



State of Tennessee
Department of Finance and Administration
Division of Health Care Finance and Administration

Trading Partner Agreement

THIS TRADING PARTNER AGREEMENT ("Agreement") is between **The State of Tennessee, Department of Finance and Administration, Division of Health Care Finance and Administration** ("HCFA" or "the State"), 310 Great Circle Road, Nashville, TN 37243, and the Provider / Group / Entity in this registration request, including all office locations and other business locations at which Trading Partner data may be used or maintained. Trading Partners may be referred to herein individually as "Party" or collectively as "Parties."

1. PURPOSE AND BACKGROUND

- 1.1 The Division of Health Care Finance and Administration (HCFA) includes TennCare, Cover Tennessee, the Health Insurance Exchange Planning Initiative, the Division of State Health Planning, and the Office of eHealth Initiatives.
- 1.2 This Agreement is ancillary to any State Contract ("SC"), Contractor Risk Agreement ("CRA") and Business Associate Agreement ("BAA") entered into between Trading Partner and a Division of HCFA, where applicable. The provisions of the SC, CRA and BAA are hereby incorporated by reference and shall be taken and considered as part of this Agreement the same as if fully set out herein.
- 1.3 TennCare, in its capacity as the Medicaid Agency ("TennCare") for the State of Tennessee, by law, must operate the TennCare Medicaid Management Information System ("TCMIS"). The TCMIS contains information regarding claims adjudication, eligibility verification, prior authorization and other information related to the TennCare Program and other HCFA programs.
- 1.4 The State owns the data in the TCMIS and operates the system in which the claims and eligibility data flow. Trading Partners provide the pipeline network for the transmission of electronic data; thus, are required to transport TCMIS data to and from the State and providers of HCFA services.
- 1.5 This Agreement delineates the responsibilities of the State and the Trading Partner in transporting TCMIS data in operation of the HCFA programs.

2. SCOPE

- 2.1 System Access. The State agrees to provide Trading Partner with electronic access to the TCMIS and network for the purpose of exchanging transactions via Trading Partners' computer systems and network or its authorized designee's computer systems and network.
- 2.1.1 To the extent Trading Partner executes a contract with HCFA service providers, or their authorized designee (clearinghouse, Value-Added Network (VAN), billing service, etc.), Trading Partner shall represent that it has on hand all necessary authorizations for submitting and receiving TCMIS data. Said contract must stipulate that providers use software tested and approved by Trading Partner as being in the proper format and compatible with the TCMIS.
- 2.1.1.1 Trading Partner agrees that the TCMIS data transmitted or received by it shall be released only in support of the terms of an executed contract between Trading Partner and the authorized party requesting information to the extent authorized party's request is for the purposes of reporting eligibility for State benefits specific to individuals and dates of service and a treatment relationship exists to support and justify the authorized party's request in keeping with this Agreement.
- 2.1.2 Prior to the submission of any transactions to the TCMIS production systems, Trading Partner agrees to submit test transactions to the State for the purpose of determining that the transactions comply with all requirements and specifications required by the State.
- 2.1.3 Successful transaction testing must be achieved by Trading Partner for each provider number that the Trading Partner represents before any production transaction submissions are processed for that provider. No electronic transaction received by the State for providers without successful transaction testing shall be processed.
- 2.1.4 The parties agree that the State shall make the sole determination that test data is acceptable and that transaction testing is successful. This capability to submit test transactions shall be maintained by Trading Partner throughout the term of this Agreement.
- 2.2 Transaction Types. Trading Partner agrees to submit to the TCMIS and any other HCFA systems only those individual transaction types for which specific approval from the State has been requested and received via the Electronic Data Interchange Request Form available under Electronic Data Interchange ("EDI") on TennCare's website. Prior to the submission of any transaction types to the TCMIS production system or to any other HCFA systems, or as a result of changes to an existing transaction type or system, Trading Partner agrees to submit test transactions to the State for both the additional and any previously approved transaction types.
- 2.3 Data Submission. Trading Partner shall prepare and submit or receive TCMIS and other HCFA related data using network connectivity, protocols, and media approved by the State. The addition and deletion by the State of approved submission network connectivity, protocols, and media may occur from time to time. To the extent the deletion of a network connectivity, protocol, or media is contemplated from the approved list, the State shall supply the Trading Partner with ninety (90) days' notice of the date of impending deletion.

- 2.4 Transmission Speed. For electronic transmission, such as File Transfer Protocol (FTP), that does not involve the physical exchange of storage media, the Trading Partner agrees to provide a minimum design transmission speed of 56 kilobits per second (KBS) with an effective transmission speed of at least eighty percent (80%) of the design transmission speed on a dedicated, secure channel or Virtual Private Network (VPN) from the Trading Partner data center to the State's facility. Trading Partner is free to choose type of channel and ultimate speed above 56 KBS as long as the selected transmission method is approved by HCFA. Trading Partner must coordinate any equipment selection or changes with the State to ensure compatibility with the State's facilities. Trading Partner is responsible for all costs including installation costs, equipment, and line charges.
- 2.5 Data Encryption. Trading Partner must encrypt all data transmitted on channels not otherwise secured and maintain full compatibility with the State's facilities. The State reserves the right to determine when encrypted transmissions are necessary and what encryption technologies and implementations are considered sufficiently secure.
- 2.6 Compression/Decompression. Trading Partner must be capable of compressing and transmitting and receiving and decompressing transaction data files that are compressed and decompressed using the algorithms commercially known as "zip" or "gzip."
- 2.7 Remote Access Request. Trading Partner shall execute a Remote Access Request with the State, found on _____ TennCare's website.

3. **DEFINITIONS**

- 3.1 "Confidential Information" shall mean any non-public, confidential or proprietary information, whether written, graphic, oral, electronic, visual or fixed in any tangible medium or expression, which is supplied by the State to the Trading Partner under this Agreement. Any information, whether written, graphic, oral, electronic, visual or fixed in any tangible medium or expression, relating to individuals enrolled in any HCFA program ("enrollees"), or relating to individuals who may be potentially enrolled in a HCFA program, which is provided to or obtained through the Trading Partner's performance under this Agreement, shall also be treated as "Confidential Information" to the extent that confidential status is afforded such information under state and federal laws or regulations. All confidential information shall not be subject to disclosure under the Tennessee Public Records Act, Tenn. Code. Ann. § 10-7-501 *et seq.*
- 3.2 "Covered entity" shall mean (1) A health plan (2) A health care clearinghouse (3) or a health care provider who transmits any health information in electronic form in connection with a transaction covered by 45 CFR Parts 160 & 164.
- 3.3 "*En Masse* Inquiry" shall mean data matching of less than fifty percent (50%).
- 3.4 "Health care clearinghouse" shall mean a public or private entity, including a billing service, repricing company, community health management information system or community health information system, and "value-added" networks and switches, that does either of the following

functions: (1) Processes or facilitates the processing of health information received from another entity in a nonstandard format or containing nonstandard data content into standard data elements or a standard transaction. (2) Receives a standard transaction from another entity and processes or facilitates the processing of health information into nonstandard format or nonstandard data content for the receiving entity.

- 3.5 "Health care provider" shall mean a provider of services (as defined in section 1861(u) of the Act, 42 U.S.C. 1395x(u)), a provider of medical or health services (as defined in section 1861(s) of the Act, 42 U.S.C. 1395x(s)), and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business.
- 3.6 "Health plan" shall mean an individual or group plan that provides, or pays the cost of, medical care information or when requesting protected health information (PHI) from another covered entity, a covered entity must make reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request. A covered entity must limit any request for PHI to that which is reasonably necessary to accomplish the purpose for which the request is made, when requesting such information from other covered entities.
- 3.7 "Individually identifiable health information" means any information, including demographic information collected from an individual, that (a) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (b) 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 identifies the individual; or, with respect to which there is a reasonable basis to believe that the information can be used to identify the individual.
- 3.8 "Payment" shall mean (1) The activities undertaken by: (i) A health plan to obtain premiums or to determine or fulfill its responsibility for coverage and provision of benefits under the health plan; or (ii) A health care provider or health plan to obtain or provide reimbursement for the provision of health care; and (2) The activities in paragraph (1) of this definition relate to the individual to whom health care is provided.
- 3.9 "Proprietary Information" shall mean HCFA processes, procedures, software, methods and any property of, or relating to, HCFA data.
- 3.10 "Protected Health Information" (PHI) shall mean individually identifiable health information that is transmitted by electronic media, maintained in electronic media; or transmitted or maintained in any other form or medium.
- 3.11 "Standard Eligibility Transaction" shall mean the Health Insurance Portability and Accountability Act of 1996 (HIPAA) 270/271 eligibility inquiry from a sender that is a health plan or health care provider and the designated response from the State.
- 3.12 "Treatment" shall mean the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care

providers relating to a patient; or the referral of a patient for health care from one health care provider to another.

3.13 "Treatment Relationship" shall have the following meanings:

3.13.1 "Direct Treatment Relationship" shall mean a treatment relationship between an individual and a health care provider that is not an indirect treatment relationship.

3.13.2 "Indirect Treatment Relationship" shall mean a relationship between an individual and a health care provider in which (1) The health care provider delivers health care to the individual based on the orders of another health care provider; and (2) The health care provider typically provides services or products, or reports the diagnosis or results associated with the health care, directly to another health care provider, who provides the services or products or reports to the individual.

4. COMPLIANCE

4.1 Trading Partner agrees to comply with all State and federal laws, regulations, and policies as they exist or as amended that are or may be applicable to this Agreement, including, but not limited to, ancillary agreements such as the SC, CRA and BAA (Section 1).

4.1.1 Proprietary and Confidential Information [See 3.1 & 3.9]. All proprietary information, including but not limited to, provider reimbursement information provided to HCFA, shall be deemed confidential and not subject to disclosure under the Tennessee Public Records Act.

4.1.2 Duty to Protect. Confidential Information (i) shall be held by the Trading Partner in strictest confidence at all times; (ii) shall not be disclosed or divulged by the Trading Partner to any person or entity, except those employees and agents of the Trading Partner who require access to such information, and only after those employees and agents have been instructed that the information is subject to the confidentiality obligations set forth herein; and (iii) shall not be used by the Trading Partner for any purpose not set forth herein or otherwise authorized in writing by the HCFA program. The Parties shall diligently exercise the highest degree of care to preserve the security and integrity of, and prevent unauthorized access to, the Confidential Information. By executing this Agreement, Trading Partner and HCFA assure that each respective organization has established written policies and procedures relating to confidentiality, including the confidentiality of protected health information and eligibility information. The Trading Partner and HCFA further assure, by executing this Agreement, that its respective organization has implemented administrative, technical and physical safeguards and mechanisms that protect against the unauthorized or inadvertent disclosure of confidential information to any person or entity outside its organization.

4.1.3 Any information obtained by HCFA Trading Partners, intermediaries or carriers in the course of carrying HCFA agreements shall not be disclosed and remain confidential; furthermore, such requests which have been made pursuant to the Tennessee Public Records Act shall be denied under authority of an appropriate exemption.

- 4.2 Explicit Data Sharing. HCFA contemplates data sharing within the ambit of HIPAA to include, but not be limited to; specific testing environments for the purpose of establishing a treatment relationship or to respond to Medicare Advantage plan finder file eligibility inquiries for the purpose of identifying dual-eligibles enrolled in the Medicare Advantage plan.

Such transactions shall be implemented under the health care operations exception set forth in HIPAA and for payment purposes, respectively.

- 4.2.1 Data Storage. Trading Partner, if a Health Care Clearinghouse, shall not store eligibility information received on behalf of a request by a subscriber provider except to the extent confirmation of delivery is necessary. In no event shall Trading Partner store eligibility information beyond a reasonable threshold period defined by the State as a maximum of thirty (30) days unless otherwise required by law, nor shall Trading Partner retain HCFA-related data for independent third-party documentation without prior approval and written authorization from the State program.

- 4.2.2 To the extent Trading Partner is classified as a Health Care Clearinghouse, Trading Partner shall not inquire *en masse* for eligibility data for an entire subscriber provider roster where the inquiry is not in the context of immediate treatment, payment or health care operations.

To the extent Trading Partner is classified as a Health Care Clearinghouse, Trading Partner may forward requests on behalf of and on the explicit request of health care provider subscribers who in turn can request the eligibility data only to support a direct patient treatment relationship and verification of eligibility to support treatment, payment or health care operations for a patient who represents that he/she is covered by Medicaid or the applicable HCFA program or whom the health care provider reasonably believes to be covered by Medicaid or the applicable HCFA program.

- 4.2.3 Prohibition of Data Mining. Trading Partner is prohibited from any and all automated extraction of predictive information from data for the purpose of finding patterns of behavior and trends or anomalies that may otherwise escape detection, the advanced statistical analysis and modeling of the data to find useful patterns and relationships, and the use of computational techniques involving statistics, machine learning and pattern recognition to analyze the data.

- 4.3. Treatment Relationship. To the extent data sharing or electronic data interchange (EDI) is utilized between the Parties for the purposes of provision, coordination or management of a treatment relationship, such use or disclosure shall be governed by strict compliance with return and destruction of protected health information (PHI) referenced in Section 9.3 of this Agreement.

- 4.3.2 Medicare Advantage Plan. The State may use or disclose PHI for its payment purposes, as well as for the payment purposes of another covered entity that receives the information. The State will accept and respond to Medicare Advantage plans' "finder files" to enable Medicare Advantage plans to claim the appropriate payment rate for their dual eligible enrollees pursuant to the limiting provisions within this Agreement.

- 4.3.2.1 Access/Usage Fee. HCFA reserves the right to amend this Agreement to institute fees predicated upon Trading Partner's access to and usage of enrollee data absent a bidirectional relationship for such data.
- 4.3.3 Suspension of Access. HCFA reserves the right to suspend Trading Partner's access in the event of Trading Partner's inappropriate use of access as determined by HCFA, including, but not limited to, in the event fifty percent (50%) of Trading Partner requests received are not matched. HCFA may evaluate such patterns for indications of inappropriate use, including inquiry outside of the context of immediate treatment, payment or healthcare operations, or where the Trading Partner has no reasonable cause to believe that information requested was for individuals eligible for the applicable HCFA program.

5. CLAIMS, CHARGES AND PAYMENT

- 5.1 Consideration. The Trading Partner certifies that all services for which reimbursement will be claimed shall be provided in accordance with all federal and State laws pertaining to HCFA Programs.
- 5.1.1 The Trading Partner certifies that all charges submitted for services and items provided shall not exceed Trading Partner's and/or Provider's usual and customary charges for the same services and items provided to persons not entitled to receive benefits under HCFA Programs.
- 5.1.2 The Trading Partner understands that any payments made in satisfaction of claims submitted through Electronic Media shall be delivered from federal and State funds and that any false claims, statements or documents, or concealments of a material fact may be subject to prosecution under federal and state law.
- 5.2 Access. The Trading Partner and/or Provider shall allow HCFA access to claims data and assures that claims data shall be submitted by authorized personnel so as to preclude erroneous payments received by the Trading Partner and/or Provider regardless of the reason for such erroneous payments.

6. GUIDELINES FOR HCFA STANDARD ELECTRONIC TRANSACTIONS

- 6.1 HIPAA Transactions. The State has adopted the HIPAA transaction standards and has created companion documentation to assist in conducting electronic transactions with the State. The ASC X12 and National Council for Prescription Drug Programs ("NCPDP") standards required by HIPAA regulation are formulated to minimize the need for users to reprogram their data processing systems for multiple formats by allowing data interchange through the use of common interchange structures.
- 6.2 Acknowledgement Capacity. The State shall acknowledge standard transactions from an authorized Trading Partner. No other transactions are acknowledged including proprietary formats and those from an unauthorized submitter.

- 6.3 HIPAA Companion Guide. All HCFA-specific information can be found in the TennCare HIPAA Companion Guide, which is a de facto part of this Trading Partner Agreement. The TennCare HIPAA Companion Guide is a multi-part document that can be accessed from the TennCare SFTP server or provided by e-mail via written request.
- 6.3.1 270/271 Healthcare Eligibility Benefit Inquiry/Response. Transaction Standard for Eligibility for a Health Plan -This transaction is used by fee-for-service ("FFS") providers to receive eligibility information about a subscriber. The State may also use this transaction set to verify eligibility for a third party health plan or Medicare Advantage plan. Data sharing or EDI utilized between the Parties shall be for the purposes of provision, coordination or management of a current treatment relationship or for an enrollee for whom an open balance exists which has been timely filed and is within the State's look-back time parameters.
- 6.3.2 276/277 Health Care Claim Status. Transaction Standard for Health Care Claim Status and Response – This transaction is used by the FFS provider to get the status of a claim.
- 6.3.3 278 Referral Certification and Authorization. Transaction Standard for Referral Certification and Authorization – This transaction is used by FFS providers to request prior authorization for clients receiving services from a FFS provider.
- 6.3.4 820 Payment Order/Remittance Advice. Transaction Standard for Health Plan Premium Payments – This transaction shall be sent to the Managed Care Contractors ("MCCs") and shall contain the capitated payment summary for the month.
- 6.3.5 834 Benefit Enrollment and Maintenance. Transaction Standard for Enrollment and Disenrollment in a Health Plan – This transaction is sent to the MCCs and shall contain enrollment information for the MCC. A 271U response transaction that primarily contains service limits information is always distributed with an 834.
- 6.3.6 835 Remittance Advice. Transaction Standard for health Care Payment and Remittance Advice This transaction is used by FFS providers to receive an electronic remittance advice.
- 6.3.7 837 Professional. Transaction Standard for Health Care Claims or Equivalent Encounter Information: Professional – This transaction is used to submit professional claims from FFS providers and encounter data information from the MCCs.
- 6.3.8 837 Dental. Transaction Standard for Health Care Claims or Equivalent Encounter Information: Dental -This transaction is used to submit dental encounter data from the Dental MCC.
- 6.3.9 837 Institutional. Transaction Standard for Health Care Claims or Equivalent Encounter Information: Institutional -This transaction is used to submit institutional claims from FFS providers and encounter data information from the MCCs.
- 6.3.10 NCPDP 1.2 or PAS 3.0. Transaction Standard for Health Care Claims or Equivalent Encounter Information: Pharmacy -This transaction is used to submit retail pharmacy crossover claims from

the Durable Medical Equipment Regional Carrier ("DMERC") and encounter data information from the Pharmacy MCC and DSNPs.

- 6.4 HL7 and Other Standard Transactions. HCFA has adopted HL7 to support its Health Information Exchange (HIE) activities and may adopt other standard transactions as needed to support its business activities. Companion Guides or usage documentation may be provided to define HCFA-specific information using an appropriate format for the given transaction standard.

7. ELECTRONIC DATA INTERCHANGE (EDI) DOCUMENTS

- 7.1 EDI Request Form. The EDI Request Form may be found on the TennCare website. It outlines all transactions used between applicable HCFA programs and the Trading Partner including HIPAA transactions and proprietary formats. For most proprietary formats, the transaction name is sufficient identification information; however, a file format and/or additional clarification data for any proprietary format may be appended to the EDI Request Form, if necessary.
- 7.1.1 Updates to the EDI Request Form may be made at any time by mutual agreement of both parties. Each update of the EDI Request Form supersedes all prior versions; therefore, each EDI Request Form must contain all transactions between both parties.
- 7.2 HIPAA Acknowledgment. All X12 transactions received by the State shall receive a 999 acknowledgement regardless of their HIPAA status.
- 7.2.1 Each Trading Partner has the option to send back to the State 999 acknowledgement transactions on all formats, except the State outbound 834 and 271U transactions, which require acknowledgements. The Trading Partner must indicate their acknowledgement intent for every transaction on the EDI Request Form.
- 7.2.2 Any transaction, per the Trading Partner Agreement, requiring an acknowledgement back to the State where an acknowledgement is not received, shall result in a transmission re-send before the next update cycle is processed.
- 7.3 Transaction Tables. The "Transaction Frequency" column shall contain the anticipated normal frequency of this transaction. Anticipated values are "D" for daily, "W" for weekly, "S" for semimonthly, "M" for monthly, "Q" for quarterly, "A" for annually, "R" for on-request, "O" for other. Multiple indicators may be used for a transaction that has multiple processing cycles.
- 7.3.1 The "Transaction Source" column shall contain the origination source for the transaction. For transactions that come from the State, this column is already filled in with "TennCare". For transactions from the Trading Partner, "TP" may be used. For transactions created by a third party for the Trading Partner, enter the third party's name.
- 7.3.2 The "Trading partner access person" column shall contain the name(s) of all individuals listed on the Security Forms below who shall access the given transaction.

- 7.3.3 The blank transaction rows on the request form are for proprietary file formats. Each production file sent between the State and the Trading Partner shall be represented on this form. Trading Partners that have multiple sources for a given transaction should include the file format once for each source.
- 7.4 Unique Identifier. The State shall assign a unique identification number or "Submitter ID" to every Trading Partner. For most Trading Partners, the Submitter ID shall be based upon tax ID – Employer Identification Number (EIN) or Social Security Number (SSN) – since the tax ID is already a required identifier on many HIPAA transactions. The assigned Submitter ID shall be used on all HIPAA transactions. The Submitter ID shall be used as the Receiver ID for transactions that originate from the State.
- 7.4.1 The Trading Partner may provide a GS02 sender code on the EDI Request form. This code shall be used as the GS03 receiver code for transactions originating from the State. A default value of the Trading Partner's Submitter ID shall be used if a value is not specified.

8. SECURITY

- 8.1 Security Forms. Trading Partner shall complete an acknowledgement of the State Acceptable Use Policy for every individual that shall access the State System. The State's security standards and the Center for Medicare and Medicaid Services (CMS) privacy and security regulations require the assignment of individual IDs.
- 8.1.1 For all forms requiring signatures, two (2) signed copies of completed forms must be mailed to TennCare Security at the State address above or a copy may be emailed to the TennCare Security Team or Privacy Office. All forms must be completed as accurately as possible.
- 8.1.2 Upon processing of security forms, the State will countersign and return a copy of the forms for Trading Partner's files, along with Trading Partner's pertinent sign-on information.
- 8.1.3 Additional Security Forms may be submitted by the Trading Partner at any time after the execution of this Agreement to request access for additional individuals. Standard State processing shall apply to the additional requests.
- 8.2 Terminated Employees -Security. It is the responsibility of the Trading Partner to notify the State when a listed individual leaves the employment of the Trading Partner or has a legal name change. Failure to do so may result in the contract termination.
- 8.3. Access Request. Trading Partner shall submit a completed TennCare Access Request form for each type of access desired for the transmission or reception of transaction data, and for each Trading Partner workforce individual controlling such transmissions or receptions.
- 8.3.1 The Trading Partner shall submit for the State's approval a list of from one (1) to three (3) Trading Partner workforce individuals authorized to submit Access Requests on behalf of the Trading Partner.

8.3.2 It is the responsibility of the Trading Partner to notify the State when a Trading Partner workforce individual authorized to submit Access Request forms leaves the employment of the Trading Partner or has a legal name change.

8.4 Remote Access Request. The Trading Partner shall complete and provide to the State a Remote Access Request. It is the responsibility of the Trading Partner to notify the State, by providing an updated Remote Access Request, any material changes to their systems and networks that would have impact on their connectivity with the State's networks.

9. TERM AND TERMINATION

9.1 Term. This Agreement shall be effective as of the last date on which it has been executed by the Parties below and shall terminate three (3) years from its effective date.

9.1.1 HCFA reserves the right to extend this Agreement for an additional period of time representing increments of no more than one (1) year and a total term of no more than five (5) years, provided that HCFA notifies the Trading Partner in writing of its intention to do so at least six (6) months prior to the Agreement expiration date. An extension of the term of this Agreement shall be effectuated through an amendment to the Agreement.

9.1.2 This Agreement may be terminated by either party by giving at least thirty (30) days advanced written notice to the other party. Any provisions required by State or federal statute shall survive the expiration, cancellation, or termination of this Agreement.

9.2 Termination for Cause. This Agreement authorizes and Trading Partner acknowledges and agrees HCFA shall have the right to immediately terminate this Agreement and suspend operations, including, but not limited to, all processing operations, or any part thereof, or payments to providers, if Trading Partner fails to comply with, or violates a material provision of this Agreement.

9.2.1 Upon HCFA's knowledge of a material breach by Trading Partner, HCFA shall either: (i) Provide notice of breach and an opportunity for Trading Partner to reasonably and promptly cure the breach or end the violation, and terminate this Agreement if Trading Partner does not cure the breach or end the violation within the reasonable time specified by HCFA; or (ii) Immediately terminate this Agreement if Trading Partner has breached a material term of this Agreement and cure is not possible; or (iii) If termination, cure, or end of violation is not feasible, HCFA shall report the violation to the Secretary.

9.3 Effect of Termination. Upon termination of this Agreement for any reason, Trading Partner shall, at its own expense, either return and/or destroy all confidential information (including PHI) received, from the applicable HCFA program or created or received by Trading Partner on behalf of the applicable HCFA program. This provision applies to all confidential information regardless of form, including but not limited to electronic or paper format. This provision shall also apply to PHI and other confidential information in the possession of sub-contractors or agents of Trading Partner.

- 9.3.1 The Trading Partner shall consult with the State as necessary to assure an appropriate means of return and/or destruction and shall notify the State in writing when such destruction is complete. If information is to be returned, the Parties shall document when all information has been received by the State.
- 9.3.2 The State shall not prohibit the retention of a single separate, archived file of the confidential HCFA information by the Trading Partner if the method of such archiving reasonably protects the continued privacy and security of such information and the Trading Partner obtains written approval at such time from the State. Otherwise, neither Trading Partner nor its subcontractors and agents shall retain copies of the State's confidential information, including enrollee PHI, except as provided herein.
- 9.3.3 The Parties agree to anticipate the return and/or the destruction of the State's confidential information, and understand that removal of the confidential information from Trading Partner's information system(s) and premises will be expected in almost all circumstances. The Trading Partner shall notify the State whether it intends to return and/or destroy the confidential information with such additional detail as requested. In the event Trading Partner determines that returning or destroying confidential information received by or created for the State at the end or other termination of this Agreement is not feasible, Trading Partner shall provide notification to the State of the conditions that make return or destruction unfeasible.
- 9.3.4 The Parties contemplate the State's confidential information shall not be merged or aggregated with data from sources unrelated to this Agreement, or Trading Partner's other business data, including for purposes of data backup and disaster recovery, until the parties identify the means of return or destruction of State data or State confidential information at the conclusion of this Agreement, or otherwise make an express alternate agreement consistent with the provisions of this Section.
- 9.3.5 Upon written mutual agreement of the Parties that return or destruction of all State confidential information is unfeasible and upon express agreement as to the means of continued protection of the data, Trading Partner shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI or other confidential information to those purposes that make the return or destruction unfeasible, for so long as Trading Partner maintains such PHI or other confidential information.

10. GENERAL PROVISIONS

- 10.1 Regulatory Reference. A reference in this Agreement to a State or federal law or regulation means the State or federal law or regulation as in effect or as amended.
- 10.2 Amendment. The Parties agree to take such action to amend this Agreement from time to time as is necessary to comply with related State and federal regulations upon the effective date of such amendment, regardless of whether this Agreement has been formally amended.
- 10.3 Assignment. Trading Partner shall not sell, transfer, assign or dispose of this Agreement, whole or in part, or any right, title or interest therein, to any other party without the express written

consent of HCFA. Such consent, if granted, shall not relieve Trading Partner of its obligations under the Agreement.

- 10.4 Billing Service(s). In the event a billing service is used, the Trading Partner hereby certifies that the billing service is authorized to submit claims on the Trading Partner's behalf using Electronic Media. The Trading Partner agrees that if the billing agreement with the billing service is terminated, the Trading Partner shall immediately report the termination in writing to HCFA. The Trading Partner must complete a new security agreement and testing cycle when making a change from one billing service to another.
- 10.5 Entire Agreement. This Agreement, together with all addenda attached hereto and incorporated by reference herein, and construed in conjunction with a SC, CRA and/or BAA, contains the entire agreement of the parties and supersedes any previous understanding, commitment or agreement, oral or written, concerning the subject matter hereof, all of which are hereby incorporated. Any change to this Agreement shall be effective only when set forth in writing and executed by the parties.
- 10.6 Prohibition of Offshore Disclosure. Nothing in this Agreement shall permit the Trading Partner to view, share, and use or disclose HCFA confidential information in any form via any medium with any third party beyond the boundaries and jurisdiction of the United States without prior approval and express written authorization from HCFA.
- 10.7 Survival. The respective rights and obligations of Trading Partner under Section 9.3 of this Agreement shall survive the termination of this Agreement.
- 10.8 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Trading Partner and HCFA to comply with State and federal laws or regulations.
- 10.9 Headings. Paragraph Headings are used in this Agreement are for the convenience of the Parties and shall have no legal meaning in the interpretation of the Agreement.
- 10.10 Notices and Communications. All instructions, notices, consents, demands, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered by hand, by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below, or to such other party, facsimile number, or address as may be hereafter specified by written notice. (For purposes of this section, effective notice to "Respective Party" is not dependent on whether the person named below remains employed by such Party.) The Parties agree to use their best efforts to immediately notify the other Party of changes in address, telephone number, and fax numbers and to promptly supplement this Agreement as necessary with corrected information.

BUREAU OF TENNCARE:

TRADING PARTNER:

HCFA EDI Unit
State of Tennessee
Dept. of Finance and Administration
Div. of Health Care Finance and Administration
Bureau of TennCare
310 Great Circle Road, Nashville, TN 37243
Email: EDI.TennCare@tn.gov

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

- 10.11 Strict Compliance. No failure by any Party to insist upon strict compliance with any term or provision of this Agreement, to exercise any option, to enforce any right, or to seek any remedy upon any default of any other Party shall affect, or constitute a waiver of, any Party's right to insist upon such strict compliance, exercise that option, enforce that right, or seek that remedy with respect to that default or any prior, contemporaneous, or subsequent default. No custom or practice of the Parties at variance with any provision of this Agreement shall affect, or constitute a waiver of, any Party's right to demand strict compliance with all provisions of this Agreement.
- 10.12 Severability. With respect to any provision of this Agreement finally determined by a --court of competent jurisdiction to be unenforceable, such court shall have jurisdiction to reform such provision so that it is enforceable to the maximum extent permitted by applicable law, and the Parties shall abide by such court's determination. In the event that any provision of this Agreement cannot be reformed, such provision shall be deemed to be severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.
- 10.13 State Liability. The State shall have no liability except as specifically provided in this Agreement.
- 10.14 Intellectual Property. Neither party shall acquire any rights in the other party's Proprietary and/or Confidential Information under this Agreement except the limited rights necessary to perform or carry out the intended purposes set forth in this Agreement. This Agreement grants no license by either party to the other, either directly or by implication, estoppel or otherwise. All right, title and interest emanating from ownership of the Proprietary and/or Confidential Information shall remain vested in the State.
- 10.15 Injunctive Relief. The parties acknowledge that any remedy at law for the breach threatened breach of the provisions of this Agreement may be inadequate to fully and properly protect HCFA and, therefore, the parties agree that HCFA may be entitled to injunctive relief in addition to other available remedies; provided, however, that nothing contained herein shall be construed

as prohibiting the State from pursuing any other remedies available in law or in equity for such breach or threatened breach.

10.16 Force Majeure. The obligations of the parties to this Agreement are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.

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