



CONTRACT AMENDMENT COVER SHEET

Agency Tracking # 31865-00018	Edison ID 51666	Contract #	Amendment # 01		
Contractor Legal Entity Name Department of Intellectual and Development Disabilities			Edison Vendor ID 0000000051		
Amendment Purpose & Effect(s) Updates Scope for Pre-Admission Annual Resident Review (PASRR) Evaluation Services					
Amendment Changes Contract End Date: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		End Date: June 30, 2019			
TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A):			\$ 0.00		
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2017	\$25,554.00	\$47,421.00			\$72,975.00
2018	\$25,554.00	\$47,421.00			\$72,975.00
2019	\$25,554.00	\$47,421.00			\$72,975.00
TOTAL:	\$76,662.00	\$142,263.00			\$218,925.00
American Recovery and Reinvestment Act (ARRA) Funding: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO					
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.				<i>CPO USE</i>	
Speed Chart (optional)		Account Code (optional)			



**AMENDMENT #1
 CONTRACT #51666
 BETWEEN THE STATE OF TENNESSEE,
 DEPARTMENT OF FINANCE AND ADMINISTRATION
 BUREAU OF TENNCARE
 AND
 DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES**

This Amendment is made and entered by and between the State of Tennessee, Department of Finance and Administration, Division of Health Care Finance and Administration, Bureau of TennCare, hereinafter referred to as the "State" or "Procuring State Agency" and the Department of Intellectual and Developmental Disabilities, hereinafter referred to as the "Contractor" or "Contracting State Agency. For good and valuable consideration, the sufficiency of which is hereby acknowledged, it is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

1. Contract Section A.3.a. is deleted in its entirety and replaced with the following:
 - a. Request SIS assessments from the State's Contractor on a triennial schedule (to occur once every 3 years) for each person enrolled in an Home and Community Based Services (HCBS) waiver and receiving residential, personal assistance services, and/or employment or day services.

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

Amendment Effective Date. The revisions set forth herein shall be effective January 1, 2017. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF:

DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES:

DPayne 12/14/16
 DEBRA K. PAYNE, COMMISSIONER DATE

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

Larry B. Martin 12/15/16
 LARRY B. MARTIN, COMMISSIONER DATE



INTERAGENCY AGREEMENT SUMMARY

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

Begin Date September 1, 2016	End Date June 30, 2019	Agency Tracking # 31865-00018	Edison ID 51666		
Contracting State Agency Name Department of Intellectual and Development Disabilities					
CFDA # 93.778 Dept of Health & Human Services/Title XIX					
Service Caption Pre-Admission Annual Resident Review (PASRR) Evaluation Services					
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Agreement Amount
2017	\$25,554.00	\$47,421.00			\$72,975.00
2018	\$25,554.00	\$47,421.00			\$72,975.00
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American Recovery and Reinvestment Act (ARRA) Funding: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO					
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 				CPO USE - IA	
Speed Chart (optional)		Account Code (optional)			



**INTERAGENCY AGREEMENT
BETWEEN THE STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION
AND
DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES**

This Interagency Agreement (Interagency Agreement), by and between the State of Tennessee, Department of Finance and Administration, Division of Health Care Finance and Administration (HCFA), hereinafter referred to as the "Procuring State Agency" or "HCFA" and the Department of Intellectual and Developmental Disabilities, hereinafter referred to as the "Contracting State Agency" is for the provision of Pre-Admission and Annual Resident Review (PASRR) evaluation services as further defined in the "SCOPE OF SERVICES."

A. SCOPE OF SERVICES:

- A.1. The Contracting State Agency shall provide all goods, services or deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Interagency Agreement.
- A.2. The Contracting State Agency shall provide in-depth review of each PASRR Level II Evaluation, Summary of Findings Reports, and recommended outcomes to assure it is person centered, that the level of care applied is correct, and that the specialized services identified are accurate and meet the person's needs. A Summary of Findings Report will be received from the State PASRR Contractor for each PASRR Level II evaluation conducted for applicants identified and determined by the PASRR Level I Screening as a person with a potential or known diagnosis of Intellectual Disability or Related Condition (IDRC). The Contracting State Agency shall:
- a. Provide in-depth review of Level II evaluations and Summary of Findings Reports and make a final determination as to whether there is a need for specialized services to treat the IDRC, and whether such treatment can be provided in the nursing home such that nursing home care is appropriate. Such determination must be consistent with criteria adopted and approved by HCFA.
 - b. Identify specific IDRC services required to meet an evaluated individual's needs when the individual is determined to require specialized services.
 - c. Coordinate and facilitate, where appropriate, for the timely provision of specialized services when a person is determined to need such services. This includes coordinating with a person's assigned Managed Care Organization and facilitating the provision of specialized services provided to persons in a nursing facility (NF) when such person requires both NF and specialized services and/or is determined not appropriate for NF services but has continuously resided in a NF for at least thirty (30) months before the determination is made and chooses to remain in the facility and receive specialized services in that setting; as well as facilitating the arrangement of specialized services in an alternative appropriate setting when the person does not meet the level of care criteria for NF services and/or is not appropriate for NF services, but requires specialized services and has not met the thirty (30) month requirement. If an individual receiving NF Services is determined by the PASRR process to not meet the level of care criteria for NF care and/or is not appropriate for NF services and has not resided in the NF for at least thirty (30) months before determination is made, facilitating the arrangement of specialized services in an alternative appropriate setting must occur within thirty (30) days of notification of discharge from the NF, or if the



appeal is timely filed, immediately upon resolution of such appeal, as Federal Financial Participation (FFP) for NF care is no longer available.

- c. Assist with online referrals when individuals appear to meet prioritization and enrollment criteria for Employment and Community First CHOICES.
- d. Review, make edits when necessary, recommend changes to the State Contractor when necessary and approve through electronic signature to finalize the Summary of Findings Report. Such approval is required prior to notification of the decision to individuals and providers by the State's Contractor.
- e. Review and make a final determination of each Level II evaluation within 2 business days from receipt.
- f. Return deficient evaluations to the State's Contractor for revision within 1 business day from receipt.
- g. Recognize that Level II evaluations resulting from a change in condition follow the same requirements as outlined above.
- h. Assist in the resolution of appeals in the preparation of the State's case and provide expert testimony as the State's intellectual and development disability authority in all hearings resulting from appeal of a decision regarding whether an individual requires the level of services provided by a nursing facility (NF) and whether specialized services are needed.
- i. Ensure that all reviews and decisions made by the Contracting State Agency are documented and made available to the State and the State's Contractor electronically via the PASRR tracking system.

A.3 The Contracting State Agency shall provide Supports Intensity Scale (SIS) assessments and reporting as follows. The Contracting State Agency shall:

- a. Request SIS assessments from the State's Contractor on a triennial schedule (to occur once every 3 years) for each person enrolled in an Home and Community Based Services (HCBS) waiver and receiving residential and or employment or day services.
- b. Request SIS assessments from the State's Contractor on an as needed basis for anyone enrolled in a waiver who had a significant change in status since the last SIS assessment performed.
- c. Report to HCFA on a monthly basis the number of SIS assessments performed by the State's Contractor. This report shall be provided on the 10th of each month and include data from the previous month. The data must include the recipient's name, Date of Birth, Medicaid ID and the date the assessment was performed.

A.4 The Contracting State Agency shall maintain and manage the existing contract with American Association on Intellectual and Developmental Disabilities (AAIDD) for the following:

- a. Access and use of the SIS online assessment tools;
- b. Software licensing;
- c. User manuals; and
- d. Paper interview forms.

A.5. The Contracting State Agency shall meet the following Quality Monitoring and Quality Improvement Requirements,



- a. The Contracting State Agency shall be responsible for assuring that all PASRR Level II evaluations and Summary of Findings Reports are compliant with federal requirements and State Rule.
 - b. The Contracting State Agency shall verify that Level II evaluations are performed by qualified individuals.
 - c. The Contracting State Agency shall verify that the Summary of Findings Report is developed using information from the onsite face-to-face evaluation and available supplemental information.
 - d. The Contracting State Agency shall assure that all completed Summary of Findings Reports include accurate specialized service determinations in accordance with State Rule.
 - e. The Contracting State Agency shall ensure that the Summary of Findings Report is person centered, identifies services and supports the applicant would need in the community, identifies natural and paid supports available to meet identified needs, includes an assessment of overall needs, determines level of care and determines whether NF placement is appropriate, determines specialized service needs in the NF, including clinical recommendations for rehabilitative services, and includes rationales, case abstracts, and appropriate demographic information as described in 42 CFR §§ 483.100 through 483.138.
 - f. When a PASRR related process or function is found to be non-compliant, the Contracting State Agency shall notify the State's PASRR Contractor to remedy and if any indication of a systemic deficiency is suspected, the Contracting State Agency must also notify HCFA immediately and participate in actions to remedy an identified deficiency or identified systemic deficiencies.
 - g. When an MCO requests an interagency review prior to authorizing specialized services as recommended, the Contracting State Agency will participate in such interagency review and lend necessary expertise as Tennessee's intellectual and developmental disability authority and PASRR subject matter expert.
 - h. The Contracting State Agency shall maintain transparent, documented procedures for all activities that demonstrate alignment with contract, State Rule, and federal requirements. All policies and procedures must be approved by HCFA in advance.
 - i. On the 10th of each month, the Contracting State Agency shall produce for HCFA, for the previous month, a report detailing the following:
 - (1) the number of PASRR reviews performed and the outcome;
 - (2) the number of appeals researched and the outcome;
 - (3) the number of hearings participated in; and
 - (4) the number of interagency reviews performed.
- A.6. The Contracting State Agency shall have hardware and technology available to allow for secure web based retrieval of information and assignments and data entry of decisions into the State Contractor's electronic workflow and tracking system. This includes:
- a. Acceptance, assignment, and recording of decision on all completed PASRR Level II evaluations, Summary of Findings Reports and outcomes assigned to the Contracting State Agency.



- b. Documentation to return item to State's Contactor for revision when PASRR outcomes are not approved by Contracting State Agency.
- c. Read access view to all submitted PASRR Level I screenings, Level II evaluations and summaries, change in condition notifications and all related processes and notifications occurring within the State's Contractor's tracking system.
- d. The means by which to make and document reviews outside the electronic system as prescribed by HCFA, and only when mandated by HCFA, when paper based reviews outside the system are necessary when a patient is currently out of state and transferring to Tennessee, when business continuity requires such during disaster recovery efforts and other similar circumstances.

A.7. The Contracting State Agency shall provide the following experience, structure, staffing and resources necessary to comply with state and federal PASRR laws and requirements and AAIDD requirements related to SIS, and shall ensure that the programmatic lead and any additional staff continue PASRR education to remain familiar with current and emerging federal requirements and guidance.

- a. Programmatic lead with demonstrated expertise in regulatory requirements who will serve as Tennessee's PASRR technical expert and intellectual and developmental disability authority and whose contact information is shared as a resource to others by the PASRR Technical Assistance Center to oversee PASRR decisions as described in sections A.2 and A.3 and participate in interagency meetings and reviews;
- b. Staff to ensure that Level II PASRR decisions are made in accordance with Federal guidance and state regulations in a timely manner;
- c. Staff available to participate in on site face to face meetings meetings, scheduled or impromptu, with the State and/or the State's Contractor;
- d. Subject matter expert on SIS and AAIDD requirements related to SIS; and
- e. Staff to assist with PASRR hearing reviews and serve as expert witnesses in related hearings.

B. INTERAGENCY AGREEMENT TERM:

- B.1. This Interagency Agreement shall be effective on September 1, 2016 ("Effective Date"), and extend for a period of thirty- four (34) months after the Effective Date ("Term"). The Procuring State Agency shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.
- B.2. Renewal Options. This Interagency Agreement may be renewed upon satisfactory completion of the Term. The State reserves the right to execute renewal options under the same terms and conditions for a period not to exceed twenty-four (24) months each by the State, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the Procuring State Agency under this Agreement exceed Seventy-two Thousand Nine Hundred Seventy-Five Thousand Dollars (\$72,975.00) for FY '17, Seventy-two Thousand Nine Hundred Seventy-Five Thousand Dollars (\$72,975.00) for FY '18, and Seventy-two Thousand Nine Hundred Seventy-Five Thousand Dollars (\$72,975.00) for FY '19, with a total Maximum Liability of Two Hundred Eighteen



Thousand Nine Hundred Twenty Five Five Dollars (\$218,925.00.00). The payment methodology in Section C.3 shall constitute the entire compensation due the Contracting State Agency for the goods delivered and accepted or for services performed and all of the Contracting State Agency's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contracting State Agency.

- C.2. Compensation Firm. The payment rates and the maximum liability of the Procuring State Agency under this Agreement are firm for the duration of the Agreement and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. Upon completion of the work described in Section A of this Agreement, the Procuring State Agency shall submit a journal voucher, in form and substance acceptable to TennCare, and with all of the necessary supporting documentation, including encounter data for services provided, prior to any payment. The Procuring State Agency will be compensated for the direct costs of administering this program and applicable indirect costs in accordance with federally approved cost allocation plans.
- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Payment of Invoice. A payment by the Procuring State Agency shall not prejudice the Procuring State Agency's right to object to or question any payment, invoice, or matter in relation thereto. A payment by the Procuring State Agency shall not be construed as acceptance of any part of the work or service provided or as approval of any amount invoiced.
- C.6. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the Procuring State Agency, on the basis of audits conducted in accordance with the terms of this Interagency Agreement, not to constitute proper remuneration for compensable services.
- C.7. Deductions. The Procuring State Agency reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any Interagency Agreement between the Contractor and the Procuring State Agency any amounts, which are or shall become due and payable to the Procuring State Agency by the Contractor.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The Procuring State Agency and the Contracting State Agency are not bound by this Agreement until it is signed by the agency head or the agency head's designee. Each agency's legal counsel shall review and approve the Agreement as to form and legality.
- D.2. Modification and Amendment. Any modifications, amendments, renewals or extensions shall be in writing, signed, and approved by all parties who signed and approved this Agreement.
- D.3. Termination for Convenience. This Agreement may be terminated by either party by giving written notice to the other, at least thirty (30) days before the effective date of termination. Should the Procuring State Agency exercise the option of terminating this Agreement for convenience, the Contracting State Agency shall be entitled to compensation for all goods delivered and accepted or satisfactory and authorized services completed as of the termination date. Should the Contracting State Agency exercise this provision, the Procuring State Agency shall have no liability to the Contracting State Agency except for those goods delivered and accepted or those units of service that were satisfactorily completed by the Contracting State Agency. The final decision as to the acceptability of goods or whether units of service were satisfactorily completed shall be determined by the Procuring State Agency in its sole discretion.



- D.4. Subject to Funds Availability. This Agreement is subject to the appropriation and availability of state and/or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the Procuring State Agency reserves the right to terminate this Agreement upon written notice to the Contracting State Agency. Said termination shall not be deemed a breach of this Agreement by the Procuring State Agency. Upon receipt of the written notice, the Contracting State Agency shall cease all work associated with this Agreement. Should such an event occur, the Contracting State Agency shall be entitled to compensation for all satisfactory and goods delivered and accepted or authorized services completed as of the termination date. Upon such termination, the Contracting State Agency shall have no right to recover from the Procuring State Agency any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.5. Completeness. This Agreement is complete and contains the entire understanding between the parties relating to this subject matter, including all the terms and conditions of the parties' agreement. There are no other prior or contemporaneous agreements that modify, supplement, or contradict any of the express terms of the agreement.
- D.6. Communications and Contacts. All instructions, notices, consents, demands, or other communications shall be made in writing and directed to the following designated contact persons:
- The Procuring State Agency:
- Deputy Commissioner
Department of Finance and Administration
Division of Health Care Finance and Administration
310 Great Circle Road
Nashville, Tennessee 37247-6501
Telephone # (615) 507-6362
FAX # (615) 532-5236
- The Contracting State Agency:
- Deputy Commissioner
Department of Intellectual and Developmental Disabilities
15th Floor, Andrew Jackson Building
500 Deaderick Street
Nashville, TN 37243
Telephone # (615) 532-6533
FAX # (615) 253-4089
- All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.
- D.7. Termination for Cause. If the Contracting State Agency fails to properly perform its obligations under this Interagency Agreement in a timely or proper manner, or if the Contracting State Agency violates any terms of this Interagency Agreement, the Procuring State Agency shall have the right to immediately terminate the Agreement and withhold payments in excess of fair compensation for completed services.
- D.8. Subcontracting. The Contracting State Agency shall not assign this Interagency Agreement or enter into a subcontract for any of the services performed under this Interagency Agreement without obtaining the prior written approval of the Procuring State Agency. Notwithstanding any



use of approved subcontractors, the Contracting State Agency shall be the prime contractor and shall be responsible for all work performed.

- D.9. Monitoring. The Contracting State Agency's activities conducted and records maintained pursuant to this Interagency Agreement shall be subject to monitoring and evaluation by the Procuring State Agency, the Comptroller of the Treasury, or their duly appointed representatives.
- D.10. Progress Reports. The Contracting State Agency shall submit brief, periodic, progress reports to the Procuring State Agency as requested.
- D.11. State and Federal Compliance. The Contracting State Agency shall comply with all applicable state and federal laws and regulations in the performance of this Agreement.
- D.12. Headings. Section headings are for reference purposes only and shall not be construed as part of this Agreement.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the Procuring State Agency or acquired by the Contractor on behalf of the Procuring State Agency shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

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

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

- E.2. HIPAA Compliance. The State and the Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Interagency Agreement.
 - a. The Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Interagency Agreement.



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

E.3. Business Associate. Contractor hereby acknowledges its designation as a business associate under HIPAA and agrees to comply with all applicable HIPAA regulations. In accordance with the HIPAA regulations, the Contractor shall, at a minimum:

- a. Comply with requirements of the HIPAA, including, but not limited to, the transactions and code sets, privacy, security, and identifier regulations. Compliance includes meeting all required transaction formats and code sets with the specified data sharing agreements required under the regulations;
- b. Transmit/receive from/to its providers, subcontractors, clearinghouses and HCFA all transactions and code sets required by HIPAA in the appropriate standard formats, utilizing appropriate and adequate safeguards, as specified under the law and as directed by HCFA so long as HCFA direction does not conflict with the law;
- c. Agree that if it is not in compliance with all applicable standards defined within the transactions and code sets, privacy, security and all subsequent HIPAA standards, that it will be in breach of this Interagency Agreement and will then take all reasonable steps to cure the breach or end the violation as applicable. Since inability to meet the transactions and code sets requirements, as well as the privacy and security requirements can bring basic business practices between HCFA and the Contractor and between the Contractor and its providers and/or subcontractors to a halt, if for any reason the Contractor cannot meet the requirements of this Section, HCFA may terminate this Interagency Agreement.
- d. Ensure that Protected Health Information (PHI) exchanged between the Contractor and HCFA is used only for the purposes of treatment, payment, or health care operations and health oversight and its related functions. All PHI not transmitted for these purposes or for purposes allowed under the federal HIPAA regulations shall be de-identified to secure and protect the individual enrollee's PHI;
- e. Report to HCFA's Privacy Office immediately upon becoming aware of any use or disclosure of PHI in violation of this Interagency Agreement by the Contractor, its officers, directors, employees, subcontractors or agents or by a third party to which the Contractor disclosed PHI;
- f. Specify in its agreements with any agent or subcontractor that will have access to 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 Interagency Agreement. The Contractor shall complete such return or destruction as promptly as possible, but not later than thirty (30) days after the effective date of the termination, cancellation, expiration or other conclusion of the Agreement. The Contractor shall identify any PHI that cannot feasibly be returned or destroyed. Within such thirty (30) days after the effective date of the termination, cancellation, expiration or other conclusion of the Agreement, the Contractor shall: (1) certify an oath in writing that such return or destruction has been completed; (2) identify any PHI which cannot feasibly be returned or destroyed; and (3) certify that it will only use or disclose such PHI for those purposes that make its return or destruction infeasible;
- k. Implement all appropriate administrative, physical and technical safeguards to prevent the use or disclosure of PHI other than pursuant to the terms and conditions of this Interagency Agreement and, including, but not limited to, privacy, security and confidentiality requirements in 45 CFR Parts 160 and 164;
- l. Set up appropriate mechanisms to limit use or disclosure of PHI to the minimum necessary to accomplish the intended purpose of the use or disclosure;
- m. Create and implement policies and procedures to address present and future HIPAA regulatory requirements as needed, including, but not limited to: use and disclosure of data; de-identification of data; minimum necessary access; accounting of disclosures; enrollee's right to amend, access, request restrictions; notice of privacy practices and right to file a complaint;
- n. Provide an appropriate level of training to its staff and employees regarding HIPAA related policies, procedures, enrollee rights and penalties prior to the HIPAA implementation deadlines and at appropriate intervals thereafter;
- o. Track training of Contractor's staff and employees and maintain signed acknowledgements by staff and employees of the Contractor's HIPAA policies;
- p. Be allowed to use and receive information from HCFA where necessary for the management and administration of this Interagency Agreement and to carry out business operations where permitted under the regulations;
- q. Be permitted to use and disclose PHI for the Contractor's own legal responsibilities;
- r. Adopt the appropriate procedures and access safeguards to restrict and regulate access to and use by Contractor's 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 periodically report such incidents to HCFA in summary fashion.
- E.4. 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.5. Authority. If other State or local agencies or offices perform services for TennCare, including the Contractor, these entities do not have the authority to change or disapprove any administrative decision of TennCare, or otherwise substitute their judgment for that of TennCare with respect to the application of policies, rules and regulations issued by TennCare.
- E.6. Applicable Laws, Rules, Policies and Court Orders. The 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.7. Severability. If any terms and conditions of this Interagency Agreement are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Interagency Agreement are declared severable.
- E.8. Social Security Administration (SSA) Required Provisions for Data Security. The Contractor shall comply with limitations on use, treatment, and safeguarding of data under the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, related Office of Management and Budget guidelines, the Federal Information Security Management Act of 2002 (44 U.S.C. § 3541, *et seq.*), and related National Institute of Standards and Technology guidelines. In addition, the Contractor shall have in place administrative, physical, and technical safeguards for data.
- a. The Contractor shall not duplicate in a separate file or disseminate, without prior written permission from TennCare, the data governed by the Interagency Agreement for any purpose other than that set forth in this Interagency Agreement for the administration of the TennCare program. Should the Contractor propose a redisclosure of said data, the Contractor must specify in writing to TennCare the data the Contractor proposes to redisclose, to whom, and the reasons that justify the redisclosure. TennCare will not give permission for such redisclosure unless the redisclosure is required by law or essential to the administration of the TennCare program.



- b. The Contractor agrees to abide by all relevant federal laws, restrictions on access, use, and disclosure, and security requirements in this Interagency Agreement.
- c. The Contractor shall provide a current list of the employees of such Contractor with access to SSA data and provide such lists to TennCare.
- d. The Contractor shall restrict access to the data obtained from TennCare to only those authorized employees who need such data to perform their official duties in connection with purposes identified in this Interagency Agreement. The Contractor shall not further duplicate, disseminate, or disclose such data without obtaining TennCare's prior written approval.
- e. The Contractor shall ensure that its employees:
 - (1) properly safeguard PHI/PII furnished by TennCare under this Interagency Agreement from loss, theft or inadvertent disclosure;
 - (2) understand that they are responsible for safeguarding this information at all times, regardless of whether or not the Contractor's employee is at his or her regular duty station;
 - (3) ensure that laptops and other electronic devices/ media containing PHI/PII are encrypted and/or password protected;
 - (4) send emails containing PHI/PII only if encrypted or if to and from addresses that are secure; and,
 - (5) limit disclosure of the information and details relating to a PHI/PII loss only to those with a need to know.

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

- f. Loss or Suspected Loss of Data – If an employee of the Contractor becomes aware of suspected or actual loss of PHI/PII, he or she must immediately contact TennCare **within 1 hour** to report the actual or suspected loss. The Contractor will use the Loss Worksheet located at http://www.tn.gov/assets/entities/tenncare/attachments/phi_piiworksheet.pdf to quickly gather and organize information about the incident. The Contractor must provide TennCare with timely updates as any additional information about the loss of PHI/PII becomes available.

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

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



h. Legal Authority – Federal laws and regulations giving SSA the authority to disclose data to TennCare and TennCare's authority to collect, maintain, use and share data with Contractor is protected under federal law for specified purposes:

- (1) Sections 1137, 453, and 1106(b) of the Act (42 U.S.C. 1320b-7, 653, and 1306(b)) (income and eligibility verification data);
- (2) 26 U.S.C. 6103(l)(7) and (8) (tax return data);
- (3) Section 202(x)(3)(B)(iv) of the Act (42 U.S.C. 401(x)(3)(B)(iv)) (prisoner data);
- (4) Section 205(r)(3) of the Act (42, U.S.C. 405(r)(3)) and Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108-458, 7213(a)(2) (death data);
- (5) Sections 402, 412, 421, and 435 of Pub. L. 104-193 (8 U.S.C. 1612, 1622, 1631, and 1645) (quarters of coverage data);
- (6) Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. 111-3 (citizenship data); and
- (7) Routine use exception to the Privacy Act, 5 U.S.C. 552a(b)(3) (data necessary to administer other programs compatible with SSA programs).

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

i. Definitions

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



E.9. Nondiscrimination Compliance Requirements.

- a. The Contracting State Agency agrees that it shall comply with the applicable federal and State civil rights laws and regulations, which may include, but are not limited to, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, and 42 U.S.C. § 18116. As part of this compliance no person on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classifications protected under federal or state laws shall be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance of the Contracting State Agency's obligation under its agreement with TennCare or in the employment practices of the Contractor.
- b. The Contracting State Agency agrees that its civil rights compliance staff member will work directly with TennCare's Nondiscrimination Compliance Director in order to implement and coordinate nondiscrimination compliance activities. The Contractor shall provide to TennCare, within ten (10) days of signing this Contract, the name and contact information of its civil rights compliance staff member. If at any time that position is reassigned to another staff member, the new staff member's name and contract information shall be reported in writing to TennCare within ten (10) calendar days of assuming these duties.

IN WITNESS WHEREOF:

DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES:

DPayle da 8/31/16
 DEBRA K. PAYNE, COMMISSIONER DATE

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

Larry B. Martin 8/30/16
 LARRY B. MARTIN, COMMISSIONER DATE