (10) In addition, written materials provided pursuant to this Contract shall include information and a toll free number for individuals with disabilities to use in order to request assistance with accessing services or other program benefits that these individuals are entitled to under the applicable federal and state civil rights laws including, but not limited to, Section 504 of the Rehabilitation Act of 1973 and Titles II and III of the Americans with Disabilities Act of 1990. This information shall be considered a vital document and shall be available at a minimum in the English and Spanish languages.
- (11) Within ninety (90) calendar days of notification from HCFA, all vital Contractor documents related to this Contract shall be translated and available to each Limited English Proficiency ("LEP") group identified by HCFA in accordance with the applicable standards set forth below:
- i. If a LEP group constitutes five percent (5%) or 1,000, whichever is less, of the population targeted under this Contract, vital documents shall be translated into that LEP language. Translation of other documents, if needed, can be provided orally; or
 - ii. If there are fewer than fifty (50) individuals in a language group that is part the population targeted under this Contract that reaches the five percent (5%) trigger in (i), the Contractor shall inform those individuals that it does not provide written translation of vital documents but provides written notice in that group's primary language of the right to receive competent oral interpretation of those written materials, free of cost.
 - iii. At a minimum, all vital Contractor documents shall be translated and available in Spanish.
- (12) In accordance with the requirements set forth in 42 U.S.C. § 300kk, the Contractor must develop and maintain the ability to collect and report data on race, ethnicity, sex, primary language, and disability status for the population targeted under this Contract and the parents or legal guardians of minors or legally incapacitated individuals targeted under this Contract. In collecting this data the Contractor shall use the Office of Management and Budget (OMB) standards, at a minimum, for race and ethnicity measures. Data collection standards for Race, Ethnicity, Sex, Primary Language, and Disability Status are available from the Office of Minority Health and on its website located at: <http://www.minorityhealth.hhs.gov/templates/content.aspx?ID=9227&lvl=2&lvlID=208>.
- b. The Contractor shall submit the following nondiscrimination compliance deliverables to HCFA as follows:
- Annually, HCFA shall provide the Contractor with a Nondiscrimination Compliance Questionnaire. The Contractor shall answer the questions contained in the Compliance Questionnaire and submit the completed Questionnaire to HCFA within ninety (90) days of the end of the calendar year with any requested documentation, which shall include, the Contractor's Assurance of Nondiscrimination. The signature date of the Contractor's Nondiscrimination Compliance Questionnaire shall be the same as the signature date of



the Contractor's Assurance of Nondiscrimination. The Nondiscrimination Compliance Questionnaire deliverables shall be in a format specified by HCFA.

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

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

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



subcontractors related to the provision of and/or access to one of HCFA's programs be reported to the Contractor, the Contractor's nondiscrimination compliance officer shall inform HCFA of such complaints within two (2) business days from the date Contractor learns of such complaints. If HCFA requests that the Contractor's nondiscrimination compliance officer assist HCFA with conducting the initial investigation, the Contractor's nondiscrimination compliance officer within five (5) business days from the date of the request shall start the initial investigation. Once an initial investigation has been completed, the Contractor's nondiscrimination compliance officer shall report his/her determinations to HCFA. At a minimum, the Contractor's nondiscrimination compliance officer's report shall include the identity of the party filing the complaint; the complainant's relationship to the Contractor; the circumstances of the complaint; date complaint filed; and the Contractor's suggested resolution. HCFA shall review the Contractor's initial investigations and determine the appropriate resolutions for the complaints as set forth in subsection (3) below. HCFA reserves the right to investigate and resolve all complaints concerning alleged acts of discrimination committed by the Contractor's providers and subcontractors that are recipients of federal financial assistance under this Contract.

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

- d. **Electronic and Information Technology Accessibility Requirements.** Contractor agrees to comply with the electronic and information technology accessibility requirements under the federal civil rights laws including Section 504 and Section 508 of the Rehabilitation Act of 1973 ("Section 508") and the Americans with Disabilities Act. To comply with these accessibility requirements, the Contractor shall consult either the Section 508 guidelines issued by the U.S. Access Board or W3C's Web Content Accessibility Guidelines ("WCAG") 2.0 (For Section 508 guidelines see: <http://www.access-board.gov/guidelines-and-standards/communications-and-it/about-the-section-508-standards/section-508-standards>; for the W3C's guidelines see: <http://www.w3.org/standards/>).

Contractor agrees to perform regularly scheduled (i.e., automatic) scans and manual testing for Section 508 or WCAG 2.0 compliance for all user content and applications in order to meet the standards for compliance. The Contractor must ensure that any system additions, updates, changes or modifications comply with either the Section 508



guidelines or WCAG 2.0. Commercial Off-the-shelf ("COTS") products may be used to verify Section 508 or WCAG 2.0 compliance.

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

Should the system or a component of the system fail to comply with the accessibility standards, the Contractor shall develop and submit to HCFA for approval a noncompliance report that identifies the areas of noncompliance, a plan to bring the system or component into compliance, an alternative/work around that provides users with the equivalent access to the content, and a timeframe for achieving that compliance. HCFA shall review the noncompliance report to determine whether or not it is acceptable and should be implemented. Once the noncompliance report is approved by HCFA the Contractor may implement the compliance plan. HCFA, in its sole discretion, shall determine when a satisfactory compliance plan resolution has been reached and shall notify the Contractor of the approved resolution. If Contractor is unable to obtain content that conforms to Section 508 guidelines or WCAG 2.0, it shall demonstrate through its reporting to HCFA that obtaining or providing accessible content would fundamentally alter the nature of its goods and services or would result in an undue burden.

IN WITNESS WHEREOF,

AUTOMATED HEALTH SYSTEMS:

Joseph W. Nocito 6-12-15
CONTRACTOR SIGNATURE DATE

Joseph W. Nocito, Chief Executive Officer

PRINTED NAME AND TITLE OF CONTRACTORSIGNATORY (above)

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

Larry B. Martin 6/12/2015
LARRY B. MARTIN, COMMISSIONER DATE



ATTACHMENT A

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	46432
CONTRACTOR LEGAL ENTITY NAME:	Automated Health Systems
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	25-1876460

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

Joseph W. Noe

CONTRACTOR SIGNATURE

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

Joseph W. Noe, C.E.O.

PRINTED NAME AND TITLE OF SIGNATORY

6-12-15

DATE OF ATTESTATION



ATTACHMENT B

LIQUIDATED DAMAGES

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

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

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

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

	<u>PROGRAM ISSUES</u>	<u>DAMAGE</u>
1.	Failure to provide a complete and accurate database of demographic eligibility data related to CoverKids enrollees per Section A.11.	\$1,000 per occurrence and \$1,000 per each date until the database is corrected.
2.	Failure to provide compatible data system capable to utilize information provided by the State in the format of HIPAA 834 or 837 per Section A.12.	\$1,000 per occurrence and \$1,000 per each date until the database is compatible.
3.	Failure to enter eligibility files from the State into the Eligibility system within one (1) business day of receipt of the file throughout the contract per Section A.14.b.	\$500.00 per each file that was not processed within one (1) day of receipt.



4.	Failure to ensure level of call center staffing adequate to fulfill the standards of promptness and quality stipulated per Section A.25.	<p>\$500.00 per each incident that phone calls are not answered within four rings;</p> <p>\$500.00 per each incident that exceeds queue wait time of three (3) minutes;</p> <p>\$500.00 for each report of abandoned (dropped) call rates exceeded 5%.</p>
5.	All Key Personnel and Call Center staff defined in Section A.41. Vacancies must be filled within thirty (30) days from the date the key personnel left his/her position.	A maximum of five hundred dollars (\$500.00) for each business day past the thirty (30) days vacant period for all Key Personnel and Call Center.
6.	Failure to issue document(s) at a 6 th grade reading level to the enrollee within the agreed upon time frame per Section A.50	\$500 per day the document(s) are not disseminated at a 6 th grade reading level
7.	Failure to submit to the state the project plan that will comply with PMBOK within 10 days of the contract start date per contract Section A.51.	\$1,000 per each day the project plan is delayed
8.	Failure to provide the Department of Human Services an electronic record on every new application to secure verification of citizenship of alien status per Section A.59.	\$1,000 per incident that citizenship or alien status was not verified.
9.	Failure to provide reports timely as stipulated in Section A.65 and A.66, and any other section throughout this Contract.	\$1,000 per report
10.	Failure by the Contractor to meet the standards for privacy, security, and confidentiality of individual data as evidenced by a breach of the security per Section D. 20. and E.2.	\$1,000 per affected enrollee per occurrence.
11.	Failure by the Contractor to execute the appropriate agreements to effectuate transfer and exchange of HCFA enrollee PHI or HCFA confidential information including, but not limited to, a data use agreement, trading partner agreement, business associate agreement or qualified protective order prior to the use or disclosure of PHI to a third party. (See E.17. and Business Associate Agreement between the parties)	\$1,000 per affected enrollee per occurrence.
12.	Failure by the Contractor to seek express written approval from HCFA prior to the use or disclosure of HCFA enrollee data or HCFA confidential information in any form via any medium	\$1,000 per affected enrollee per occurrence.



	with any third party beyond the boundaries and jurisdiction of the United States. (See E.18 and Business Associate Agreement between the parties)	
13.	Failure by the Contractor to timely report violations in the access, use and disclosure of PHI or timely report a security incident or timely make a notification of breach or notification of suspected breach per Sections (See E.19 and Business Associate Agreement between the parties)	\$1,000 per affected enrollee per occurrence.



ATTACHMENT C

Applicable Terms and Definitions

Child – under 19 years of age

CoverKids – the program provides comprehensive (medical, pharmacy, vision, behavioral health and dental services) coverage to any eligible child less than 19 years of age enrolled in the CoverKids program.

Dental Plan Administrator – A contractor approved by HCFA to provide dental benefits to CoverKids members.

834 transaction – an electronic eligibility enrollment file sent from the Eligibility Contractor to the Plan and Dental Administrator(s).

Enrollee – A child or pregnant woman enrolled in CoverKids.

Federally Facilitated Marketplace – Operated by the Medicaid and Medicaid Services (CMS) to assist states who are an “assessment” state and do not have state run combined eligibility systems for Medicaid and CHIP. The Marketplace currently makes Medicaid and CHIP eligibility determinations for Tennessee.

HCFA – Division of Health Care Finance and Administration

HealthyTNBabies – the program provides “unborn” coverage to any eligible pregnant woman that receives prenatal, delivery and 60 days of post-partum coverage

Medical Plan Administrator(s) – A contractor(s) approved by the HCFA to provide medical, pharmacy, vision and behavioral health benefits to CoverKids members and prenatal, delivery and 60 days post-partum care to HealthyTNBabies moms.

TennCare Bureau Interface – an electronic submission of eligibility data in an agreed format to the Eligibility Contractor