



**STATE OF TENNESSEE  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION  
BUREAU OF TENNCARE**

**REQUEST FOR PROPOSALS  
FOR  
TENNCARE SOLUTIONS UNIT (TSU) CALL CENTER  
RFP 31865-00459**

**RFP CONTENTS**

**SECTIONS:**

- 1. INTRODUCTION**
- 2. RFP SCHEDULE OF EVENTS**
- 3. RESPONSE REQUIREMENTS**
- 4. GENERAL CONTRACTING INFORMATION & REQUIREMENTS**
- 5. EVALUATION & CONTRACT AWARD**

**ATTACHMENTS:**

- 6.1. Response Statement of Certifications & Assurances**
- 6.2. Technical Response & Evaluation Guide**
- 6.3. Cost Proposal & Scoring Guide**
- 6.4. Reference Questionnaire**
- 6.5. Score Summary Matrix**
- 6.6. *Pro Forma* Contract**
- 6.7. HIPAA Business Associate Agreement**

## 1. INTRODUCTION

---

The State of Tennessee, Department of Finance and Administration, Division of Health Care Finance and Administration (HCFA), Bureau of TennCare, hereinafter referred to as the "State" or "HCFA" or "TennCare," has issued this Request for Proposals (RFP) to define minimum contract requirements; solicit responses; detail response requirements; and, outline the State's process for evaluating responses and selecting a contractor to provide the needed goods or services.

Through this RFP, the State seeks to procure necessary goods or services at the most favorable, competitive prices and to give ALL qualified businesses, including those that are owned by minorities, women, Tennessee service-disabled veterans, and small business enterprises, an opportunity to do business with the state as contractors, subcontractors or suppliers.

### 1.1. Statement of Procurement Purpose

The State intends to secure a contract for the purpose of providing an incoming, toll-free call center to afford TennCare members the opportunity to file Medical Issues/Appeals by phone. The TSU Call Center will be located at offices of the Department of Finance and Administration, Division of Health Care Finance and Administration (HCFA), Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243. The Contractor shall provide coverage for the State operated TennCare Solutions Unit (TSU) toll-free line, which is currently receiving an average call volume of 2500 calls per week. Call volume is subject to fluctuation and may increase or decrease from its current level. The Contractor will be expected to handle such fluctuations appropriately as they occur, including, if necessary, adjusting its staffing levels to adequately handle call volume. Calls will include requests for medical (including physical health and behavioral health) or pharmacy services, reimbursement, billing relief, and health plan changes, as well as requests for reconsideration of adverse actions, including denials, delays, reductions, suspensions, and termination of coverage. The Contractor shall ensure that the staff provide adequate documentation of all calls and comply with operator scripts and processes in the operation of the TSU Call Center. Examples of current operator scripts and TSU forms are provided at the link below. These forms and scripts are subject to updating and all updated documents will be provided to the successful respondent that receives the contract award.

<http://tn.gov/assets/entities/tenncare/attachments/RFP31865-00459.pdf>

Upon contract signature, the winning respondent will be required to sign RFP Attachment 6.7, HIPAA Business Associate Agreement.

1.1.2. The maximum liability in RFP Attachment 6.6, Section C.1, will be populated based on the Cost Proposal rates and associated volumes as projected to complete the scope of work in the *pro forma* contract. There is no way to accurately project the amount of this project until the cost proposals are received, however, the current contract for these services has expenditures of approximately \$1.1 million annually.

### 1.2. Scope of Service, Contract Period, & Required Terms and Conditions

The RFP Attachment 6.6., *Pro Forma* Contract details the State's requirements:

- Scope of Services and Deliverables (Section A);
- Contract Period (Section B);
- Payment Terms (Section C);
- Standard Terms and Conditions (Section D); and,
- Special Terms and Conditions (Section E).

The *pro forma* contract substantially represents the contract document that the successful Respondent must sign.

1.3. **Nondiscrimination**

No person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of a Contract pursuant to this RFP 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, Tennessee state constitutional, or statutory law. The Contractor pursuant to this RFP shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

1.4. **RFP Communications**

1.4.1. The State has assigned the following RFP identification number that must be referenced in all communications regarding this RFP:

**RFP # 31865-00459**

1.4.2. **Unauthorized contact about this RFP with employees or officials of the State of Tennessee except as detailed below may result in disqualification from consideration under this procurement process.**

1.4.2.1. Prospective Respondents must direct communications concerning this RFP to the following person designated as the Solicitation Coordinator:

Alma Chilton, Director of Contracts  
Department of Finance and Administration  
Division of Health Care Finance and Administration  
310 Great Circle Road  
Nashville, TN 37243  
(615) 507-6384 (phone)  
(615) 253-5414 (fax)  
[Alma.chilton@tn.gov](mailto:Alma.chilton@tn.gov)

1.4.2.2. Notwithstanding the foregoing, Prospective Respondents may alternatively contact:

- a. staff of the Governor's Office of Diversity Business Enterprise for assistance available to minority-owned, woman-owned, Tennessee service-disabled veteran owned, and small businesses as well as general, public information relating to this RFP (visit <http://www.tn.gov/generalservices/article/godbe-general-contacts> for contact information); and
- b. the following individual designated by the State to coordinate compliance with the nondiscrimination requirements of the State of Tennessee, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and associated federal regulations:

Talley A. Olson  
Director, Office of Civil Rights Compliance  
Division of Health Care Finance and Administration  
310 Great Circle Road, 4 West  
Nashville, TN 37243  
Phone: 615- 507-6841  
Email: [Talley.A.Olson@tn.gov](mailto:Talley.A.Olson@tn.gov)  
Fax 615- 532-7322

- 1.4.3. Only the State's official, written responses and communications with Respondents are binding with regard to this RFP. Oral communications between a State official and one or more Respondents are unofficial and non-binding.
- 1.4.4. Potential Respondents must ensure that the State receives all written questions and comments, including questions and requests for clarification, no later than the Written Questions & Comments Deadline detailed in the RFP Section 2, Schedule of Events.
- 1.4.5. Respondents must assume the risk of the method of dispatching any communication or response to the State. The State assumes no responsibility for delays or delivery failures resulting from the Respondent's method of dispatch. Actual or digital "postmarking" of a communication or response to the State by a specified deadline is not a substitute for the State's actual receipt of a communication or response.
- 1.4.6. The State will convey all official responses and communications related to this RFP to the prospective Respondents from whom the State has received a Notice of Intent to Respond (refer to RFP Section 1.8).
- 1.4.7. The State reserves the right to determine, at its sole discretion, the method of conveying official, written responses and communications related to this RFP. Such written communications may be transmitted by mail, hand-delivery, facsimile, electronic mail, internet posting, or any other means deemed reasonable by the State. For internet posting, please refer to the following website: <http://tn.gov/generalservices/article/request-for-proposals-rfp-opportunities>.
- 1.4.8. The State reserves the right to determine, at its sole discretion, the appropriateness and adequacy of responses to written comments, questions, and requests related to this RFP. The State's official, written responses will constitute an amendment of this RFP.
- 1.4.9. Any data or factual information provided by the State (in this RFP, an RFP amendment or any other communication relating to this RFP) is for informational purposes only. The State will make reasonable efforts to ensure the accuracy of such data or information, however it is the Respondent's obligation to independently verify any data or information provided by the State. The State expressly disclaims the accuracy or adequacy of any information or data that it provides to prospective Respondents.

1.5. **Assistance to Respondents With a Handicap or Disability**

Prospective Respondents with a handicap or disability may receive accommodation relating to the communication of this RFP and participating in the RFP process. Prospective Respondents may contact the Solicitation Coordinator to request such reasonable accommodation no later than the Disability Accommodation Request Deadline detailed in the RFP Section 2, Schedule of Events.

1.6. **Respondent Required Review & Waiver of Objections**

- 1.6.1. Each prospective Respondent must carefully review this RFP, including but not limited to, attachments, the RFP Attachment 6.6., *Pro Forma* Contract, and any amendments, for questions, comments, defects, objections, or any other matter requiring clarification or correction (collectively called "questions and comments").
- 1.6.2. Any prospective Respondent having questions and comments concerning this RFP must provide them in writing to the State no later than the Written Questions & Comments Deadline detailed in the RFP Section 2, Schedule of Events.
- 1.6.3. Protests based on any objection to the RFP shall be considered waived and invalid if the objection has not been brought to the attention of the State, in writing, by the Written Questions & Comments Deadline.

### 1.7. **Pre-Response Conference**

A Pre-response Conference will be held at the time and date detailed in the RFP Section 2, Schedule of Events. Pre-response Conference attendance is not mandatory, and prospective Respondents may be limited to a maximum number of attendees depending upon overall attendance and space limitations.

The conference will be held at:

Division of Health Care Finance and Administration  
TennCare Building  
310 Great Circle Road  
Nashville, TN 37243

The purpose of the conference is to discuss the RFP scope of goods or services. The State will entertain questions, however prospective Respondents must understand that the State's oral response to any question at the Pre-response Conference shall be unofficial and non-binding. Prospective Respondents must submit all questions, comments, or other concerns regarding the RFP in writing prior to the Written Questions & Comments Deadline date detailed in the RFP Section 2, Schedule of Events. The State will send the official response to these questions and comments to prospective Respondents from whom the State has received a Notice of Intent to respond as indicated in RFP Section 1.8 and on the date detailed in the RFP Section 2, Schedule of Events.

### 1.8. **Notice of Intent to Respond**

Before the Notice of Intent to Respond Deadline detailed in the RFP Section 2, Schedule of Events, prospective Respondents should submit to the Solicitation Coordinator a Notice of Intent to Respond (in the form of a simple e-mail or other written communication). Such notice should include the following information:

- the business or individual's name (as appropriate)
- a contact person's name and title
- the contact person's mailing address, telephone number, facsimile number, and e-mail address

**A Notice of Intent to Respond creates no obligation and is not a prerequisite for submitting a response, however, it is necessary to ensure receipt of any RFP amendments or other notices and communications relating to this RFP.**

### 1.9. **Response Deadline**

A Respondent must ensure that the State receives a response no later than the response Deadline time and date detailed in the RFP Section 2, Schedule of Events. A response must respond, as required, to this RFP (including its attachments) as may be amended. The State will not accept late responses, and a Respondent's failure to submit a response before the deadline will result in disqualification of the response. It is the responsibility of the Respondent to ascertain any additional security requirements with respect to packaging and delivery to the State of Tennessee. Respondents should be mindful of any potential delays due to security screening procedures, weather, or other filing delays whether foreseeable or unforeseeable.

## 2. RFP SCHEDULE OF EVENTS

---

2.1. The following RFP Schedule of Events represents the State's best estimate for this RFP.

EVENT	TIME (central time zone)	DATE
1. RFP Issued		March 1, 2017
2. Disability Accommodation Request Deadline	2:00 p.m.	March 6, 2017
3. Pre-response Conference	2:00 p.m.	March 8, 2017
4. Notice of Intent to Respond Deadline	2:00 p.m.	March 9, 2017
5. Written "Questions & Comments" Deadline	2:00 p.m.	March 14, 2017
6. State Response to Written "Questions & Comments"		March 22, 2017
7. Response Deadline	12:00 p.m.	April 7, 2017
8. State Completion of Technical Response Evaluations		April 18, 2017
9. State Opening & Scoring of Cost Proposals	2:00 p.m.	April 19, 2017
10. State Notice of Intent to Award Released <u>and</u> RFP Files Opened for Public Inspection	2:00 p.m.	April 20, 2017
11. End of Open File Period		May 1, 2017
12. State sends contract to Contractor for signature		May 2, 2017
13. Contractor Signature Deadline		May 8, 2017
14. Contract Start Date		June 1, 2017

2.2. **The State reserves the right, at its sole discretion, to adjust the RFP Schedule of Events as it deems necessary.** Any adjustment of the Schedule of Events shall constitute an RFP amendment, and the State will communicate such to prospective Respondents from whom the State has received a Notice of Intent to Respond (refer to section 1.8).

### 3. RESPONSE REQUIREMENTS

---

#### 3.1. Response Form

A response to this RFP must consist of two parts, a Technical Response and a Cost Proposal.

- 3.1.1. **Technical Response.** RFP Attachment 6.2., Technical Response & Evaluation Guide provides the specific requirements for submitting a response. This guide includes mandatory requirement items, general qualifications and experience items, and technical qualifications, experience, and approach items all of which must be addressed with a written response and, in some instances, additional documentation.

**NOTICE: A technical response must not include any pricing or cost information. If any pricing or cost information amounts of any type (even pricing relating to other projects) is included in any part of the technical response, the state may deem the response to be non-responsive and reject it.**

- 3.1.1.1. A Respondent must use the RFP Attachment 6.2., Technical Response & Evaluation Guide to organize, reference, and draft the Technical Response by duplicating the attachment, adding appropriate page numbers as required, and using the guide as a table of contents covering the Technical Response.
- 3.1.1.2. A response should be economically prepared, with emphasis on completeness and clarity. A response, as well as any reference material presented, must be written in English and must be written on standard 8 ½" x 11" pages (although oversize exhibits are permissible) and use a 12 point font for text. All response pages must be numbered.
- 3.1.1.3. All information and documentation included in a Technical Response should respond to or address a specific requirement detailed in the RFP Attachment 6.2., Technical Response & Evaluation Guide. All information must be incorporated into a response to a specific requirement and clearly referenced. Any information not meeting these criteria will be deemed extraneous and will not contribute to evaluations.
- 3.1.1.4. The State may determine a response to be non-responsive and reject it if:
- a. the Respondent fails to organize and properly reference the Technical Response as required by this RFP and the RFP Attachment 6.2., Technical Response & Evaluation Guide; or
  - b. the Technical Response document does not appropriately respond to, address, or meet all of the requirements and response items detailed in the RFP Attachment 6.2., Technical Response & Evaluation Guide.
- 3.1.2. **Cost Proposal.** A Cost Proposal must be recorded on an exact duplicate of the RFP Attachment 6.3., Cost Proposal & Scoring Guide.

**NOTICE: If a Respondent fails to submit a cost proposal exactly as required, the State may deem the response to be non-responsive and reject it.**

- 3.1.2.1. A Respondent must only record the proposed cost exactly as required by the RFP Attachment 6.3., Cost Proposal & Scoring Guide and must NOT record any other rates, amounts, or information.

- 3.1.2.2. The proposed cost shall incorporate ALL costs for services under the contract for the total contract period, including any renewals or extensions.
- 3.1.2.3. A Respondent must sign and date the Cost Proposal.
- 3.1.2.4. A Respondent must submit the Cost Proposal to the State in a sealed package separate from the Technical Response (as detailed in RFP Sections 3.2.3., *et seq.*).

## 3.2. Response Delivery

- 3.2.1. A Respondent must ensure that both the original Technical Response and Cost Proposal documents meet all form and content requirements, including all required signatures, as detailed within this RFP.
- 3.2.2. A Respondent must submit original Technical Response and Cost Proposal documents and copies as specified below.

- 3.2.2.1. One (1) original Technical Response paper document labeled:

**“RFP # 31865-00459 TECHNICAL RESPONSE ORIGINAL”**

and five (5) digital copies of the Technical Response each in the form of one (1) digital document in “PDF” format properly recorded on its own otherwise blank, standard CD-R recordable disc or USB flash drive labeled:

**“RFP # 31865-00459 TECHNICAL RESPONSE COPY”**

The digital copies should not include copies of sealed customer references, however any other discrepancy between the paper Technical Response document and any digital copies may result in the State rejecting the proposal as non-responsive.

- 3.2.2.2. One (1) original Cost Proposal paper document labeled:

**“RFP # 31865-00459 COST PROPOSAL ORIGINAL”**

and one (1) copy in the form of a digital document in “PDF/XLS” format properly recorded on separate, blank, standard CD-R recordable disc or USB flash drive labeled:

**“RFP # 31865-00459 COST PROPOSAL COPY”**

In the event of a discrepancy between the original Cost Proposal document and the digital copy, the original, signed document will take precedence.

- 3.2.3. A Respondent must separate, seal, package, and label the documents and copies for delivery as follows:

- 3.2.3.1. The Technical Response original document and digital copies must be placed in a sealed package that is clearly labeled:

**“DO NOT OPEN... RFP # 31865-00459 TECHNICAL RESPONSE FROM  
[RESPONDENT LEGAL ENTITY NAME]”**

- 3.2.3.2. The Cost Proposal original document and digital copy must be placed in a separate, sealed package that is clearly labeled:



**“DO NOT OPEN... RFP # 31865-00459 COST PROPOSAL FROM [RESPONDENT LEGAL ENTITY NAME]”**

- 3.2.3.3. The separately, sealed Technical Response and Cost Proposal components may be enclosed in a larger package for mailing or delivery, provided that the outermost package is clearly labeled:

**“RFP # 31865-00459 SEALED TECHNICAL RESPONSE & SEALED COST PROPOSAL FROM [RESPONDENT LEGAL ENTITY NAME]”**

- 3.2.4. A Respondent must ensure that the State receives a response no later than the Response Deadline time and date detailed in the RFP Section 2, Schedule of Events at the following address:

Alma Chilton, Director of Contracts  
Department of Finance and Administration  
Division of Health Care Finance and Administration  
310 Great Circle Road  
Nashville, TN 37243

**3.3. Response & Respondent Prohibitions**

- 3.3.1. A response must not include alternate contract terms and conditions. If a response contains such terms and conditions, the State, at its sole discretion, may determine the response to be a non-responsive counteroffer and reject it.
- 3.3.2. A response must not restrict the rights of the State or otherwise qualify either the offer to deliver goods or provide services as required by this RFP or the Cost Proposal. If a response restricts the rights of the State or otherwise qualifies either the offer to deliver goods or provide services as required by this RFP or the Cost Proposal, the State, at its sole discretion, may determine the response to be a non-responsive counteroffer and reject it.
- 3.3.3. A response must not propose alternative goods or services (*i.e.*, offer services different from those requested and required by this RFP) unless expressly requested in this RFP. The State may consider a response of alternative goods or services to be non-responsive and reject it.
- 3.3.4. A Cost Proposal must be prepared and arrived at independently and must not involve any collusion between Respondents. The State will reject any Cost Proposal that involves collusion, consultation, communication, or agreement between Respondents. Regardless of the time of detection, the State will consider any such actions to be grounds for response rejection or contract termination.
- 3.3.5. A Respondent must not provide, for consideration in this RFP process or subsequent contract negotiations, any information that the Respondent knew or should have known was materially incorrect. If the State determines that a Respondent has provided such incorrect information, the State will deem the Response non-responsive and reject it.
- 3.3.6. A Respondent must not submit more than one Technical Response and one Cost Proposal in response to this RFP, except as expressly requested by the State in this RFP. If a Respondent submits more than one Technical Response or more than one Cost Proposal, the State will deem all of the responses non-responsive and reject them.
- 3.3.7. A Respondent must not submit a response as a prime contractor while also permitting one or more other Respondents to offer the Respondent as a subcontractor in their own responses. Such may result in the disqualification of all Respondents knowingly involved. This restriction does not, however, prohibit different Respondents from offering the same subcontractor as a part

of their responses (provided that the subcontractor does not also submit a response as a prime contractor).

3.3.8. The State shall not consider a response from an individual who is, or within the past six (6) months has been, a State employee. For purposes of this RFP:

3.3.8.1. An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;

3.3.8.2. A contract with or a response from a company, corporation, or any other contracting entity in which a controlling interest is held by any State employee shall be considered to be a contract with or proposal from the employee; and

3.3.8.3. A contract with or a response from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six (6) months has been, a State employee shall not be considered a contract with or a proposal from the employee and shall not constitute a prohibited conflict of interest.

#### 3.4. **Response Errors & Revisions**

A Respondent is responsible for any and all response errors or omissions. A Respondent will not be allowed to alter or revise response documents after the Response Deadline time and date detailed in the RFP Section 2, Schedule of Events unless such is formally requested, in writing, by the State.

#### 3.5. **Response Withdrawal**

A Respondent may withdraw a submitted response at any time before the Response Deadline time and date detailed in the RFP Section 2, Schedule of Events by submitting a written request signed by an authorized Respondent representative. After withdrawing a response, a Respondent may submit another response at any time before the Response Deadline. After the Response Deadline, a Respondent may only withdraw all or a portion of a response where the enforcement of the response would impose an unconscionable hardship on the Respondent.

#### 3.6. **Additional Services**

If a response offers goods or services in addition to those required by and described in this RFP, the State, at its sole discretion, may add such services to the contract awarded as a result of this RFP. Notwithstanding the foregoing, a Respondent must not propose any additional cost amounts or rates for additional goods or services. Regardless of any additional services offered in a response, the Respondent's Cost Proposal must only record the proposed cost as required in this RFP and must not record any other rates, amounts, or information.

**NOTICE: If a Respondent fails to submit a Cost Proposal exactly as required, the State may deem the response non-responsive and reject it.**

#### 3.7. **Response Preparation Costs**

The State will not pay any costs associated with the preparation, submittal, or presentation of any response.

## 4. GENERAL CONTRACTING INFORMATION & REQUIREMENTS

---

### 4.1. RFP Amendment

The State at its sole discretion may amend this RFP, in writing, at any time prior to contract award. However, prior to any such amendment, the State will consider whether it would negatively impact the ability of potential Respondents to meet the response deadline and revise the RFP Schedule of Events if deemed appropriate. If an RFP amendment is issued, the State will convey it to potential Respondents who submitted a Notice of Intent to Respond (refer to RFP Section 1.8). A response must address the final RFP (including its attachments) as amended.

### 4.2. RFP Cancellation

The State reserves the right, at its sole discretion, to cancel the RFP or to cancel and reissue this RFP in accordance with applicable laws and regulations.

### 4.3. State Right of Rejection

4.3.1. Subject to applicable laws and regulations, the State reserves the right to reject, at its sole discretion, any and all responses.

4.3.2. The State may deem as non-responsive and reject any response that does not comply with all terms, conditions, and performance requirements of this RFP. Notwithstanding the foregoing, the State reserves the right to waive, at its sole discretion, minor variances from full compliance with this RFP. If the State waives variances in a response, such waiver shall not modify the RFP requirements or excuse the Respondent from full compliance, and the State may hold any resulting Contractor to strict compliance with this RFP.

### 4.4. Assignment & Subcontracting

4.4.1. The Contractor may not subcontract, transfer, or assign any portion of the Contract awarded as a result of this RFP without prior approval of the State. The State reserves the right to refuse approval, at its sole discretion, of any subcontract, transfer, or assignment.

4.4.2. If a Respondent intends to use subcontractors, the response to this RFP must specifically identify the scope and portions of the work each subcontractor will perform (refer to RFP Attachment 6.2., Section B, General Qualifications & Experience Item B.14.).

4.4.3. Subcontractors identified within a response to this RFP will be deemed as approved by the State unless the State expressly disapproves one or more of the proposed subcontractors prior to signing the Contract.

4.4.4. After contract award, a Contractor may only substitute an approved subcontractor at the discretion of the State and with the State's prior, written approval.

4.4.5. Notwithstanding any State approval relating to subcontracts, the Respondent who is awarded a contract pursuant to this RFP will be the prime contractor and will be responsible for all work under the Contract.

### 4.5. Right to Refuse Personnel or Subcontractors

The State reserves the right to refuse, at its sole discretion and notwithstanding any prior approval, any personnel of the prime contractor or a subcontractor providing goods or services in the performance of a contract resulting from this RFP. The State will document in writing the reason(s) for any rejection of personnel.

#### 4.6. **Insurance**

From time-to-time, the State may require the awarded Contractor to provide a Certificate of Insurance issued by an insurance company licensed or authorized to provide insurance in the State of Tennessee. Each Certificate of Insurance shall indicate current insurance coverages meeting minimum requirements as may be specified by this RFP. A failure to provide a current, Certificate of Insurance will be considered a material breach and grounds for contract termination.

#### 4.7. **Professional Licensure and Department of Revenue Registration**

- 4.7.1. All persons, agencies, firms, or other entities that provide legal or financial opinions, which a Respondent provides for consideration and evaluation by the State as a part of a response to this RFP, shall be properly licensed to render such opinions.
- 4.7.2. Before the Contract resulting from this RFP is signed, the apparent successful Respondent (and Respondent employees and subcontractors, as applicable) must hold all necessary or appropriate business or professional licenses to provide the goods or services as required by the contract. The State may require any Respondent to submit evidence of proper licensure.
- 4.7.3. Before the Contract resulting from this RFP is signed, the apparent successful Respondent must be registered with the Tennessee Department of Revenue for the collection of Tennessee sales and use tax. The State shall not award a contract unless the Respondent provides proof of such registration or provides documentation from the Department of Revenue that the Contractor is exempt from this registration requirement. The foregoing is a mandatory requirement of an award of a contract pursuant to this solicitation. For purposes of this registration requirement, the Department of Revenue may be contacted at: TN.Revenue@tn.gov.

#### 4.8. **Disclosure of Response Contents**

- 4.8.1. All materials submitted to the State in response to this RFP shall become the property of the State of Tennessee. Selection or rejection of a response does not affect this right. By submitting a response, a Respondent acknowledges and accepts that the full response contents and associated documents will become open to public inspection in accordance with the laws of the State of Tennessee.
- 4.8.2. The State will hold all response information, including both technical and cost information, in confidence during the evaluation process. Notwithstanding the foregoing, a list of actual Respondents submitting timely responses may be available to the public, upon request, after technical responses are opened.
- 4.8.3. Upon completion of response evaluations, indicated by public release of a Notice of Intent to Award, the responses and associated materials will be open for review by the public in accordance with *Tennessee Code Annotated*, Section 10-7-504(a)(7).

#### 4.9. **Contract Approval and Contract Payments**

- 4.9.1. After contract award, the Contractor who is awarded the contract must submit appropriate documentation with the Department of Finance and Administration, Division of Accounts.
- 4.9.2. This RFP and its contractor selection processes do not obligate the State and do not create rights, interests, or claims of entitlement in either the Respondent with the apparent best-evaluated response or any other Respondent. State obligations pursuant to a contract award shall commence only after the contract is signed by the State agency head and the Contractor and after the Contract is approved by all other state officials as required by applicable laws and regulations.

- 4.9.3. No payment will be obligated or made until the relevant Contract is approved as required by applicable statutes and rules of the State of Tennessee.
- 4.9.3.1. The State shall not be liable for payment of any type associated with the Contract resulting from this RFP (or any amendment thereof) or responsible for any goods delivered or services rendered by the Contractor, even goods delivered or services rendered in good faith and even if the Contractor is orally directed to proceed with the delivery of goods or the rendering of services, if it occurs before the Contract start date or after the Contract end date.
- 4.9.3.2. All payments relating to this procurement will be made in accordance with the Payment Terms and Conditions of the Contract resulting from this RFP (refer to RFP Attachment 6.6., *Pro Forma Contract*, Section C).
- 4.9.3.3. If any provision of the Contract provides direct funding or reimbursement for the competitive purchase of goods or services as a component of contract performance or otherwise provides for the reimbursement of specified, actual costs, the State will employ all reasonable means and will require all such documentation that it deems necessary to ensure that such purchases were competitive and costs were reasonable, necessary, and actual. The Contractor shall provide reasonable assistance and access related to such review. Further, the State shall not remit, as funding or reimbursement pursuant to such provisions, any amounts that it determines do not represent reasonable, necessary, and actual costs.

#### 4.10. **Contractor Performance**

The Contractor who is awarded a contract will be responsible for the delivery of all acceptable goods or the satisfactory completion of all services set out in this RFP (including attachments) as may be amended. All goods or services are subject to inspection and evaluation by the State. The State will employ all reasonable means to ensure that goods delivered or services rendered are in compliance with the Contract, and the Contractor must cooperate with such efforts.

#### 4.11. **Contract Amendment**

After contract award, the State may request the Contractor to deliver additional goods or perform additional services within the general scope of the contract and this RFP, but beyond the specified scope of service, and for which the Contractor may be compensated. In such instances, the State will provide the Contractor a written description of the additional goods or services. The Contractor must respond to the State with a time schedule for delivering the additional goods or accomplishing the additional services based on the compensable units included in the Contractor's response to this RFP. If the State and the Contractor reach an agreement regarding the goods or services and associated compensation, such agreement must be effected by means of a contract amendment. Further, any such amendment requiring additional goods or services must be signed by both the State agency head and the Contractor and must be approved by other state officials as required by applicable statutes, rules, policies and procedures of the State of Tennessee. The Contractor must not provide additional goods or render additional services until the State has issued a written contract amendment with all required approvals.

#### 4.12. **Severability**

If any provision of this RFP is declared by a court to be illegal or in conflict with any law, said decision will not affect the validity of the remaining RFP terms and provisions, and the rights and obligations of the State and Respondents will be construed and enforced as if the RFP did not contain the particular provision held to be invalid.

4.13. **Next Ranked Respondent**

The State reserves the right to initiate negotiations with the next ranked Respondent should the State cease doing business with any Respondent selected via this RFP process.

## 5. EVALUATION & CONTRACT AWARD

---

### 5.1. Evaluation Categories & Maximum Points

The State will consider qualifications, experience, technical approach, and cost in the evaluation of responses and award points in each of the categories detailed below (up to the maximum evaluation points indicated) to each response deemed by the State to be responsive.

EVALUATION CATEGORY	MAXIMUM POINTS POSSIBLE
<b>General Qualifications &amp; Experience</b> (refer to RFP Attachment 6.2., Section B)	<b>30</b>
<b>Technical Qualifications, Experience &amp; Approach</b> (refer to RFP Attachment 6.2., Section C)	<b>40</b>
<b>Cost Proposal</b> (refer to RFP Attachment 6.3.)	<b>30</b>

### 5.2. Evaluation Process

The evaluation process is designed to award the contract resulting from this RFP not necessarily to the Respondent offering the lowest cost, but rather to the Respondent deemed by the State to be responsive and responsible who offers the best combination of attributes based upon the evaluation criteria. ("Responsive Respondent" is defined as a Respondent that has submitted a response that conforms in all material respects to the RFP. "Responsible Respondent" is defined as a Respondent that has the capacity in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.)

5.2.1. **Technical Response Evaluation.** The Solicitation Coordinator and the Proposal Evaluation Team (consisting of three (3) or more State employees) will use the RFP Attachment 6.2., Technical Response & Evaluation Guide to manage the Technical Response Evaluation and maintain evaluation records.

5.2.1.1. The State reserves the right, at its sole discretion, to request Respondent clarification of a Technical Response or to conduct clarification discussions with any or all Respondents. Any such clarification or discussion will be limited to specific sections of the response identified by the State. The subject Respondent must put any resulting clarification in writing as may be required and in accordance with any deadline imposed by the State.

5.2.1.2. The Solicitation Coordinator will review each Technical Response to determine compliance with RFP Attachment 6.2., Technical Response & Evaluation Guide, Section A—Mandatory Requirements. If the Solicitation Coordinator determines that a response failed to meet one or more of the mandatory requirements, the Proposal Evaluation Team will review the response and document the team's determination of whether:

- a. the response adequately meets RFP requirements for further evaluation;
- b. the State will request clarifications or corrections for consideration prior to further evaluation; or,
- c. the State will determine the response to be non-responsive to the RFP and reject it.

- 5.2.1.3. Proposal Evaluation Team members will independently evaluate each Technical Response (that is responsive to the RFP) against the evaluation criteria in this RFP, and will score each in accordance with the RFP Attachment 6.2., Technical Response & Evaluation Guide.
  - 5.2.1.4. For each response evaluated, the Solicitation Coordinator will calculate the average of the Proposal Evaluation Team member scores for RFP Attachment 6.2., Technical Response & Evaluation Guide, and record each average as the response score for the respective Technical Response section.
  - 5.2.1.5. Before Cost Proposals are opened, the Proposal Evaluation Team will review the Technical Response Evaluation record and any other available information pertinent to whether or not each Respondent is responsive and responsible. If the Proposal Evaluation Team identifies any Respondent that does not to meet the responsive and responsible thresholds such that the team would not recommend the Respondent for Cost Proposal Evaluation and potential contract award, the team members will fully document the determination.
- 5.2.2. **Cost Proposal Evaluation.** The Solicitation Coordinator will open for evaluation the Cost Proposal of each Respondent deemed by the State to be responsive and responsible and calculate and record each Cost Proposal score in accordance with the RFP Attachment 6.3., Cost Proposal & Scoring Guide.
- 5.2.3. **Clarifications and Negotiations:** The State reserves the right to award a contract on the basis of initial responses received, therefore, each response shall contain the Respondent's best terms and conditions from a technical and cost standpoint. The State reserves the right to conduct clarifications or negotiations with one or more Respondents. All communications, clarifications, and negotiations shall be conducted in a manner that supports fairness in response improvement.
- 5.2.3.1. **Clarifications:** The State may identify areas of a response that may require further clarification or areas in which it is apparent that there may have been miscommunications or misunderstandings as to the State's specifications or requirements. The State may seek to clarify those issues identified during one or multiple clarification rounds. Each clarification sought by the State may be unique to an individual Respondent, provided that the process is conducted in a manner that supports fairness in response improvement.
  - 5.2.3.2. **Negotiations:** The State may elect to negotiate with one or more Respondents by requesting revised responses, negotiating costs, or finalizing contract terms and conditions. The State reserves the right to conduct multiple negotiation rounds or no negotiations at all.
  - 5.2.3.3. **Cost Negotiations:** All Respondents, selected for negotiation by the State, will be given equivalent information with respect to cost negotiations. All cost negotiations will be documented for the procurement file. Additionally, the State may conduct target pricing and other goods or services level negotiations. Target pricing may be based on considerations such as current pricing, market considerations, benchmarks, budget availability, or other methods that do not reveal individual Respondent pricing. During target price negotiations, Respondents are not obligated to reduce their pricing to target prices, but no Respondent is allowed to increase prices.
  - 5.2.3.4. If the State determines that it is unable to successfully negotiate a contract with the apparent best evaluated Respondent, the State reserves the right to bypass the apparent best evaluated Respondent and enter into contract negotiations with the next apparent best evaluated Respondent.



- 5.2.4. **Total Response Score.** The Solicitation Coordinator will calculate the sum of the Technical Response section scores and the Cost Proposal score and record the resulting number as the total score for the subject Response (refer to RFP Attachment 6.5., Score Summary Matrix).

### 5.3. Contract Award Process

- 5.3.1 The Solicitation Coordinator will submit the Proposal Evaluation Team determinations and scores to the head of the procuring agency for consideration along with any other relevant information that might be available and pertinent to contract award.
- 5.3.2. The procuring agency head will determine the apparent best-evaluated Response. To effect a contract award to a Respondent other than the one receiving the highest evaluation process score, the head of the procuring agency must provide written justification and obtain the written approval of the Chief Procurement Officer and the Comptroller of the Treasury.
- 5.3.3. The State will issue a Notice of Intent to Award identifying the apparent best-evaluated response and make the RFP files available for public inspection at the time and date specified in the RFP Section 2, Schedule of Events.

**NOTICE: The Notice of Intent to Award shall not create rights, interests, or claims of entitlement in either the apparent best-evaluated Respondent or any other Respondent.**

- 5.3.4. The Respondent identified as offering the apparent best-evaluated response must sign a contract drawn by the State pursuant to this RFP. The contract shall be substantially the same as the RFP Attachment 6.6., *Pro Forma* Contract. The Respondent must sign the contract by the Contractor Signature Deadline detailed in the RFP Section 2, Schedule of Events. If the Respondent fails to provide the signed contract by this deadline, the State may determine that the Respondent is non-responsive to this RFP and reject the response.
- 5.3.5. Notwithstanding the foregoing, the State may, at its sole discretion, entertain limited negotiation prior to contract signing and, as a result, revise the *pro forma* contract terms and conditions or performance requirements in the State's best interests, PROVIDED THAT such revision of terms and conditions or performance requirements shall NOT materially affect the basis of response evaluations or negatively impact the competitive nature of the RFP and contractor selection process.
- 5.3.6. If the State determines that a response is non-responsive and rejects it after opening Cost Proposals, the Solicitation Coordinator will re-calculate scores for each remaining responsive Cost Proposal to determine (or re-determine) the apparent best-evaluated response.

**RFP # 31865-00459 STATEMENT OF CERTIFICATIONS AND ASSURANCES**

The Respondent must sign and complete the Statement of Certifications and Assurances below as required, and it must be included in the Technical Response (as required by RFP Attachment 6.2., Technical Response & Evaluation Guide, Section A, Item A.1.).

**The Respondent does, hereby, expressly affirm, declare, confirm, certify, and assure ALL of the following:**

1. The Respondent will comply with all of the provisions and requirements of the RFP.
2. The Respondent will provide all services as defined in the Scope of Services of the RFP Attachment 6.6., *Pro Forma Contract* for the total contract period.
3. The Respondent, except as otherwise provided in this RFP, accepts and agrees to all terms and conditions set out in the RFP Attachment 6.6., *Pro Forma Contract*.
4. The Respondent acknowledges and agrees that a contract resulting from the RFP shall incorporate, by reference, all proposal responses as a part of the contract.
5. The Respondent will comply with:
  - (a) the laws of the State of Tennessee;
  - (b) Title VI of the federal Civil Rights Act of 1964;
  - (c) Title IX of the federal Education Amendments Act of 1972;
  - (d) the Equal Employment Opportunity Act and the regulations issued there under by the federal government; and,
  - (e) the Americans with Disabilities Act of 1990 and the regulations issued there under by the federal government.
6. To the knowledge of the undersigned, the information detailed within the response submitted to this RFP is accurate.
7. The response submitted to this RFP was independently prepared, without collusion, under penalty of perjury.
8. No amount 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 Respondent in connection with this RFP or any resulting contract.
9. Both the Technical Response and the Cost Proposal submitted in response to this RFP shall remain valid for at least 120 days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any contract pursuant to the RFP.
10. The Respondent affirms the following statement, as required by the Iran Divestment Act Tenn. Code Ann. § 12-12-111: "By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint response each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each Respondent is not on the list created pursuant to §12-12-106." For reference purposes, the list is currently available online at: <http://www.tn.gov/generalservices/article/Public-Information-library>.

**By signing this Statement of Certifications and Assurances, below, the signatory also certifies legal authority to bind the proposing entity to the provisions of this RFP and any contract awarded pursuant to it. If the signatory is not the Respondent (if an individual) or the Respondent's company *President* or *Chief Executive Officer*, this document must attach evidence showing the individual's authority to bind the Respondent.**

**DO NOT SIGN THIS DOCUMENT IF YOU ARE NOT LEGALLY AUTHORIZED TO BIND THE RESPONDENT**

**SIGNATURE:**

\_\_\_\_\_

**PRINTED NAME & TITLE:**

\_\_\_\_\_

**DATE:**

\_\_\_\_\_

**RESPONDENT LEGAL ENTITY  
NAME:**

\_\_\_\_\_

**TECHNICAL RESPONSE & EVALUATION GUIDE**

**SECTION A: MANDATORY REQUIREMENTS.** The Respondent must address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Respondent must also detail the response page number for each item in the appropriate space below.

The Solicitation Coordinator will review the response to determine if the Mandatory Requirement Items are addressed as required and mark each with pass or fail. For each item that is not addressed as required, the Proposal Evaluation Team must review the response and attach a written determination. In addition to the Mandatory Requirement Items, the Solicitation Coordinator will review each response for compliance with all RFP requirements.

RESPONDENT LEGAL ENTITY NAME:			
Response Page # (Respondent completes)	Item Ref.	Section A— Mandatory Requirement Items	Pass/Fail
		The Response must be delivered to the State no later than the Response Deadline specified in the RFP Section 2, Schedule of Events.	
		The Technical Response and the Cost Proposal documentation must be packaged separately as required (refer to RFP Section 3.2., <i>et seq.</i> ).	
		The Technical Response must NOT contain cost or pricing information of any type.	
		The Technical Response must NOT contain any restrictions of the rights of the State or other qualification of the response.	
		A Respondent must NOT submit alternate responses (refer to RFP Section 3.3.).	
		A Respondent must NOT submit multiple responses in different forms (as a prime and a sub-contractor) (refer to RFP Section 3.3.).	
	A.1.	Provide the Statement of Certifications and Assurances (RFP Attachment 6.1.) completed and signed by an individual empowered to bind the Respondent to the provisions of this RFP and any resulting contract. The document must be signed without exception or qualification.	
	A.2.	Provide a statement, based upon reasonable inquiry, of whether the Respondent or any individual who shall cause to deliver goods or perform services under the contract has a possible conflict of interest (e.g., employment by the State of Tennessee) and, if so, the nature of that conflict.  NOTE: Any questions of conflict of interest shall be solely within the discretion of the State, and the State reserves the right to cancel any award.	
	A.3.	Provide a current bank reference indicating that the Respondent's business relationship with the financial institution is in positive	

<b>RESPONDENT LEGAL ENTITY NAME:</b>			
<b>Response Page # (Respondent completes)</b>	<b>Item Ref.</b>	<b>Section A— Mandatory Requirement Items</b>	<b>Pass/Fail</b>
		standing. Such reference must be written in the form of a standard business letter, signed, and dated within the past three (3) months.	
	<b>A.4.</b>	Provide two current positive credit references from vendors with which the Respondent has done business written in the form of standard business letters, signed, and dated within the past three (3) months.	
	<b>A.5.</b>	Provide an official document or letter from an accredited credit bureau, verified and dated within the last three (3) months and indicating a satisfactory credit rating for the Respondent (NOTE: A credit bureau report number without the full report is insufficient and will <u>not</u> be considered responsive.)	
	<b>A.6.</b>	Provide written attestation that the Respondent does 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 and/or Medicaid programs pursuant to Sections 1128 of the Social Security Act.	
<i>State Use – Solicitation Coordinator Signature, Printed Name &amp; Date:</i>			

**TECHNICAL RESPONSE & EVALUATION GUIDE**

**SECTION B: GENERAL QUALIFICATIONS & EXPERIENCE.** The Respondent must address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Respondent must also detail the response page number for each item in the appropriate space below. Proposal Evaluation Team members will independently evaluate and assign one score for all responses to Section B— General Qualifications & Experience Items.

<b>RESPONDENT LEGAL ENTITY NAME:</b>		
<b>Response Page #</b> (Respondent completes)	<b>Item Ref.</b>	<b>Section B— General Qualifications &amp; Experience Items</b>
	<b>B.1.</b>	Detail the name, e-mail address, mailing address, telephone number, and facsimile number of the person the State should contact regarding the response.
	<b>B.2.</b>	Describe the Respondent's form of business ( <i>i.e.</i> , individual, sole proprietor, corporation, non-profit corporation, partnership, limited liability company) and business location (physical location or domicile).
	<b>B.3.</b>	Detail the number of years the Respondent has been in business.
	<b>B.4.</b>	Briefly describe how long the Respondent has been providing the goods or services required by this RFP.
	<b>B.5.</b>	Describe the Respondent's number of employees, client base, and location of offices.
	<b>B.6.</b>	Provide a statement of whether there have been any mergers, acquisitions, or change of control of the Respondent within the last ten (10) years. If so, include an explanation providing relevant details.
	<b>B.7.</b>	Provide a statement of whether the Respondent or, to the Respondent's knowledge, any of the Respondent's employees, agents, independent contractors, or subcontractors, involved in the delivery of goods or performance of services on a contract pursuant to this RFP, have been convicted of, pled guilty to, or pled <i>nolo contendere</i> to any felony. If so, include an explanation providing relevant details.
	<b>B.8.</b>	Provide a statement of whether, in the last ten (10) years, the Respondent has filed (or had filed against it) any bankruptcy or insolvency proceeding, whether voluntary or involuntary, or undergone the appointment of a receiver, trustee, or assignee for the benefit of creditors. If so, include an explanation providing relevant details.
	<b>B.9.</b>	Provide a statement of whether there is any material, pending litigation against the Respondent that the Respondent should reasonably believe could adversely affect its ability to meet contract requirements pursuant to this RFP or is likely to have a material adverse effect on the Respondent's financial condition. If such exists, list each separately, explain the relevant details, and attach the opinion of counsel addressing whether and to what extent it would impair the Respondent's performance in a contract pursuant to this RFP.  NOTE: All persons, agencies, firms, or other entities that provide legal opinions regarding the Respondent must be properly licensed to render such opinions. The State may require the Respondent to submit proof of license for each person or entity that renders such opinions.
	<b>B.10.</b>	Provide a statement of whether there are any pending or in progress Securities Exchange Commission investigations involving the Respondent. If such exists, list each separately, explain the relevant details, and attach the opinion of counsel addressing whether and to what extent it will

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
		impair the Respondent’s performance in a contract pursuant to this RFP.  NOTE: All persons, agencies, firms, or other entities that provide legal opinions regarding the Respondent must be properly licensed to render such opinions. The State may require the Respondent to submit proof of license for each person or entity that renders such opinions.
	B.11.	Provide a brief, descriptive statement detailing evidence of the Respondent's ability to deliver the goods or services sought under this RFP (e.g., prior experience, training, certifications, resources, program and quality management systems, etc.).
	B.12.	Provide a narrative description of the proposed project team, its members, and organizational structure along with an organizational chart identifying the key people who will be assigned to deliver the goods or services required by this RFP.
	B.13.	Provide a personnel roster listing the names of key people who the Respondent will assign to meet the Respondent’s requirements under this RFP along with the estimated number of hours that each individual will devote to that performance. Follow the personnel roster with a resume for each of the people listed. The resumes must detail the individual's title, education, current position with the Respondent, and employment history.
	B.14.	Provide a statement of whether the Respondent intends to use subcontractors to meet the Respondent’s requirements of any contract awarded pursuant to this RFP, and if so, detail: (a) the names of the subcontractors along with the contact person, mailing address, telephone number, and e-mail address for each; (b) a description of the scope and portions of the goods each subcontractor involved in the delivery of goods or performance of the services each subcontractor will perform; <u>and</u> (c) a statement specifying that each proposed subcontractor has expressly assented to being proposed as a subcontractor in the Respondent’s response to this RFP.
	B.15.	Provide documentation of the Respondent's commitment to diversity as represented by the following: (a) <u>Business Strategy</u> . Provide a description of the Respondent's existing programs and procedures designed to encourage and foster commerce with business enterprises owned by minorities, women, Tennessee service-disabled veterans, and small business enterprises. Please also include a list of the Respondent’s certifications as a diversity business, if applicable. (b) <u>Business Relationships</u> . Provide a listing of the Respondent’s current contracts with business enterprises owned by minorities, women, Tennessee service-disabled veterans and small business enterprises. Please include the following information: (i) contract description; (ii) contractor name and ownership characteristics (i.e., ethnicity, gender, Tennessee service-disabled); (iii) contractor contact name and telephone number. (c) <u>Estimated Participation</u> . Provide an estimated level of participation by business enterprises owned by minorities, women, Tennessee service-disabled veterans, and small business enterprises if a contract is awarded to the Respondent pursuant to this RFP. Please include the following information: (i) a percentage (%) indicating the participation estimate. (Express the estimated participation number as a percentage of the total estimated contract value that will be dedicated to business with subcontractors and supply contractors having such ownership characteristics only and <b>DO NOT INCLUDE DOLLAR AMOUNTS</b> );

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
		<p>(ii) anticipated goods or services contract descriptions;</p> <p>(iii) names and ownership characteristics (i.e., ethnicity, gender, Tennessee service-disabled veterans) of anticipated subcontractors and supply contractors.</p> <p>NOTE: In order to claim status as a Diversity Business Enterprise under this contract, businesses must be certified by the Governor’s Office of Diversity Business Enterprise (Go-DBE). Please visit the Go-DBE website at <a href="https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&amp;XID=9810">https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&amp;XID=9810</a> for more information.</p> <p>(d) <u>Workforce</u>. Provide the percentage of the Respondent’s total current employees by ethnicity and gender.</p> <p>NOTE: Respondents that demonstrate a commitment to diversity will advance State efforts to expand opportunity to do business with the State as contractors and subcontractors. Response evaluations will recognize the positive qualifications and experience of a Respondent that does business with enterprises owned by minorities, women, Tennessee service-disabled veterans and small business enterprises and who offer a diverse workforce.</p>
	<b>B.16.</b>	<p>Provide a statement of whether or not the Respondent has any current contracts with the State of Tennessee or has completed any contracts with the State of Tennessee within the previous five (5) year period. If so, provide the following information for all of the current and completed contracts:</p> <p>(a) the name, title, telephone number and e-mail address of the State contact knowledgeable about the contract;</p> <p>(b) the procuring State agency name;</p> <p>(c) a brief description of the contract’s scope of services;</p> <p>(d) the contract period; and</p> <p>(e) the contract number.</p> <p>NOTES:</p> <ul style="list-style-type: none"> <li>▪ Current or prior contracts with the State are <u>not</u> a prerequisite and are <u>not</u> required for the maximum evaluation score, and the existence of such contracts with the State will <u>not</u> automatically result in the addition or deduction of evaluation points.</li> <li>▪ Each evaluator will generally consider the results of inquiries by the State regarding all contracts noted.</li> </ul>
	<b>B.17.</b>	<p>Provide customer references from individuals who are <u>not</u> current or former State employees for projects similar to the goods or services sought under this RFP and which represent:</p> <ul style="list-style-type: none"> <li>▪ two (2) accounts Respondent currently services that are similar in size to the State; <u>and</u></li> <li>▪ three (3) completed projects.</li> </ul> <p>References from at least three (3) different individuals are required to satisfy the requirements above, e.g., an individual may provide a reference about a completed project and another reference about a currently serviced account. The standard reference questionnaire, which <u>must</u> be used and completed, is provided at RFP Attachment 6.4. References that are not completed as required may be deemed non-responsive and may not be considered.</p> <p>The Respondent will be <u>solely</u> responsible for obtaining fully completed reference questionnaires and including them in the sealed Technical Response. In order to obtain and submit the completed reference questionnaires follow the process below.</p> <p>(a) Add the Respondent’s name to the standard reference questionnaire at RFP Attachment 6.4. and make a copy for each reference.</p> <p>(b) Send a reference questionnaire and new, standard #10 envelope to each reference.</p> <p>(c) Instruct the reference to:</p> <ul style="list-style-type: none"> <li>(i) complete the reference questionnaire;</li> </ul>

<b>RESPONDENT LEGAL ENTITY NAME:</b>		
<b>Response Page # (Respondent completes)</b>	<b>Item Ref.</b>	<b>Section B— General Qualifications &amp; Experience Items</b>
		<ul style="list-style-type: none"> <li>(ii) sign and date the completed reference questionnaire;</li> <li>(iii) seal the completed, signed, and dated reference questionnaire within the envelope provided;</li> <li>(iv) sign his or her name in ink across the sealed portion of the envelope; and</li> <li>(v) return the sealed envelope directly to the Respondent (the Respondent may wish to give each reference a deadline, such that the Respondent will be able to collect all required references in time to include them within the sealed Technical Response).</li> </ul> <p>(d) <u>Do NOT open the sealed references upon receipt.</u></p> <p>(e) Enclose all <u>sealed</u> reference envelopes within a larger, labeled envelope for inclusion in the Technical Response as required.</p> <p>NOTES:</p> <ul style="list-style-type: none"> <li>▪ The State will not accept late references or references submitted by any means other than that which is described above, and each reference questionnaire submitted must be completed as required.</li> <li>▪ The State will not review more than the number of required references indicated above.</li> <li>▪ While the State will base its reference check on the contents of the sealed reference envelopes included in the Technical Response package, the State reserves the right to confirm and clarify information detailed in the completed reference questionnaires, and may consider clarification responses in the evaluation of references.</li> <li>▪ The State is under <u>no</u> obligation to clarify any reference information.</li> </ul>
	<b>B.18.</b>	<p>Provide a statement and any relevant details addressing whether the Respondent is any of the following:</p> <ul style="list-style-type: none"> <li>(a) is presently debarred, suspended, proposed for debarment, or voluntarily excluded from covered transactions by any federal or state department or agency;</li> <li>(b) has within the past three (3) years, been convicted of, or had a civil judgment rendered against the contracting party from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;</li> <li>(c) is presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed above; and</li> <li>(d) has within a three (3) year period preceding the contract had one or more public transactions (federal, state, or local) terminated for cause or default.</li> </ul>
	<b>B.19.</b>	<p>Respondent shall describe how its background and experience will enable it to comply with the applicable federal and state civil rights laws. These laws prohibit discrimination based on a person's race, color, national origin, sex, age, religious, disability, or other status protected under federal and state laws. For example, describe Respondent's ability to provide language services to individuals who do not speak English and communication assistance services to individuals with disabilities.</p>
		<p><b>SCORE (for <u>all</u> Section B—Qualifications &amp; Experience Items above):</b> (maximum possible score = 30)</p>
<p>State Use – Evaluator Identification:</p>		



**TECHNICAL RESPONSE & EVALUATION GUIDE**

**SECTION C: TECHNICAL QUALIFICATIONS, EXPERIENCE & APPROACH.** The Respondent must address all items (below) and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Respondent must also detail the response page number for each item in the appropriate space below.

A Proposal Evaluation Team, made up of three or more State employees, will independently evaluate and score the response to each item. Each evaluator will use the following whole number, raw point scale for scoring each item:

**0 = little value      1 = poor      2 = fair      3 = satisfactory      4 = good      5 = excellent**

The Solicitation Coordinator will multiply the Item Score by the associated Evaluation Factor (indicating the relative emphasis of the item in the overall evaluation). The resulting product will be the item’s Raw Weighted Score for purposes of calculating the section score as indicated.

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
	<b>C.1.</b>	Provide a narrative that illustrates the Respondent’s understanding of the State’s requirements and project schedule.		<b>15</b>	
	<b>C.2.</b>	Provide a narrative that illustrates how the Respondent will complete the scope of services, accomplish required objectives, and meet the State’s project schedule. These objectives should include:  (a) Proposed configuration of the TSU Call Center including the number of customer representatives and manager, and quality audit expectations;  (b) Whether the vendor has existing locations and/or the capability to add locations where calls would be routed in the event an established call center location was out of service because of a natural disaster;  (c) Service level team configuration including the number and size of the service level operation;  (d) Hiring criteria for customer representatives and supervisors as well as turnover rates for customer representatives and supervisors for previous and existing call center operations conducted by the vendor; and  (e) Retention strategies for customer representatives and supervisors.		<b>20</b>	
	<b>C.2.</b>	Provide a sample Training Plan for customer representatives and supervisors.		<b>10</b>	
	<b>C.3.</b>	Provide a sample Quality Assurance Plan that includes:  (a) Utilization of advanced supervisor controls for listen, record, call recording retrieval, and agent/queue		<b>10</b>	

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
		performance monitoring; (b) Measures for evaluating customer representative and supervisor performance.			
	<b>C.4.</b>	Provide a narrative reporting on current performance measures on other accounts as they are ranked against industry benchmarks in the following areas: (a) Service level; (b) Average speed of answer; (c) Abandon call rate (d) Average talk time (e) Agent utilization; (f) Estimated annual agent turnover; and (g) Span of control, i.e., representatives per supervisor.		<b>20</b>	
	<b>C.5.</b>	Provide a narrative that documents ability to increase staffing adequate to meet SLAs in response to periods of peak demand.		<b>10</b>	
	<b>C.6.</b>	Provide narrative that documents Respondent's expertise in call center operation specifically dealing with Medicaid or government agencies.		<b>15</b>	
<i>The Solicitation Coordinator will use this sum and the formula below to calculate the section score. All calculations will use and result in numbers rounded to two (2) places to the right of the decimal point.</i>					<b>Total Raw Weighted Score:</b> <i>(sum of Raw Weighted Scores above)</i>
<b>Total Raw Weighted Score</b>			<b>X 40</b> <i>(maximum possible score)</i>	<b>=</b>	
<b>Maximum Possible Raw Weighted Score</b> <i>(i.e., 5 x the sum of item weights above)</i>				<b>SCORE:</b>	
<i>State Use – Evaluator Identification:</i>					
<i>State Use – Solicitation Coordinator Signature, Printed Name &amp; Date:</i>					

**COST PROPOSAL & SCORING GUIDE**

*NOTICE: THIS COST PROPOSAL MUST BE COMPLETED EXACTLY AS REQUIRED*

**COST PROPOSAL SCHEDULE**— The Cost Proposal, detailed below, shall indicate the proposed price for goods or services defined in the Scope of Services of the RFP Attachment 6.6., *Pro Forma* Contract and for the entire contract period. The Cost Proposal shall remain valid for at least one hundred twenty (120) days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any contract resulting from this RFP. All monetary amounts shall be in U.S. currency and limited to two (2) places to the right of the decimal point.

**NOTICE:** The Evaluation Factor associated with each cost item is for evaluation purposes only. The evaluation factors do NOT and should NOT be construed as any type of volume guarantee or minimum purchase quantity. The evaluation factors shall NOT create rights, interests, or claims of entitlement in the Respondent.

Notwithstanding the cost items herein, pursuant to the second paragraph of the *Pro Forma* Contract section C.1. (refer to RFP Attachment 6.6.), "The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract."

This Cost Proposal must be signed, in the space below, by an individual empowered to bind the Respondent to the provisions of this RFP and any contract awarded pursuant to it. If said individual is not the *President* or *Chief Executive Officer*, this document must attach evidence showing the individual's authority to legally bind the Respondent.

<b>RESPONDENT SIGNATURE:</b>			
<b>PRINTED NAME &amp; TITLE:</b>			
<b>DATE:</b>			
<b>RESPONDENT LEGAL ENTITY NAME:</b>			
Cost Item Description	Proposed Cost	State Use Only	
		Evaluation Factor	Evaluation Cost (cost x factor)
<b>June 1, 2017 – August 31, 2017    No Cost to the State</b>			
<b>September 1, 2017 – August 31, 2020</b>			
Comprehensive Monthly Call Center Rate up to and including 2500 Calls Per Week	\$ _____ / per month	36	
Per Call Rate for Answered/Processed Calls Over 2500 Per Week	\$ _____ / per call	6,000	

<b>RESPONDENT LEGAL ENTITY NAME:</b>			
<b>Cost Item Description</b>	<b>Proposed Cost</b>	<b>State Use Only</b>	
		<b>Evaluation Factor</b>	<b>Evaluation Cost</b> (cost x factor)
<b>September 1, 2020 – August 31, 2022 (Pursuant to Contract Term Extension)</b>			
Comprehensive Monthly Call Center Rate up to and including 2500 Calls Per Week	\$ _____ / per month	24	
Per Call Rate for Answered/Processed Calls Over 2500 Per Week	\$ _____ / per call	4,000	
<b>EVALUATION COST AMOUNT</b> (sum of evaluation costs above): The Solicitation Coordinator will use this sum and the formula below to calculate the Cost Proposal Score. Numbers rounded to two (2) places to the right of the decimal point will be standard for calculations.			
$\frac{\text{lowest evaluation cost amount from all proposals}}{\text{evaluation cost amount being evaluated}}$		$\times 30$ (maximum section score)	<b>= SCORE:</b>
<i>State Use – Solicitation Coordinator Signature, Printed Name &amp; Date:</i>			

**REFERENCE QUESTIONNAIRE**

**The standard reference questionnaire provided on the following pages of this attachment MUST be completed by all individuals offering a reference for the Respondent.**

The Respondent will be solely responsible for obtaining completed reference questionnaires as required (refer to RFP Attachment 6.2., Technical Response & Evaluation Guide, Section B, Item B.17.), and for enclosing the sealed reference envelopes within the Respondent's Technical Response.

**RFP # 31865-00459 REFERENCE QUESTIONNAIRE**

**REFERENCE SUBJECT:** RESPONDENT NAME (completed by Respondent before reference is requested)

---

The "reference subject" specified above, intends to submit a response to the State of Tennessee in response to the Request for Proposals (RFP) indicated. As a part of such response, the reference subject must include a number of completed and sealed reference questionnaires (using this form).

Each individual responding to this reference questionnaire is asked to follow these instructions:

- complete this questionnaire (either using the form provided or an exact duplicate of this document);
  - sign and date the completed questionnaire;
  - seal the completed, signed, and dated questionnaire in a new standard #10 envelope;
  - sign in ink across the sealed portion of the envelope; and
  - return the sealed envelope containing the completed questionnaire directly to the reference subject.
- 

**(1) What is the name of the individual, company, organization, or entity responding to this reference questionnaire?**

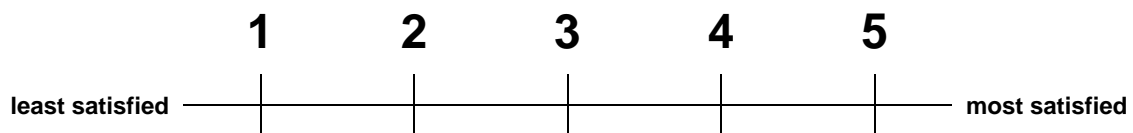
**(2) Please provide the following information about the individual completing this reference questionnaire on behalf of the above-named individual, company, organization, or entity.**

<b>NAME:</b>	
<b>TITLE:</b>	
<b>TELEPHONE #</b>	
<b>E-MAIL ADDRESS:</b>	

**(3) What goods or services does/did the reference subject provide to your company or organization?**

**(4) What is the level of your overall satisfaction with the reference subject as a vendor of the goods or services described above?**

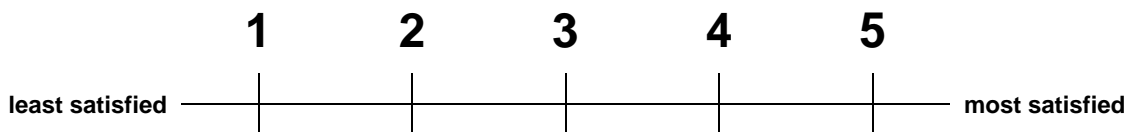
*Please respond by circling the appropriate number on the scale below.*



If you circled 3 or less above, what could the reference subject have done to improve that rating?

- (5) If the goods or services that the reference subject provided to your company or organization are completed, were the goods or services provided in compliance with the terms of the contract, on time, and within budget? If not, please explain.
  
- (6) If the reference subject is still providing goods or services to your company or organization, are these goods or services being provided in compliance with the terms of the contract, on time, and within budget? If not, please explain.
  
- (7) How satisfied are you with the reference subject's ability to perform based on your expectations and according to the contractual arrangements?
  
- (8) In what areas of goods or service delivery does/did the reference subject excel?
  
- (9) In what areas of goods or service delivery does/did the reference subject fall short?
  
- (10) What is the level of your satisfaction with the reference subject's project management structures, processes, and personnel?

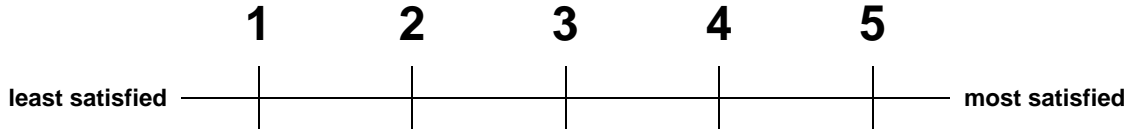
*Please respond by circling the appropriate number on the scale below.*



What, if any, comments do you have regarding the score selected above?

(11) Considering the staff assigned by the reference subject to deliver the goods or services described in response to question 3 above, how satisfied are you with the technical abilities, professionalism, and interpersonal skills of the individuals assigned?

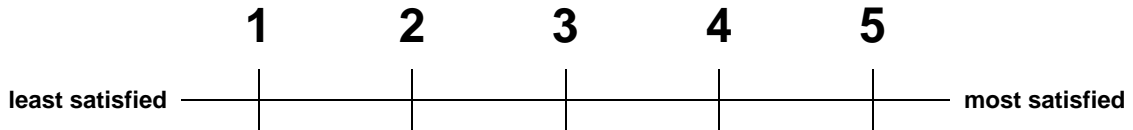
*Please respond by circling the appropriate number on the scale below.*



What, if any, comments do you have regarding the score selected above?

(12) Would you contract again with the reference subject for the same or similar goods or services?

*Please respond by circling the appropriate number on the scale below.*



What, if any, comments do you have regarding the score selected above?

**REFERENCE SIGNATURE:**

(by the individual completing this request for reference information)

\_\_\_\_\_  
(must be the same as the signature across the envelope seal)

**DATE:**

\_\_\_\_\_



**SCORE SUMMARY MATRIX**

	<i>RESPONDENT NAME</i>		<i>RESPONDENT NAME</i>		<i>RESPONDENT NAME</i>	
<b>GENERAL QUALIFICATIONS &amp; EXPERIENCE</b> (maximum: 30)						
<i>EVALUATOR NAME</i>						
<i>EVALUATOR NAME</i>						
<i>REPEAT AS NECESSARY</i>						
	<b>AVERAGE:</b>		<b>AVERAGE:</b>		<b>AVERAGE:</b>	
<b>TECHNICAL QUALIFICATIONS, EXPERIENCE &amp; APPROACH</b> (maximum: 40)						
<i>EVALUATOR NAME</i>						
<i>EVALUATOR NAME</i>						
<i>REPEAT AS NECESSARY</i>						
	<b>AVERAGE:</b>		<b>AVERAGE:</b>		<b>AVERAGE:</b>	
<b>COST PROPOSAL</b> (maximum: 30)	<b>SCORE:</b>		<b>SCORE:</b>		<b>SCORE:</b>	
<b>TOTAL RESPONSE EVALUATION SCORE:</b> (maximum: 100)						

*Solicitation Coordinator Signature, Printed Name & Date:*

**RFP # 31865-00459 *PRO FORMA* CONTRACT**

The *Pro Forma* Contract detailed in following pages of this exhibit contains some “blanks” (signified by descriptions in capital letters) that will be completed with appropriate information in the final contract resulting from the RFP.

**CONTRACT**  
**BETWEEN THE STATE OF TENNESSEE,**  
**DEPARTMENT OF FINANCE AND ADMINISTRATION**  
**DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION**  
**BUREAU OF TENNCARE**  
**AND**  
**CONTRACTOR NAME**

This Contract, by and between the State of Tennessee, Department of Finance and Administration, Division of Health Care Finance and Administration (HCFA), Bureau of TennCare, ("State," "HCFA" or "TennCare") and **Contractor Legal Entity Name** ("Contractor"), is for the provision of an incoming, toll-free call center to afford TennCare members the opportunity to file Medical Issues/Appeals by phone, as further defined in the "SCOPE." The State and the Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is **a/an Individual, For-Profit Corporation, Non-Profit Corporation, Special Purpose Corporation Or Association, Partnership, Joint Venture, Or Limited Liability Company.**

Contractor Place of Incorporation or Organization: **Location**

Contractor Edison Registration ID # **Number**

**A. SCOPE:**

- A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.
- A.2. The Contractor shall provide coverage for the State operated TennCare Solutions Unit (TSU) toll-free call center to afford TennCare members the opportunity to file Medical Issues/Appeals, as defined in Section A.3, by phone (TSU Call Center), responding to an estimated call volume of 2500 calls per week. Call volume is subject to fluctuation and may increase or decrease from this level. The Contractor shall be expected to handle such fluctuations appropriately as they occur, including, if necessary, adjusting its staffing levels to adequately handle call volume. Incoming calls will include requests for medical (including physical health and behavioral health) or pharmacy services, reimbursement, billing relief, and health plan changes, as well as requests for reconsideration of adverse actions, including denials, delays, reductions, suspensions, and termination of coverage. The Contractor shall ensure that the staff provide adequate documentation of all calls in the Customer Relationship Management (CRM) system and comply with operator scripts and processes in the operation of the TSU Call Center. As directed by TennCare, any script changes shall be implemented by the Contractor within twenty-four (24) hours of notification of change. Failure to make these changes timely may result in Liquidated Damages as specified in Attachment B. Unless otherwise instructed in writing by the State, the Contractor shall operate the TSU Call/Contact Center from 8:00a.m. to 4:30p.m. Central Time (CT) Monday through Friday except on official State holidays (Normal Business Hours).
- A.3. The Contractor shall provide the TennCare member, or individual calling on behalf of the TennCare member, the opportunity to file a Medical Issue/Appeal by phone, using electronic application-based Medical Issue/Appeal forms that include operator scripts and data fields approved by TennCare. "Medical Issues" are hereby defined as requests for medical (including physical health and behavioral health) or pharmacy services, reimbursements, billing relief, and health plan changes. "Medical Appeals" are hereby defined as requests for reconsideration of adverse actions (denials, delays, reductions, suspensions, and terminations) for medical (including physical health and behavioral health) or pharmacy services, reimbursement, billing, and health plan changes. These are hereinafter referred to as "Medical Issues/Appeals" or "Medical Issue/Appeal". Handwritten Medical Issue/Appeal forms shall only be used in cases of emergencies as specified in the BC/DR plan in Section A.10.a., and with the prior approval of TennCare. All handwritten Medical Issue/Appeal forms shall be entered into the TennCare database by the Contractor within seventy-two (72) hours after the emergency.

- a. Service Level Performance Standards. The Contractor shall provide sufficient staff for "live" answering services during operational hours as specified in Section A.2. to meet the following Service Level Agreements (SLAs) for each queue within the TSU Call Center. For all SLAs measured in percentages, calculations for said percentages shall be made using the following standard: less than five-tenths (.5) of a percentage point will round down to the nearest percentage point and five-tenths (.5) and over will round up to the nearest percentage point.
- i. Daily Maximum Speed of Answer: The TSU Call Center shall answer one hundred percent (100%) of non- abandoned calls within five (5) minutes, or three hundred (300) seconds. Speed to Answer shall be defined as the total time between (a) the moment at which a caller to the TSU Call Center first hears an introductory greeting and enters the queue and (b) the time at which a TSU Call Center representative answers the call. For this definition, the term "answer" shall mean begin an uninterrupted dialogue with the caller. If a TSU Call Center representative asks the caller to hold during the first 60 seconds of the dialogue, the Contractor shall not consider the call to be "answered" for purposes of this definition until the TSU Call Center representative returns to the caller and begins an uninterrupted dialogue.
  - ii. Daily Abandonment Rate. The TSU Call Center shall maintain an average daily abandonment rate of five percent (5%) or less, excluding calls abandoned before thirty (30) seconds. Abandoned Call shall be defined as a call in which the caller elects an option and is either not permitted access to that option or disconnects from the system.
  - iii. Daily Average Speed of Answer. The TSU Call Center shall maintain a Daily Average Speed of Answer (ASA) of sixty (60) seconds or less. Calls answered in less than sixty (60) seconds but placed on hold within the first sixty (60) seconds of answer do not contribute to this performance standard. Average Speed of Answer shall mean the mean time between (a) the moment at which a caller to the TSU Call Center first hears an introductory greeting and enters the queue and (b) the time at which a TSU Call Center representative answers the call. For this definition, the term "answer" shall mean begin an uninterrupted dialogue with the caller. If a TSU Call Center representative asks the caller to hold during the first 60 seconds of the dialogue, the Contractor shall not consider the call to be "answered" for purposes of this definition until the TSU Call Center representative returns to the caller and begins an uninterrupted dialogue. If a caller requested a returned call using the dial-back feature ASA shall be defined as the time between (a) the moment at which a caller to the TSU Call Center first hears an introductory greeting and enters the queue and (b) the time of the returned call (regardless of whether the applicant or member answered).
  - iv. Blocked Call Rate. The TSU Call Center shall maintain a Blocked Call Rate of one percent (1 %) or less at all times without exception. Blocked Call shall mean a call that cannot be connected immediately because no circuit is available at the time the call arrives or the telephone system is programmed to block calls from entering the queue when the queue backs up behind a defined threshold.
- b. Failure to meet one (1) or more of the weekly-averaged SLAs as stated above may result in Liquidated Damages as outlined in Section A.12, Control Memorandum Process, and Section E.10 Liquidated Damages, and Attachment B Liquidated Damages. For purposes of assessing Liquidated Damages for deficient weekly-averaged SLAs, one (1) deficiency shall be defined as one (1) or more instances across multiple queues in which the target for one (1) of the three (3) weekly-averaged SLAs has not been met.

- c. The Contractor shall develop proactive hiring practices to maintain the capability of responding quickly to staff turnover and absenteeism and/or increases in call volume. The SLAs as specified in A.3.a shall be subject to Liquidated Damages even in the events of staff turnover and absenteeism and/or increases in call volume.
  - d. The Contractor shall determine calls related to Expedited Appeals and shall comply with TSU process and policy for Expedited Appeals calls received during Normal Business Hours and for Expedited Appeals calls received at any time other than Normal Business Hours. For purposes of this Contract, Expedited Appeals are defined pursuant to 42 C.F.R. § 438.410.
  - e. The Contractor shall provide appropriate information and referrals to those callers whose questions or concerns are not Medical Issues/Appeals, and upon such referral of the member, TSU Call Center staff shall manually transfer the call to the appropriate TennCare contact for follow-up, including but not limited to Tennessee Health Connection (TNHC), Long Term Services and Supports (LTSS), and appropriate TennCare provider (MCO, DBM, or PBM). For those callers whose questions or concerns involve the status of existing Medical Issues/Appeals, the Contractor shall perform appropriate research (including consulting with TSU staff) and shall place return phone calls to such callers to provide explanation, according to Call Back Procedures.
  - f. The Contractor shall receive mail and faxes addressed to the TennCare Solutions Unit and shall file mailed and faxed Medical Issues/Appeals using electronic application-based Medical Issue/Appeal forms approved by TennCare. The Contractor shall ensure that all original correspondence is electronically scanned and attached to the corresponding records in the TennCare database, and shall distribute mail and faxes other than Medical Issues/Appeals appropriately according to TSU Mail/Fax Distribution Procedures, as updated and provided by TennCare.
  - g. The Contractor shall submit all Medical Issues/Appeals electronically to appropriate units within TSU, at specific times and via specific processes as approved by TennCare in current Issue Forms Distribution Procedures.
  - h. The Contractor shall comply with established processes to make corrections to Medical Issue/Appeal forms as requested by TSU in accordance to Issue and Appeal Forms Correction Procedures, as provided by TennCare.
  - i. The Contractor shall acquire, install, configure, and maintain telephone systems that provide at call recording capability (including audio recording of the call and video "computer desktop" recording). The Contractor's system capabilities shall specifically include but not be limited to live call monitoring. System(s) used for call tracking, managing, monitoring, recording, and reporting of both inbound and outbound calls shall have web-based accessibility.
  - j. The Contractor's call recording system shall record one hundred percent (100%) of all calls in an accessible and searchable format. The Contractor shall retrieve recorded calls for the State; within one (1) hour during normal operating hours of receiving a request from the State, any call within the previous ninety (90) days and retrieve for the State, within one (1) business day of receiving a request from the State any call made within the previous seven (7) years. In addition, the Contractor shall provide the State and its designees with secure web-based, remote access to the Contractor's call recording system and train designated staff on its use. The Contractor's system shall support recorded call searching capability at minimum by date and time, by TSU Call Center representative, or by incoming telephone number.
- A.4. The Contractor shall staff the TSU Call Center sufficiently to perform all Contractor functions as required, described, and detailed by this Scope of Services. The Contractor shall staff the TSU

Call Center with sufficient numbers of trained administrative and programmatic personnel - clerical, program, technical and management - to ensure efficient completion of its responsibilities within this Contract.

- a. All TSU Call Center staff shall be trained and knowledgeable in customer service, conflict resolution, crisis de-escalation, interpersonal and problem-solving skills, competent data entry skills, writing skills, and computer operating skills. In addition, staff shall acquire and maintain proficiency in their knowledge of the TennCare Program and the TennCare Medical Appeals process. The Contractor shall, upon request by TennCare, remove staff from their specific job function or project either pursuant to Section D.12 or based on performance deficiencies such as, but not limited to, lack of knowledge and skills necessary to perform contracted activities. The Contractor shall comply with staff position requirements and with the exception of Section A.4.h.viii, all positions are to be located full-time on-site at the TSU Call Center in Nashville, Tennessee.
- b. The Contractor shall maintain an organization chart that depicts all administrative, functional, and programmatic reporting relationships of staff that perform services under the Contract, including any subcontractors of the Contract, and submit the chart to the State for review and approval whenever a change to such organizational chart is proposed.
- c. The Contractor shall maintain an alphabetical by last name listing of the titles, responsibilities, location, telephone numbers, and email addresses for all administrative and programmatic Contractor staff that will perform services under the Contract, and provide the list to the State whenever a change occurs.
- d. The Contractor shall maintain updated, detailed job descriptions for each of the positions that have ongoing responsibility for the functions in the Contract, and submit said descriptions in advance to the State for review and approval whenever changes to such job descriptions are proposed.
- e. The Contractor shall ensure that all persons, including independent contractors, subcontractors and consultants assigned by it to perform under the Contract shall have the credentials necessary and be fully qualified and trained, as required and specified in this Contract, to perform the services required herein.
- f. The Contractor shall notify the State in writing in advance whenever the Contractor has reason to believe that staffing levels will temporarily adversely affect operational levels, particularly staff positions with a direct impact on callers.
- g. The Contractor shall ensure that all Contractor workforce members (employees, consultants, contractors, subcontractors, or any other member of the Contractor's workforce) assigned to this Contract, are adequately trained to comply with Medicaid and CHIP safeguarding regulations, HIPAA/HITECH and any other federal or State privacy and security laws, including, but not limited to the Gramm-Leach Bliley Act (GLBA); the Privacy Act of 197 4, as amended; the Tennessee Consumer Protection Act, Identity Theft Safeguards, The Red Flag Rules; the Tennessee Consumer Protection Act, Identity Theft Safeguards, and 26 U.S.C. § 6103(p)(4) that applies to authorized recipients of FTI. The Contractor and its subcontractors shall comply with the provisions of 42 U.S.C. § 1396a(a)(68)et seq as applicable, regarding policies and education of employees as regards the terms of the False Claims Act and whistleblower protections.
- h. Key Personnel. The Contractor shall submit to the State for prior review and approval the names, titles, and resumes of candidates for initial engagement of Key Personnel and whenever a change in Key Personnel is proposed. If, during the term of this Contract, any Key Personnel should leave the Contractor's employment or the State requests that a specific Key Personnel no longer work onsite, the Contractor shall fill the vacant Key Personnel position, within thirty (30) days from the date of the 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 Key Personnel position, within three (3) business days of a vacancy occurring, with a qualified Contractor corporate staff resource who shall perform the Key Personnel duties at the TNHC location in Tennessee if this Contract requires that particular Key Personnel position to be located onsite. Failure to timely replace Key Personnel may result in Liquidated Damages as set forth in Attachment B. All of the following identified Key Personnel positions shall be filled with personnel who are dedicated one hundred percent (100%) to providing the services required in this Contract. These staff positions are described and identified as follows:

- i. **Manager** - The TSU Call Center Manager shall be responsible for all TSU Call Center functions and operations. This position shall work directly with the TennCare Deputy Director of Medical Appeals, and/or other individual(s) designated in writing by the State, to maintain acceptable levels of performance at the TSU Call Center using reporting methods as specified in Section A.8. This position shall also be responsible for managing changes to TSU Call Center systems and processes in response to changes in TennCare policy and procedure, as requested by TennCare and/or identified by the Contractor, and approved by TennCare.
- ii. **Trainer** - The Trainer shall be responsible for developing, maintaining, and updating all materials used in reference and training for the TSU Call Center. This position shall work with all TSU Call Center staff to provide a comprehensive training program to the Contractor's newly hired TSU Call Center staff, as well as provide refresher and in-service training to existing staff. This position shall also be responsible for working directly with the Manager and TennCare QC/QA staff, and/or other individual(s) designated in writing by the State, to maintain acceptable quality levels of call performance and data entry.
- iii. **Quality Control & Quality Assurance (QC/QA) Representative** - The QC/QA Representative shall be responsible for developing and implementing an ongoing quality control and quality assurance program as specified in Section A.7 and shall work directly with the TSU QC/QA Reviewer, and/or other individual(s) designated in writing by the State, to maintain required levels of call performance quality, as well as retaining a consistent and accurate data analysis and recording for the TSU Call Center.
- iv. **Shift Leads** - Shift leads shall be responsible for direct supervision of phone representatives, ensuring that phone calls are logged in and logged out as appropriate for correct coordination of call flow, and for reviewing and compiling all Medical Issue/Appeal forms prior to distribution to TSU. This position shall work with designated management and training staff to coordinate implementation of TSU Call Center process, policy, and training.
- v. **Phone Representatives** - Phone Representatives shall be responsible for answering incoming calls to the TSU Call Center, provide accurate documentation of one hundred percent (100%) of all calls into the Customer Relationship Management (CRM) System, while on the line with the caller, and generate an electronic Medical Issue/Appeal form on behalf of the caller when appropriate. English-speaking phone representatives shall be fluent in English and Spanish-speaking representatives shall be fluent in Spanish; representatives shall be easily understood by English and Spanish-speaking callers respectively for whom such language is their primary spoken language. Contractor shall provide a sufficient number of Spanish-speaking phone representatives to handle the amount of Spanish-speaking callers.
- vi. **Call Back Coordinator** – The Call Back Coordinator shall be a subject matter expert capable of performing appropriate research (including consulting with TSU staff) and

making outgoing calls to callers to provide adequate explanation to their question or concern. At the State's discretion, this position may be combined with the position of Shift Lead and/or Mail/Fax Intake Coordinator.

- vii. Mail/Fax Intake Coordinator - The Mail/Fax Intake Coordinator shall be conducted by a subject matter expert capable of reviewing a variety of documents received via mail and fax and determining appropriate action necessary in each case. At the State's discretion, this position may be combined with the position of Shift Lead and/or Call Back Coordinator.
- viii. CRM System Programmer/Liaison - The CRM System Programmer/Liaison shall be capable of performing programming and coding modifications, additions, and deletions in a timely manner as requested by TennCare and/or the Contractor, to reflect TennCare policy and process changes in TennCare's CRM system used by the TSU Call Center to document calls received and their corresponding Medical Issues/Appeals when appropriate. This position shall also interface with the TSU Call/Contact Center Manager, TennCare's Information Systems (IS) staff, and other TennCare staff and contractors as directed by the State, and shall follow established TennCare procedures to ensure timely and seamless implementation of CRM system programming changes and modifications relative to CRM System Programming/Implementation Procedures as provided by TennCare. At the State's discretion, with prior written approval from the State, this position may perform work off-site from the TSU Call Center, via a Virtual Private Network (VPN) connection provided by TennCare. If the Contractor utilizes a third party vendor in providing this CRM System Programmer/Liaison position, this vendor shall be considered a subcontractor and the Contractor and subcontractor shall comply with all subcontractor requirements in the Contract, including without limitation, Section D.5. The Contractor shall maintain a subcontract with any outside source acting as the CRM System Programmer/Liaison to make any programming and coding modifications, additions, and deletions within the timeframe requested by TennCare. Failure to complete any requested changes within the stipulated timeframe will result in Liquidated Damages in the amounts as specified in Section E.10 and Attachment B.

- A.5. The Contractor shall provide culturally and linguistically appropriate Phone Interpreter Services to persons with Limited English Proficiency (LEP) or to persons or agencies who act on behalf of TennCare members with LEP and who call the TSU Call Center. For purposes of this Contract, "persons with LEP" shall be defined as TennCare members or persons who act on behalf of TennCare members who need assistance in a language other than English.
- a. The Contractor shall provide a sufficient number of Spanish-speaking representatives on-site during the hours of 8:00am- 4:30pm, (Central Time), Monday through Friday, to meet SLAs as specified in Section A.3.a. In the event that all Spanish-speaking representatives are unavailable and a Spanish-speaking caller requires language assistance, the Contractor may utilize third party Phone Interpreter Services for that call. The Contractor shall monitor the volume of Spanish calls in which Phone Interpreter Services are used to maintain appropriate staffing levels of Spanish-speaking representatives.
  - b. The Contractor shall provide and maintain access to third party Phone Interpreter Services for callers with LEP including but not limited to the following languages: Arabic, Chinese, Korean, French, Amharic, Gujarati, Laotian, German, Tagalog, Hindi, Serbo-Croatian, Russian, Nepali, Persian,, Kurdish, Somali, and Vietnamese. If the Contractor utilizes an outside source in providing third party telephone Interpreter Services, this outside source shall be considered a subcontractor and shall comply with subcontractor requirements as specified in section D.7. These services shall be provided at no



additional cost to the State. These services shall be provided at no additional cost to caller and/or to the State.

- c. The Contractor shall knowledgeably operate a Telecommunication Device for the Deaf/Teletypewriter (TDD/TTY) line to offer those individuals with hearing/speech impairment the opportunity to file a Medical Issue/Appeal by phone. These services shall be provided at no additional cost to the State. These services shall be provided at no additional cost to caller and/or to the State.
- A.6. The Contractor shall develop, maintain, and administer a comprehensive training program for newly hired staff and a refresher/in-service training program for existing staff. Training topics shall include but not be limited to: customer service, conflict resolution, crisis de-escalation, interpersonal and problem-solving skills, cultural and linguistic awareness of the Limited English Proficiency (LEP) population, effectively communicating with individuals who have disabilities, and sensitivity awareness of the Priority population. For purposes of this Contract, the Priority population shall be defined as those TennCare members who have received specific mental health diagnoses within the past year and are designated by TennCare as the Priority population. Training materials for the TennCare program shall include but not be limited to: TennCare rules, policies, and procedures pertaining to eligibility, enrollment, and Medical Appeals processing, as well as systems user training including but not limited to the following TennCare owned applications: MMIS (InterChange), CRM system (Siebel), phone/ACD system (Phone with Automatic Call Distribution), Medical Appeals Tracking system (Prolaw), fax system (RightFax), and TennCare e-mail system. All Contractor-developed training and reference materials shall be submitted to TennCare for review and approval prior to implementation. TennCare may request modifications to the Contractor's training program to improve the quality and efficiency of the TSU Call Center operations and to ensure that performance and or operational issues are promptly addressed.
- A.7. The Contractor shall develop, maintain, and administer a State approved, comprehensive Quality Control and Quality Assurance Program (QC/QA Program). The QC/QA Program shall consist of both inactive quality control monitoring and data collecting for required reports, including the SLA's in Section A.3.a, and the proactive quality assurance corrective action steps to immediately correct staff call errors and problems. The Contractor shall report the collected quality control data weekly to the designated TSU Quality Control and Quality Assurance Reviewer.
- a. The Contractor's QC/QA Program shall ensure quality control by continually monitoring and documenting calls in the TSU Evaluation Form in order to identify staff performance errors and problems that occur during phone calls, including but not limited to:
    - (1) TennCare plan and benefit knowledge;
    - (2) productivity;
    - (3) communication and customer service skills;
    - (4) phone etiquette, call control and technical skills, and
    - (5) accuracy in call sheet/issue form verification.
  - b. The Contractor's QC/QA Program shall ensure quality assurance through immediately addressing and correcting staff errors and problems through various methods of training, such as, but not limited to, coaching, refreshing, re-training, and/or in-service training.
  - c. The Contractor shall compile monthly reports to be sent directly to the designated TSU QC/QA Reviewer(s). The Contractor shall ensure that performance issues and related problems are promptly communicated with the designated QC/QA TSU Reviewer, with corrective actions reported to TennCare upon request. Failure to properly address Quality Assurance or Quality Control issues or problems within the requested timeframe may result in Liquidated Damages as specified in Section E.10 and Attachment B.

- d. TennCare may request modifications to the Contractor's Quality Control and Quality Assurance program at any time to improve the quality and efficiency of the TSU Call Center operations.
- A.8. The Contractor shall maintain the capability to knowledgeably compile and submit required TSU Call Center reports to TennCare, utilizing TennCare's CRM System and Phone/ACD System. These reports include but are not limited to:
- a. Cumulative Call Performance, Run, Match, Address Change Request, Urgent Medical, Urgent Pharmacy, Quality Evaluations, and Audit Report. All reports shall comply with reporting formats and procedures as specified by TennCare.
  - b. The Contractor shall modify its reporting formats and methodology to report additional information as requested by TennCare.
- A.9. On an on-going basis throughout the term of the Contract, the Contractor shall submit appropriately completed TennCare Management Information Systems (TCMIS) and Acceptable Use Policy (AUP) forms to TennCare Security to request access to necessary systems and applications for all Contractor staff. The Contractor shall notify TennCare Security of any staff member who is no longer employed by the Contractor immediately upon separation.

The Contractor shall acquire and maintain proficiency in using the TennCare owned systems and applications identified below and in the operation of the TSU Call Center, and shall be responsible to identify and timely notify the State of any technical problems associated with such systems that impact the Contractor's ability to perform contracted activities. The current program, application or system used for each TSU Call Center System components is indicated below, if a commercial application is used, while the rest of the components have been developed by the State. TennCare reserves the right, without any additional cost to the State, to require the Contractor to use any other program, application or system that the State chooses to implement in the event of upgrades or replacements to the current TSU Call Center Components. Contractor will be notified of any such changes in programs, applications or systems in writing by the State. The components of the TSU Call Center Systems are:

- a. The Contractor shall utilize TennCare's CRM system (Siebel) to perform data entry for each call received at the TSU Call Center. The CRM system will also be used to review all Medical Issue/Appeal forms prior to distribution to TSU, to make corrections to Medical Issue/Appeal forms as specified in Section A.3.h., and to compile data for reports. The Contractor shall provide and perform, at no additional cost to the State, CRM system programming and coding modifications, additions, and deletions as requested by TennCare and/or as identified by the Contractor. These changes may reflect TennCare policy and process changes in TennCare's CRM system used by the TSU Call Center, and shall interface with TennCare's IS staff and other TennCare contractors to ensure seamless implementation of CRM system programming changes and modifications. Although TennCare's current CRM system is Siebel, TennCare reserves the right to require the Contractor to use any CRM system that TennCare chooses to implement in the event of upgrades or replacement.
- b. The Contractor shall utilize TennCare's phone system with Automatic Call Distribution (Phone/ACD) to receive incoming phone calls to the TSU Call Center to monitor and report on call volume, call queues, and required SLA's. The Contractor shall provide recorded TennCare-approved greeting and menu messages, and TennCare-approved informational queue messages regarding TennCare benefit changes, appeal information, referral entities and contact numbers for TennCare members waiting to speak with a representative. TennCare's current Phone/ACD system is CISCO, however, TennCare reserves the right to require the Contractor to use any Phone/ACD system that TennCare chooses to implement in the event of upgrades or replacement.

- c. The Contractor shall utilize recipient screens within TennCare's Medicaid Management Information System (MMIS) in a read-only capacity in order to provide relevant information to the TennCare member, and/or verified caller or provider, and to record information in data fields of the Medical Issue/Appeal forms created in the CRM system. TennCare reserves the right to require the Contractor to use any MMIS that TennCare chooses to implement in the event of upgrades or replacement.
  - d. The Contractor shall utilize TennCare's Medical Appeals Tracking system to perform research on existing member Medical Issues/Appeals for the purpose of answering questions and concerns about the status of such Medical Issues/Appeals. The Call Back Coordinator shall have editing access to the Medical Appeals Tracking system to document Call Back issues. Staff other than the Call Back Coordinator shall have read-only access. TennCare's current Medical Appeals Tracking system is ProLaw, however, TennCare reserves the right to require the Contractor to use any Medical Appeals Tracking system the State designates in the event of upgrades or replacement.
  - e. The Contractor shall utilize the State's e-mail system to communicate via e-mail with TennCare. Each staff member will have his/her individual email address with the State. TennCare's current e-mail system is Microsoft Outlook, however, TennCare reserves the right to require the Contractor to use any e-mail system the State designates in the event of upgrades or replacement.
  - f. The Contractor's management staff shall access TSU-specific folders on TennCare's file server for the purpose of distributing Medical Issues/Appeals electronically to appropriate TSU Units for processing. TennCare reserves the right to require the Contractor to use any file server or network server system that TennCare chooses to implement in the event of upgrades or replacement.
  - g. The Contractor shall utilize TennCare's Telecommunication Device for the Deaf/Teletypewriter (TDD/TTY) equipment that affords TennCare members with hearing and/or speech impairment the opportunity to file a Medical Issue/Appeal by phone.
  - h. The Contractor shall utilize TennCare's fax system to receive and process faxes submitted to the TennCare Solutions Unit. TennCare's current fax system is Rightfax, however, TennCare reserves the right to require the Contractor to use any fax system that TennCare chooses to implement in the event of upgrades or replacement.
- A.10 The Contractor shall meet the following responsibilities to the satisfaction of the State during the three (3) month Start-Up and transition period (projected to be from June 1, 2017 through August 31, 2017) and prior to implementation of the TSU Call Center scheduled to begin on September 1, 2017 (TSU Call Center Implementation Date):
- a. With the prior approval of TennCare, the Contractor shall submit a formal Business Continuity/Disaster Recovery (BC/DR) Plan no later than thirty (30) calendar days prior to the implementation of the TSU Call Center. The Plan shall include recognized industry standards governing disaster preparedness and recovery including the ability to continue operations, Monday through Friday, 8:00 a.m. to 4:30 p.m. CST, excluding weekends and holidays, in the event that the central site is rendered inoperable. The Contractor shall maintain the ability to implement the BC/DR Plan within a two (2) hour window from the time of TennCare's direction to implement such plan. Such plan must provide for seamless operation of all contracted activities and the TSU Call Center functionality as specified herein. Any back-up call centers must have an ACD system and remote access via telephone and simple internet connection. All Contractor employees are required to be familiar with emergency procedures.

Upon TennCare's request, the Plan must be tested with the results added to the Plan document. The Plan shall meet the requirements of any applicable state and federal regulations, and Bureau of TennCare, and State's Strategic Technology Solutions (STS) requirements. The Contractor's BC/DR Plan shall include sufficient information to show that the following requirements are met:

- (1) Documentation of emergency procedures that include steps to take in the event of short-term interruptions in normal operations, including but not limited to fire drills, temporary technical computer/application/server outage issues, temporary power outages, and in the event that all representatives are logged out/unavailable to answer calls, and
  - (2) Documentation of emergency procedures that include steps to take in the event of a disaster by storm, fire, water damage, sabotage, criminal action, bomb threats, etc., rendering the central site inoperable.
- b. The Contractor shall meet the following timelines in providing the initial deliverables for the Start-up of this Contract:
- (1) The BC/DR Plan shall be submitted to TennCare for approval no later than thirty (30) calendar days prior to the TSU Call Center Implementation Date.
  - (2) Management, supervisory, training, and QC/QA positions shall be staffed no later than forty-five (45) calendar days prior to the TSU Call Center Implementation Date.
  - (3) TennCare Management Information Systems (TCMIS) and Acceptable Use Policy (AUP) forms for all management, supervisory, training, and QC staff shall be submitted no later than thirty (30) calendar days prior to the TSU Call Center implementation Date.
  - (4) Management, supervisory, training, and QC/QA staff shall participate in TennCare-provided train-the-trainer sessions to be held thirty (30) calendar days prior to the TSU Call Center Implementation Date. TennCare shall provide an on-site training room with access to systems for the purpose of this training program.
  - (5) The Contractor's training program materials and QC/QA program materials shall be submitted to TennCare for approval no later than forty-five (45) calendar days prior to the TSU Call Center Implementation Date.
  - (6) The CRM System Programmer position shall be staffed no later than thirty (30) calendar days prior to the TSU Call Center Implementation Date. The CRM System Programmer shall participate in establishing VPN connections and meeting with TennCare and other TennCare contractors to discuss systems to be completed no later than fifteen (15) calendar days prior to the TSU Call Center Implementation Date.
  - (7) Phone representative positions shall be staffed no later than thirty (30) calendar days prior to the TSU Call Center Implementation Date.
  - (8) TennCare Management Information Systems (TCMIS) and Acceptable Use Policy (AUP) forms for the CRM System Programmer and all phone representatives shall be submitted no later than fifteen (15) calendar days prior to the TSU Call Center Implementation Date.

- (9) Phone representatives shall participate in a Contractor-provided training program no later than fifteen (15) calendar days prior to the TSU Call Center Implementation Date. TennCare shall provide an on-site training room with access to systems for the purpose of this training program.
  - (10) Arrangements for third party Phone Interpreter Services shall be made by the Contractor no later than thirty (30) days prior to the Call Center Implementation Date.
- c. The Contractor shall meet the following timelines in providing extended deliverables pursuant to the CRM System Programming/Implementation Procedures as set forth by TennCare:
- (1) The Contractor shall modify the CRM system to include documentation of Medical Issues/Appeals received via mail and fax. The modification shall include, but not be limited to, features such as: capability to attach scanned documents to a record created in the CRM system, and capability to separate intake by phone, mail, and fax for reporting purposes. Implementation of this modification to the CRM system shall be completed and effective September 1, 2017.
  - (2) The Contractor shall modify the CRM system to include documentation of the caller's primary language for each phone record created in the CRM system. This field shall default to English, but shall contain a picklist that includes, but is not limited to the following values: English, Spanish, Arabic, Chinese, Korean, French, Amharic, Gujarati, Laotian, German, Tagalog, Hindi, Serbo-Croatian, Russian, Nepali, Persian, Kurdish, Somali, Vietnamese, and other. . The system shall preclude further entry of data until the language field is filled out. The primary language field shall have the capability to be reported upon, and shall also appear on each Medical Issue/Appeal form generated from the CRM system. Implementation of this modification to the CRM system shall be effective September 1, 2017.
- d. The Contractor shall participate in a "Readiness Review" conducted by TennCare to review the Contractor's readiness to begin operations. This review may include, but is not limited to ,an on-site review of the status of staffing resources, training material development, and QC/QA process development. The scope of the review may include any or all requirements of this Contract as determined by TennCare. Based on the results of the review activities, TennCare will issue a letter of findings and if needed, will request a corrective action plan (CAP) from the Contractor. Contractor shall provide the CAP one (1) business day after it is requested by TennCare. In its sole discretion, TennCare shall have the right to postpone the TSU Call Center implementation date, based upon Contractor's inadequate project status as determined from the Readiness Review. Postponement of the September 1, 2017 implementation date may result in damages being assessed against the Contractor as specified in Section E.10 and Attachment B.
- A.11 The Contractor shall be required to assist with transitioning the operation of the TSU Call Center to a successor TSU Call Center contractor at the end of this Contract. The Contractor hereby acknowledges that it shall not be compensated separately for such transition services which are deemed to be included in the monthly administrative fee set forth in Section C.3. Contractor further acknowledges that the last such administrative fee payment shall be made by the State for satisfactory transition services performed during the calendar month in which the successor TSU Call Center contractor assumes full operation TSU Call Center, even though the Contractor may be required to perform some final transition services after the date on which the successor TSU

Call Center contractor assumes its duties. The Contractor shall comply with and perform the following transition services:

- a. Participate in transition planning and scheduling with the State and the successor TSU Call Center contractor as required by the State throughout the entire transition process.
  - b. Sixty (60) days prior to the end of this Contract, the Contractor shall provide summary and detail reports of all TSU Call Center statistics for the previous twelve (12) months, and all current TSU Call Center training and reference materials being used.
  - c. Upon the last day of this Contract, TennCare shall conduct an “exit” interview with the Contractor to address the following:
    - (1) inventory of all TennCare supplied hardware, including TDD/TTY, computers, printers, and phones. All inventory must be accounted for and all hardware must be in working condition exclusive of normal wear and tear.
    - (2) inventory of all TennCare supplied workstations and workspaces. All workstations and workspaces must be in working condition exclusive of normal wear and tear.
  - d. Failure to satisfactorily meet any or all transition requirements shall result in damages to the Contractor as specified in section E.10 and Attachment B.
  - e. The Contractor shall perform, at no additional cost to the State, such other tasks and functions as may be required by the State in order to transfer all required TSU Call Center systems, enrollee data and records, information, processes and functions to the successor TSU Call Center contractor to facilitate and ensure a seamless transition of all Contract requirements from one contractor to the other without any interruptions or gaps in service. The Contractor acknowledges that it has a duty to complete this transition to the satisfaction of the State, with such duty surviving the termination of this Contract, Contractor further acknowledges and agrees that it may be required to perform some final transition services following the last day of this Contract for which it shall not be separately compensated.
- A.12. Control Memorandum Process. The Control Memorandum (“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 – 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 failure 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, and setting out the performance or compliance failure underlying each intended damage assessment. 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. The State may not obtain both Liquidated Damages and Actual Damages for the same occurrence of a Contract performance or compliance failure.
- b. Damages for failure to comply with CM. The Contractor shall fully comply with all CMs. Failure to do so may result in the State pursuing recovery of damages, as defined in Section E.10, including Liquidated Damages as listed in Contract Attachment B, a corrective action plan, 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 within (10) days of the receipt of the appeal from the Contractor. Upon appeal or escalation, the State shall not increase the amount of the potential damages.
- A.13. 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 (codified at 45 C.F.R. pt. 92) 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. Contractor agrees that its civil rights compliance staff member will work directly with TennCare's Civil Rights Compliance Director in order to implement and coordinate nondiscrimination compliance activities. 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 Civil Rights 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 Contractor's staff and subcontractors assigned to perform duties under the terms of this Contract shall receive nondiscrimination training. The Contractor shall be able to show documented proof that the training was made available to the Contractor's staff and to its subcontractors that are considered to be performing duties 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. 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. 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"), the U.S. Department of Justice ("DOJ"), 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, DOJ, HCFA, or THRC. The requested information may be necessary to enable HHS, DOJ, HCFA, or THRC to ascertain whether the Contractor is complying with the applicable civil rights laws.
- (5) The Contractor shall permit access as set forth in the applicable civil rights laws, such as, 45 C.F.R. § 92.302 or 45 C.F.R. § 80.6 to HHS, DOJ, 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 use and have available to individuals HCFA's discrimination complaint forms for the HCFA program or programs covered under this Contract. These discrimination complaint forms shall be provided to individuals 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. HCFA's Director of Civil Rights Compliance shall work with the Contractor's NCC on providing the Contractor with the HCFA program's or programs' discrimination complaint forms that are required under this Contract.

The Contractor shall provide assistance to individuals that request that the Contractor assist them with filing discrimination complaints with the HCFA program or programs covered under this Contract. The Contractor shall inform its employees and its providers and subcontractors that are considered to be recipients of federal financial assistance under this Contract about how to assist individuals with obtaining discrimination complaint forms and assistance with submitting the forms to the HCFA program or programs covered under this Contract.

- (7) Significant publications and significant communications, including small sized publications and communications that are targeted to beneficiaries, participants, enrollees, applicants, and members of the public shall be printed with the notice of nondiscrimination and LEP taglines as required by HCFA and set forth in HCFA's tagline templates. Written materials specific to HCFA's programs' members shall be prior approved in writing by HCFA prior to the materials being sent to these individuals.
- (8) 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 (a), 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.
- b) The Contractor shall submit the following nondiscrimination compliance deliverables to HCFA as follows:
- (1) 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 sixty (60) days of receipt of the Questionnaire 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.
  - (i) 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 HCFA program members shall be prior approved in writing by HCFA.

- (ii) Also as part of the requested documentation for the Nondiscrimination Compliance Questionnaire the Contractor shall include reports that capture data for all language and communication assistance services used and provided by the Contractor under this Contract. One report shall contain the names of the Contractor's language and communication 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 and communication assistance services. A separate report that captures a listing of language and communication assistance services that were requested by members (i.e. Arabic; Braille) and the methods used to provide the language and alternative communication service to the members (i.e. interpretation; translation). Upon request the Contractor shall provide a more detailed report that contains 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.
- (2) The Contractor shall submit a quarterly Non-discrimination Compliance Report which shall include the following:
  - (i) A summary listing that captures the total number of the Contractor's new hires that have completed civil rights/nondiscrimination training and cultural competency training and the dates the trainings were completed for that quarter;
  - (ii) A listing of the total number of the Contractor's employees that have completed annual civil rights training and cultural competency training and the dates completed for that quarter, if annual training was provided during that quarter.
  - (iii) An update of all written discrimination complaints filed by individuals, such as, employees, members, and subcontractors in which the discrimination allegation is related the provision of and/or access to HCFA covered services provided by the Contractor, which the Contractor is assisting HCFA with resolving. This update shall include, at a minimum: identity of the complainant, complainant's relationship to the Contractor, circumstances of the complaint; type of covered service related to the complaint, date complaint filed, the Contractor's resolution, date of resolution, and the name of the Contractor staff person responsible for adjudication of the complaint. For each complaint reported as resolved the Contractor shall submit a copy of the complainant's letter of resolution.
  - (iv) The Contractor shall provide a listing of all discrimination claims that are reported to the Contractor that are claimed to be related to the provision of and/or access to HCFA covered services provided by the Contractor. The listing shall include, at a minimum: identity of the complainant, complainant's relationship to the Contractor, circumstances of the complaint; type of covered service related to the complaint, date complaint filed, the Contractor's resolution, date of resolution. When such reports are made, the Contractor shall offer to provide the discrimination complaint forms to the individual making the report.
  - (v) The language and communication assistance report shall capture a summary listing of language and communication assistance services that were requested by members (i.e. Arabic; Braille) and the methods used to provide the language and alternative communication service to the members (i.e. interpretation; translation). Upon request the Contractor shall provide a more detailed report that contains 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 subcontractors that are considered to be recipients of federal financial

assistance 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 Subcontractors that are recipients of federal financial assistance under this Contract. Should complaints concerning alleged acts of discrimination committed by the Contractor's 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 subcontractors that are recipients of federal financial assistance under this Contract. The Contractor's Providers and Subcontractors that are recipients of federal financial assistance under this Contract shall cooperate with HCFA and the Contractor during discrimination investigations and resolutions.
- (3) Corrective Action Plans to Resolve Discrimination Complaints. If a discrimination complaint against the Contractor or its employees or one of its subcontractors who are recipients of federal financial assistance 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. To the extent that the Contractor is using electronic and information technology to fulfill its obligations under this Contract, the 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"); 45 C.F.R. § 92.204; and the Americans with Disabilities Act. To comply with the accessibility requirements for Web content and non-Web electronic documents and software, the Contractor shall use W3C's Web Content Accessibility Guidelines ("WCAG") 2.0 AA (For the W3C's guidelines see: <http://www.w3.org/TR/WCAG20/>) (Two core linked resources are Understanding WCAG 2.0 <http://www.w3.org/TR/UNDERSTANDING-WCAG20/> and Techniques for WCAG 2.0 <http://www.w3.org/TR/WCAG20-TECHS/>).

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 WCAG 2.0 AA, 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.

#### A.14. Non-Disclosure and Contractors

The Contractor shall, as directed by the State and at no additional cost to the State, coordinate with, facilitate the prompt exchange of information between, and work collaboratively with any and all other State contractors and State agencies. If required in order for the Contractor to proceed with any part of the Scope of Services which involves sharing or obtaining information of a confidential, proprietary, or otherwise valuable nature with or from another State contractor or State agency, the Contractor may be requested to sign mutually agreeable documents, including but not limited to Non-Disclosure Agreements (Non-Disclosure Documents), which are reasonably necessary to maintain cooperation and collaboration among and with any and all other State contractors and State agencies in the performance of the Contract.

All information the Contractor may receive, have disclosed to it, or otherwise becomes known to Contractor during the performance of this Contract from any other State contractor or State agency, that the State contractor or State agency considers to be propriety or confidential in nature pursuant to a Non-Disclosure Document entered into between the Contractor and another State contractor or State agency, shall be governed by such Non-Disclosure Document.

Nothing in this Section, including failure to negotiate and enter into a Non-Disclosure Document acceptable to Contractor with another State contractor or State agency, shall be construed to relieve the Contractor of its duty to perform any requirements or deliverables under this Contract. Other than as permitted in Section C. of this Contract, Payment Terms and Conditions, the Contractor shall not invoice the State for any such coordination services, and the State shall not

be liable to the Contractor for payment of any such coordination services, without the prior written consent of the State.

### **TennCare Responsibilities**

- A.15. TennCare shall provide initial and ongoing support and oversight to the Contractor for the TSU Call Center as required, described, and detailed by this Scope of Services.
- A.16. TennCare shall provide the following on-site provisions:
- a. Dedicated area for all on-site Contractor staff, including workstations, office chairs, storage bins, and filing cabinets, to house the TSU Call Center at 310 Great Circle Road, Nashville, TN;
  - b. General operating supplies (e.g., tablet, loose leaf and copier paper, file folders, writing instruments, etc.), and the use of existing copying equipment for the purpose of reproducing reference and training materials for TSU Call Center staff, and
  - c. Provide and pay for all toll-free phone numbers and phone lines required in this Contract, TennCare shall NOT authorize payment of any long distance calls received by the TSU Call Center. All calls received by the TSU Call Center must be on the designated toll free line.
- A.17. TennCare Information Systems (IS) shall provide the following:
- a. Provide and maintain with technical support any hardware, including personal computer workstations, workstation printers, network printers, network file server(s), phones and headsets, and TDD/TTY equipment to be used by the Contractor on the State's premises and for the operation of the TSU Call Center.
  - b. Provide and maintain with technical support the following software applications: CRM system, phone/ACD system, MMIS (InterChange), Medical Appeals Tracking System, TennCare e-mail System, fax system and network servers, to be used by the Contractor for the operation of the TSU Call Center. TennCare shall interface with vendors, STS, and the Contractor to ensure maximum performance of said applications, and shall pay annual licensure fees for said applications.
    - (1) As appropriate, TennCare shall provide a Virtual Private Network (VPN) connection for software programming functions specific to the CRM system to be made off-site by the Contractor.
    - (2) TennCare shall NOT be responsible for the cost of programming and coding modifications, additions and deletions made specifically to the CRM system to reflect TennCare policy and process changes in TennCare's CRM system used by the TSU Call Center to document callers' Medical Issues/Appeals. Such CRM system programming and coding changes and associated costs shall be the responsibility of the Contractor.
  - c. Call Center systems and components thereof, incorporated by any means such as, but not limited to licenses for use or purchase for ownership, shall become or remain the exclusive property of TennCare and the State upon termination of the Contract regardless of the reason for termination.
  - d. TennCare IS shall maintain communications with the Contractor sufficient for the Contractor to be aware of and prepared for any changes to the technological environment

of the State and TennCare that will affect the Contractor's responsibilities for TSU Call Center operations.

A.18 TennCare shall provide support and oversight in daily operations of the TSU Call Center in the following manner:

- a. Provide initial start-up training for Contractor management/training staff in a train-the-trainer capacity, for the following applications: MMIS (InterChange), CRM system, Phone/ACD system, Medical Appeals Tracking System, TennCare e-mail system and fax system. TennCare shall provide an on-site training room with access to systems for the purpose of this training program.
- b. Provide initial start-up training for Contractor management/training staff in a train-the-trainer capacity for TennCare program topics including TennCare rules, policies, and procedures pertaining to eligibility, enrollment, and Medical Appeals processing. TennCare shall provide an on-site training room with access to systems for the purpose of this training program.
  - (1) TennCare shall NOT be responsible for providing training for customer service, data entry, writing, computer operating skills, conflict resolution, crisis de-escalation, interpersonal and problem-solving skills, cultural and linguistic awareness of the Limited English Proficiency (LEP) population, effectively communicating with individuals who have disabilities and sensitivity awareness of the Priority population. For purposes of this Contract, the Limited English Proficiency population shall be defined as TennCare members or persons who act on behalf of TennCare members who need assistance in a language other than English, and the Priority population shall be defined as those TennCare members who have received specific mental health diagnoses within the past year and are designated by TennCare as the Priority population. Such training topics shall be the responsibility of the Contractor.
  - (2) TennCare may request modifications of the Contractor's training program to improve the quality and efficiency of the TSU Call Center operations and to ensure that performance and or operational issues are promptly addressed. All modifications must be approved by TennCare prior to use by the Contractor.
- c. TennCare shall provide TennCare-specific workforce member training, such as HIPAA/HITECH training (training sessions focused on privacy, security and confidentiality), for which the Contractor shall cooperate in making staff available.
- d. The TennCare QC/QA Reviewer(s) shall audit a representative sampling of the Contractor's recorded calls and documented Medical Issue/Appeal forms on a weekly basis, using the TSU Score Card to be provided by TennCare. In addition to reviewing the Contractor's weekly internal reports, TSU QC/QA Reviewer(s) shall:
  - (1) report the Contractor's internal reports and the TSU Score Card of recorded audit findings on a weekly basis to their designated TSU managers and/or TSU directors;
  - (2) work with the Contractor's management, training, and QC/QA staff to assist and train in the identification of TSU Call Center issues and problems discovered during audit findings.
  - (3) request Corrective Action Plans (CAP) in response to TSU Call Center issues and problems discovered during audit findings.

TennCare reserves the right to request modifications of Contractor's QC/QA program(s) and training material to improve the quality and efficiency of the TSU Call Center operations, as well as to ensure that performance and or operational issues and problems are promptly addressed. TennCare must approve any and all modifications before use by Contractor.

- e. TennCare shall provide routinely scheduled meeting times with the Contractor to discuss changes in TennCare operations (e.g., mailings, health plan contractor/provider issues, Medical Appeal process changes, etc.) that will affect the TSU Call Center, Call Center performance statistics including Service Level Agreements (SLAs), QC/QA results, and the identification of trends indicative of issues, problems, or concerns occurring at the TSU Call Center.

- A.19 Subcontracting and Right to Refuse Personnel. In addition to the requirements regarding subcontracting set forth herein the Contractor shall, upon written request from the State, provide a complete, signed copy of any subcontract(s) it currently has with any third party who performs services under this Contract. Such subcontract(s) shall be provided within five (5) business days of receipt of the State's request, and may be redacted only to the extent necessary to conceal the amount of compensation paid by the Contractor to its subcontractor(s). Failure to comply with such request may result in Liquidated Damages as specified in Attachment B.

Subcontractors identified within Contractor's response to the RFP associated with this Contract and previously approved by the State are deemed to be approved subcontractors. Contractor may only substitute an approved subcontractor or add a new subcontractor during the term of this Contract at the discretion of the State and with the State's prior, written approval. The State reserves the right to refuse approval, in its sole discretion, of any proposed subcontract.

The State also reserves the right, at any time during this Contract, to refuse or reject, in its sole discretion and notwithstanding any prior approval, any of Contractor's staff and/or subcontractors providing services pursuant to this Contract.

## **B. TERM OF CONTRACT:**

- B.1. This Contract shall be effective for the period beginning June 1, 2017 ("Effective Date") and ending on August 31, 2020 ("Term"). The State shall have no obligation for goods delivered 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-three (63) months.

## **C. PAYMENT TERMS AND CONDITIONS:**

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed **Written Dollar Amount (\$Number)** ("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 the transition period of June 1, 2017 – August 31, 2017, there shall be no cost to the State.
  - (2) For services performed from September 1, 2017 – August 31, 2020, the following rates shall apply:

Cost Item Description	Amount (per compensable increment)
Comprehensive Monthly Call Center Rate up to and including 2500 Calls Per Week	\$ _____ / per month
Per Call Rate for Answered/Processed Calls Over 2500 Per Week	\$ _____ / per call

- (3) Should the State exercise renewal options per Section B.2, the following rates shall apply for services performed from September 1, 2020 through August 31, 2022.

Cost Item Description	Amount (per compensable increment)
Comprehensive Monthly Call Center Rate up to and including 2500 Calls Per Week	\$ _____ / per month
Per Call Rate for Answered/Processed Calls Over 2500 Per Week	\$ _____ / per call

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  
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 the "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, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
- b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

**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:

Deputy Commissioner  
Department of Finance and Administration  
Division of Health Care Finance and Administration  
Bureau of TennCare  
310 Great Circle Road  
Nashville TN 37243  
Telephone # (615) 507-6444  
FAX # (615) 253-5607

The Contractor:

**Contractor Contact Name & Title**  
**Contractor Name**  
**Address**  
**Email Address**  
**Telephone # Number**  
**FAX # Number**

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

- 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 A.13 (Nondiscrimination Compliance Requirements) and this Section D.9 shall not be deemed to limit or abridge any requirement set forth in Section A.13.

- 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: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts 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, Applicable Laws, Rules, Policies and Court Orders.
- 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), which includes Attachment A, Attestation RE: Personnel Used in Contract Performance and Attachment B, Liquidated Damages;
  - 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.
- D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101 et.seq., addressing contracting with persons with investment activities in Iran, shall be a material provision of this Contract. The Contractor agrees, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.

**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. The Contractor shall only use Confidential information for activities pursuant to and related to the performance of the Contract. 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, 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 In the event of a Contract performance or compliance failure by the Contractor, the State may, but is not obligated to address such Contract performance or compliance failure and/or assess damages ("Liquidated Damages") in accordance with Attachment B of the Contract. The State shall notify the Contractor of any amounts to be assessed as Liquidated Damages via the Control Memorandum process specified in Contract

Section A.12. 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 a Contractor performance or compliance failure, as these amounts are likely to be uncertain and not easily proven. Contractor has carefully reviewed the Liquidated Damages contained in Contract Attachment B and agrees that these amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of a Contract performance or compliance failure, are a reasonable estimate of the damages that would occur from a Contract performance or compliance failure, and are not punitive. The Parties agree that although the Liquidated Damages represent the reasonable estimate of the damages and injuries sustained by the State due to the Contract performance or compliance failure, they do not include any injury or damage sustained by a third party. 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 as a result of a Contract performance or compliance failure before availing itself of any other remedy. In the event of multiple Contract performance or compliance failures, the Parties recognize that the cumulative effect of these Contract performance failures may exceed the compensation provided by Liquidated Damages. In that event, the State may choose to avail itself of any other remedy available under this Contract or at law or equity. The Parties further recognize that the State may not obtain both Liquidated Damages and Actual Damages for the same occurrence of a Contract performance or compliance failure.

Without regard to whether the State has imposed Liquidated Damages or pursued any other remedy due to any action or inaction by the Contractor, the State may impose a corrective action plan or similar measure through a Control Memorandum. Such measure is neither punitive nor related to any damages the State might suffer.

- 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.18 (Notification of Breach), E.20 (SSA Data), and E.24 (IRS Data) of this Contract shall survive the completion of performance, termination or expiration of this Contract.
- E.16. 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 program. Such compliance shall be performed at no additional cost to the State.

- E.17. Business Associate. As the Contractor will provide services to HCFA pursuant to which the Contractor will have access to, receive from, create, or receive on behalf of HCFA Protected Health Information, or Contractor will have access to, create, receive, maintain or transmit on behalf of HCFA Electronic Protected Health Information (as those terms are defined under HIPAA and HITECH), Contractor hereby acknowledges its designation as a business associate under HIPAA and agrees to comply with all applicable HIPAA regulations and the terms in the associated Business Associate Agreement.
- E.18. Notification of Breach and Notification of Suspected Breach. The Contractor shall notify HCFA's Privacy Office immediately upon becoming aware of and in no case later than forty-eight (48) hours after discovery of any incident, either confirmed or suspected, that represents or may represent unauthorized access, use or disclosure of encrypted or unencrypted computerized data that materially compromises the security, confidentiality, or integrity of enrollee PHI maintained or held by the 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.19. 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 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.
- E.20. 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 specify in its agreements with any agent or subcontractor that will have access to data that such agent or subcontractor agrees to be bound by the same restrictions, terms and conditions that apply to the Contractor pursuant to this Section;
  - b. 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.
  - c. The Contractor agrees to abide by all relevant federal laws, restrictions on access, use, and disclosure, and security requirements in this Contract.
  - d. The Contractor shall provide a current list of the employees of such contractor with access to SSA data and provide such lists to HCFA.
  - e. 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.

- f. 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.

- g. 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/assets/entities/tenncare/attachments/phi\\_piiworksheet.pdf](http://www.tn.gov/assets/entities/tenncare/attachments/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.

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

- j. Definitions

- (1) "SSA-supplied data" or "data" as used in this section – 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 (covered by a CMPPA between SSA and F&A; and 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.21. 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
  - 2) received under 26 USC is exchanged only with parties authorized to receive that information under that section of the Code; and, 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) Income information received from SSA or the Internal Revenue Service must be safeguarded according to Medicaid and CHIP requirements;
  - 8) Any information received in connection with the identification of legally liable third party resources; and.
  - 9) 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 beneficiaries:
  - 2) Access to information concerning applicants or beneficiaries 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 beneficiaries;
  - 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 beneficiaries 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 beneficiary, 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.22. 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 Act.
- E.23. 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.24. 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 by IRS Publication 1075 and IRC 6103.
  - (2) All work will be done under the supervision of the contractor or the contractor's employees. The contractor and the contractor's employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.
  - (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. 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. 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 with 24 hour notice, 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 with FTI under this contract. The IRS and Agency's right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, specific measures may be required in cases where the contractor is found to be noncompliant with contract safeguards.

- E.25. 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 RFP 31865-00459 (Attachment 6.2, Section B.15) 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.

**IN WITNESS WHEREOF,**

**CONTRACTOR LEGAL ENTITY NAME:**

---

**CONTRACTOR SIGNATURE**

**DATE**

---

**PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)**

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

---

**LARRY B. MARTIN, COMMISSIONER**

**DATE**

**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

<b>SUBJECT CONTRACT NUMBER:</b>	
<b>CONTRACTOR LEGAL ENTITY NAME:</b>	
<b>EDISON VENDOR IDENTIFICATION NUMBER:</b>	

**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.**

---

**CONTRACTOR SIGNATURE**

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. Attach evidence documenting the individual's authority to contractually bind the Contractor, unless the signatory is the Contractor's chief executive or president.

---

**PRINTED NAME AND TITLE OF SIGNATORY**

---

**DATE OF ATTESTATION**

## LIQUIDATED DAMAGES

In the event of a Contract performance or compliance failure by Contractor and such Contract performance failure is not included in the following table with an associated Liquidated Damage amount, the parties hereby agree that the State may choose one of the following courses of action in order to obtain redressability for such Contract performance failure: (1) the State may assess actual damages resulting from the Contract performance or compliance failure against the Contractor in the event that such actual damages are known or are reasonably ascertainable at the time of discovery of such Contract performance or compliance failure or (2) if such actual damages are unknown or are not reasonably ascertainable at the time of discovery of the Contract performance or compliance failure, the State may (a) require the Contractor to submit a corrective action plan to address any such Contract performance or compliance failure and (b) assess a liquidated damage against Contractor for an amount that is reasonable in relation to the Contract performance failure as measured at the time of discovery of the Contract performance or compliance failure. In the event that the State chooses to assess a Liquidated Damage for a Contract performance or compliance failure according to the immediately preceding sentence, in no event shall such Liquidated Damage be in excess of \$1,000 for any single Contract performance or compliance failure.

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 performance or compliance failure and of the potential liquidated damages to be assessed. Should the performance or compliance failure remain uncorrected for more than thirty (30) calendar days from the date of the original notification of the performance or compliance failure 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 performance or compliance failure 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, or the Deputy Commissioner's representative, determines the performance or compliance failure has been cured.

If liquidated damages are assessed, HCFA shall reduce the amount of any payment due to the Contractor in the next 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, 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, to the HCFA Deputy Commissioner or the Deputy Commissioner's representative within thirty (30) calendar 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.

Liquidated damages will apply in the below Contract performance or compliance failures. Contractor acknowledges that the actual damages likely to result from breach of the below contract performance or compliance failures are difficult to estimate and may be difficult for the State to prove. The parties intend that the Contractor's payment of assessed liquidated damages will compensate the State for breach by the Contractor obligations under this Contract. Liquidated damages do not serve as punishment for any breach by the Contractor.

	<b><u>PROGRAM ISSUES</u></b>	<b><u>DAMAGE</u></b>
1.	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 E. 2. and E.18	The damage that may be assessed shall be one thousand dollars (\$1,000.00) per affected member per occurrence.
2.	Failure by the Contractor to execute the appropriate agreements to effectuate transfer and exchange of 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)	The damage that may be assessed shall be one thousand dollars (\$1,000.00) per affected member per occurrence.
3.	Failure by the Contractor to seek express written approval from HCFA prior to the use or disclosure of enrollee data or HCFA confidential information in any form via any medium with any third party beyond the boundaries and jurisdiction of the United States. (See E.13 and Business Associate Agreement between the parties)	The damage that may be assessed shall be one thousand dollars (\$1,000.00) per affected member per occurrence.
4.	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.18 and Business Associate Agreement between the parties)	The damage that may be assessed shall be one thousand dollars (\$1,000.00) per affected member per occurrence.
5.	Failure to make required changes to scripts per Section A.2 within twenty-four (24) hours of notification by TennCare.	The damage that may be assessed shall be one thousand dollars (\$1000.00) per hour beyond the twenty-four (24) hour required timeline.
6.	Daily Maximum Speed to Answer. The TSU Call Center shall answer 100% of calls each day within 300 seconds as specified in Section A.3.a.  For calls answered after 300 seconds, Liquidated Damages in the amount specified in this item 6 may be assessed against the Contractor.	A maximum of five hundred dollars (\$500.00) for each instance of each call answered within 301 seconds – 600 seconds during each operating day; provided, however, total LDs under this section shall not exceed twenty-five thousand dollars (\$25,000.00) per operating day.  A maximum of one thousand dollars (\$1,000.00) for each instance of each call answered in 601 seconds or more



		during each operating day; provided, however, total LDs under this section shall not exceed fifty thousand dollars (\$50,000.00) per operating day.
7.	Daily Abandonment Rate. Maintain an average daily abandonment rate of 5% or less for each queue on each day the TSU Call Center is open for business excluding calls abandoned before thirty seconds as specified in Section A.3.a.	A maximum of five hundred dollars (\$500.00) per queue per day for a daily abandonment rate of 6%-10%.  A maximum of one thousand dollars (\$1,000.00) per queue per day for a daily abandonment rate of over 10%.
8.	Daily Average Seconds to Answer. Maintain an Average Speed of Answer (ASA) per queue per day of 60 seconds or less as specified in Section A.3.a. ASA is to be calculated from the time that a call comes into the queue and when it is answered by an TSU Call Center representative.	A maximum of five hundred dollars (\$500.00) per queue per day for an ASA of 61 seconds – 180 seconds.  A maximum of one thousand five hundred dollars (\$1,500.00) per queue per operating day for an ASA of 181 seconds or more.
9.	Blocked Call Rate. Maintain a daily blocked call rate of 1% or less as specified in Section A.3.a. The Blocked Call Rate shall be calculated using the total number of all calls (including abandoned calls and blocked calls) received during Normal Business Hours as the denominator and the total number of blocked calls during the same period used as the numerator.	A maximum of one thousand dollars (\$1,000.00) for each percentage point above 1%.
10.	Failure to comply with staffing requirements as stipulated in Section A.4.	The damage that may be assessed shall be five hundred dollars (\$500.00) per week per staffing deficiency.
11.	Failure to submit a BC/DR Plan no later than thirty (30) calendar days prior to implementation date of September 1, 2017 pursuant to Section A.10.	The damage that may be assessed shall be five hundred dollars (\$500.00) per day beyond the due date.
12.	Failure to implement the BC/DC Plan within a two (2) hour window from the time of TennCare's direction to implement such plan as stipulated in Section A.10.	The damage that may be assessed shall be one thousand dollars (\$1000.00) per hour for each hour that exceeds the two (2) hour requirement.
13.	Failure to enter all handwritten Medical Issues/Appeals forms resulting from emergency situation into the TennCare database within seventy-two (72) hours after emergency as stipulated in Section A.3.	The damage that may be assessed shall be five hundred dollars (\$500.00) per hour for each hour that exceeds seventy-two (72) hours.
14.	Failure to demonstrate ability to meet requirements of this Contract as determined by TennCare after completion of readiness review as stipulated in Section A.10.d.	The damage that may be assessed shall be one thousand dollars (\$1000.00) per calendar day that Contractor fails to meet the requirements of the readiness review.
15.	Failure to respond to a Corrective Action Plan (CAP) request as determined by TennCare as stipulated in Section A.10.d.	The damage that may be assessed shall be five hundred dollars (\$500.00) per day beyond the due date.

16.	Failure to complete any requested CRM system programming and coding modifications, additions, and deletions as determined by TennCare within the stipulated timeframe in Section A.4.h.viii	The damage that may be assessed shall be one thousand dollars (\$1000.00) per calendar day until request is completed.
17.	Failure to properly address Quality Assurance or Quality Control issues or problems within the requested timeframe in Section A.7.c.	The damage that may be assessed shall be five hundred dollars (\$500.00) per day beyond the due date.

**HIPAA Business Associate Agreement**

THIS HIPAA BUSINESS ASSOCIATE AGREEMENT (“Agreement”) is between **The State of Tennessee, Department of Finance and Administration, Health Care Finance and Administration** (“HCFA” or “Covered Entity”), 310 Great Circle Road, Nashville, TN 37243 and \_\_\_\_\_ (“Business Associate”), located at \_\_\_\_\_, including all office locations and other business locations at which Business Associate data may be used or maintained. Covered Entity and Business Associate may be referred to herein individually as “Party” or collectively as “Parties.”

**BACKGROUND**

The Parties acknowledge that they are subject to the Privacy and Security Rules (45 C.F.R. Parts 160 and 164) promulgated by the United States Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, and as amended by the final rule modifying the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules under the Health Information Technology for Economic and Clinical Health Act (HITECH). If Business Associate provides services to Covered Entity pursuant to one or more contractual relationships, said Agreements are detailed below and hereinafter referred to as “Service Agreements.”

**LIST OF AGREEMENTS AFFECTED BY THIS HIPAA BUSINESS ASSOCIATE AGREEMENT:**

\_\_\_\_\_  
\_\_\_\_\_

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

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

**1. DEFINITIONS**

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

1.1 “Breach of the Security of the [Business Associate’s Information] System” shall mean the unauthorized acquisition, including, but not limited to, access to, use, disclosure, modification or destruction, of unencrypted computerized data that materially compromises the security, confidentiality, or integrity of personal information maintained by or on behalf of the Covered Entity under the terms of Tenn. Code Ann. § 47-18-2107 and this Agreement. Good faith acquisition of personal information by an employee or agent of the Information Holder for the purposes of the Information Holder is not a Breach of the Security of the System; provided, that the personal information is not used or subject to further unauthorized disclosure.

1.2 “Commercial Use” means obtaining PHI with the intent to sell, transfer or use it for commercial, or personal gain, or malicious harm; sale to third party for consumption, resale, or processing for resale; application or conversion of data to make a profit or obtain a benefit contrary to the spirit of this Agreement, including but not

limited to presentation of data or examples of data in a conference or meeting setting where the ultimate goal is to obtain or gain new business.

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

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

1.5 "Information Holder" means any person or business that conducts business in this state, or any agency of the state of Tennessee or any of its political subdivisions, that owns or licenses computerized data that includes personal information

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

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

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

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

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

2.4 Privacy Safeguards and Policies. Business Associate shall use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by the Service Agreement(s), this Agreement or as required by law. This includes the implementation of Administrative, Physical, and Technical Safeguards to reasonably and appropriately protect the Covered Entity's PHI against any reasonably anticipated threats or hazards, utilizing the technology commercially available to the Business Associate (See also Section 3.2). The Business Associate shall maintain appropriate documentation of its compliance with the Privacy Rule, including, but not limited to, its policies, procedures, records of training and sanctions of members of its Workforce.

2.5 Business Associate Contracts. Business Associate shall require any agent, including a Subcontractor, to whom it provides PHI received from, maintained, created or received by Business Associate on behalf of Covered Entity, or that carries out any duties for the Business Associate involving the use, custody, disclosure, creation of,

or access to PHI or other confidential HCFA information, to agree, by written agreement with Business Associate, to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information except for the provision at section 4.6, which shall only apply to the Business Associate notwithstanding the requirements in this section 2.5.

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

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

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

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

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

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

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

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

- (a) The Parties understand that if either Party receives a request for access to or copies of PHI from an Individual which the Party may complete with only its own onsite information, the time for such response shall be thirty (30) days, with notification to the Covered Entity upon completion.
- (b) If Covered Entity does not have the requested PHI onsite and directs Business Associate to provide access to or a copy of his/her PHI directly to the Individual, or Individual's designee, the Business Associate shall have sixty (60) days from the date of the Individual's request to provide access to PHI or deliver a copy of such information to the Individual. The Business Associate shall notify the Covered Entity when it completes the response.
- (c) If the Covered Entity receives a request and requires information from the Business Associate in addition to the Covered Entity's onsite information to fulfill the request, the Business Associate shall have thirty (30) days from date of Covered Entity's notice to provide access or deliver such information to the Covered Entity so that the Covered Entity may timely respond to the Individual within the sixty (60) day requirement of 45 C.F.R. § 164.524.

- (d) If the Party designated above as responding to the Individual's request is unable to complete the response to the request in the time provided, that Party shall provide the Individual, or Individual's designee, with a written statement of the reasons for the delay and the date by which the Party will complete its action on the request. The Party may extend the response time once for no more than thirty (30) additional days.
- (e) Business Associate is permitted to send an Individual or Individual's designee unencrypted emails including Electronic PHI if the Individual requests it, provided the Business Associate has advised the Individual of the risk and the Individual still prefers to receive the message by unencrypted email.
- (f) Business Associate shall develop forms that are designed to collect the necessary written, signed designation that is required in order to permit Individuals to designate recipients of PHI.

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

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

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

- (a) If Covered Entity directs Business Associate to provide an accounting of disclosures of the Individual's PHI directly to the Individual, the Business Associate shall have sixty (60) days from the date of the Individual's request to provide access to or deliver such information to the Individual or Individual's designee. The Covered Entity shall provide notice to the Business Associate in time to allow the Business Associate a minimum of thirty (30) days to timely complete the Individual's request.
- (b) If the Covered Entity elects to provide the accounting to the Individual, the Business Associate shall have thirty (30) days from date of Covered Entity's notice of request to provide information for the Accounting to the Covered Entity so that the Covered Entity may timely respond to the Individual within the sixty (60) day period.
- (c) If either of the Parties is unable to complete the response to the request in the times provided above, that Party shall notify the Individual with a written statement of the reasons for the delay and the date by which the Party will complete its action on the request. The Parties may extend the response time once for no more than thirty (30) additional days.
- (d) The accounting of disclosures shall include at least the following information:
  - (1) date of the disclosure;
  - (2) name of the third party to whom the PHI was disclosed,
  - (3) if known, the address of the third party;
  - (4) brief description of the disclosed information; and
  - (5) brief explanation of the purpose and basis for such disclosure.
- (e) The Parties shall provide one (1) accounting in any twelve (12) months to the Individual without charge. The Parties may charge a reasonable, cost-based fee, for each subsequent request for an accounting by the same Individual if he/she is provided notice and the opportunity to modify his/her request. Such charges shall not exceed any applicable State statutes or rules.

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

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

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

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

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

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

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

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

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

3.3 Security Provisions in Business Associate Contracts. Business Associate shall ensure that any agent to whom it provides Electronic PHI received from, maintained, or created for Covered Entity or that carries out any duties for the Business Associate involving the use, custody, disclosure, creation of, or access to PHI supplied by Covered Entity, shall execute a bilateral contract (or the appropriate equivalent if the agent is a government entity) with Business Associate, incorporating the same restrictions and conditions in this Agreement with Business Associate regarding PHI except for the provision in Section 4.6.

3.4 Tennessee Consumer Notice of System Breach. Business Associate understands that the Covered Entity is an "Information Holder" (as may be Business Associate) under the terms of Tenn. Code Ann. § 47-18-2107, and that in the event of a breach of the Business Associate's security system as defined by that statute and Definition 1.1 of this agreement, the Business Associate shall indemnify and hold the Covered Entity harmless for expenses and/or damages related to the breach. Such obligation shall include, but is not limited to, the mailed notification to any Tennessee resident whose personal information is reasonably believed to have been acquired by an unauthorized individual. In the event that the Business Associate discovers circumstances requiring notification of more than one thousand (1,000) persons at one time, the person shall also notify, without unreasonable delay, all consumer reporting agencies and credit bureaus that compile and maintain files on consumers on a nationwide basis, as defined by 15 U.S.C. § 1681a, of the timing, distribution and content of the notices. Substitute notice, as defined by Tenn. Code Ann. § 47-18-2107(e)(2) and (3), shall not be permitted except as approved in writing in advance by the Covered Entity. The parties agree that PHI includes data elements in addition to those included by "personal information" under Tenn. Code Ann. § 47-18-2107, and agree that Business Associate's responsibilities under this paragraph shall include all PHI.

3.5 Reporting of Security Incidents. The Business Associate shall track all Security Incidents as defined by HIPAA and shall periodically report such Security Incidents in summary fashion as may be requested by the Covered Entity, but not less than annually within sixty (60) days of the anniversary of this Agreement. The Covered Entity shall not consider as Security Incidents, for the purpose of reporting, external activities (port enumeration, etc.) typically associated with the "footprinting" of a computing environment as long as such activities have only identified but not compromised the logical network perimeter, including but not limited to externally facing firewalls and web servers. The Business Associate shall reasonably use its own vulnerability assessment of damage potential and monitoring to define levels of Security Incidents and responses for Business Associate's operations. However, the Business Associate shall expediently notify the Covered Entity's Privacy Officer of any Security Incident, including any "breach of the security of the system" under Tenn Code Ann. § 47-18-2107, immediately upon becoming aware of any unauthorized acquisition including but not limited to use, disclosure, modification, or destruction of PHI by an employee or otherwise authorized user of its system of which it becomes aware.

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

---

---

---

---

---

---

---

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

3.6 Contact for Security Incident Notice. Notification for the purposes of Sections 2.9, 3.4 and 3.5 shall be in writing made by email/fax, certified mail or overnight parcel immediately upon becoming aware of the event, with supplemental notification by facsimile and/or telephone as soon as practicable, to:

HCFA Privacy Officer  
310 Great Circle Rd.  
Nashville Tennessee 37243  
Phone: (615) 507-6855  
Facsimile: (615) 734-5289  
Email: Privacy.TennCare@tn.gov

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

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

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

#### **4. USES AND DISCLOSURES BY BUSINESS ASSOCIATE**

4.1 Use and Disclosure of PHI for Operations on Behalf of Covered Entity. Except as otherwise limited in this



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

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

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

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

4.5 Covered Entity Authorization for Additional Uses. Any use of PHI or other confidential HCFA information by Business Associate, its Subcontractors, its affiliate or Contractor, other than those purposes of this Agreement, shall require express written authorization by the Covered Entity, and a Business Associate agreement or amendment as necessary.

Activities which are prohibited include, but not are not limited to, Marketing or the sharing for Commercial Use or any purpose construed by Covered Entity as Marketing or Commercial use of HCFA enrollee personal or financial information with affiliates, even if such sharing would be permitted by federal or state laws.

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

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

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

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

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

Health Information.

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

## 5. OBLIGATIONS OF COVERED ENTITY

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

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

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

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

## 6. TERM AND TERMINATION

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

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

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

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

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

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

6.3.2 This provision (Section 6.3 and its subsections) shall not prohibit the retention of a single separate, archived file of the PHI and other confidential HCFA information by the Business Associate if the method

of such archiving reasonably protects the continued privacy and security of such information and the Business Associate obtains written approval at such time from the Covered Entity. Otherwise, neither the Business Associate nor its Subcontractors and agents shall retain copies of HCFA confidential information, including enrollee PHI, except as provided herein in subsection 6.3.5.

- 6.3.3 The Parties agree to anticipate the return and/or the destruction of PHI and other HCFA confidential information, and understand that removal of the confidential information from Business Associate's information system(s) and premises will be expected in almost all circumstances. The Business Associate shall notify the Covered Entity whether it intends to return and/or destroy the confidential with such additional detail as requested. In the event Business Associate determines that returning or destroying the PHI and other confidential information received by or created for the Covered Entity at the end or other termination of the Service Agreement is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction unfeasible.
- 6.3.4 Except for Business Associate Agreements in effect prior to April 21, 2005 when the Security Rule became effective, for the renewal or amendment of those same Agreements, or for other unavoidable circumstances, the Parties contemplate that PHI and other confidential information of the Covered Entity shall not be merged or aggregated with data from sources unrelated to that Agreement, or Business Associate's other business data, including for purposes of data backup and disaster recovery, until the parties identify the means of return or destruction of the HCFA data or other confidential information of the Covered Entity at the conclusion of the Service Agreement, or otherwise make an express alternate agreement consistent with the provisions of Section 6.3 and its subsections.
- 6.3.5 Upon written mutual agreement of the Parties that return or destruction of PHI is unfeasible and upon express agreement as to the means of continued protection of the data, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction unfeasible, for so long as Business Associate maintains such PHI.

## **7. MISCELLANEOUS**

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

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

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

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

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

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

address, telephone number, and fax numbers and to promptly supplement this Agreement as necessary with corrected information.

**Notifications relative to Sections 2.7, 3.4 and 3.5 of this Agreement must be reported to the Privacy Officer pursuant to Section 3.6.**

**COVERED ENTITY:**

Wendy Long, MD, Director  
Department of Finance and Adm.  
Health Care Finance & Admin.  
310 Great Circle Rd.  
Nashville, TN 37243  
Fax: (615) 253-5607

**BUSINESS ASSOCIATE:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

7.7 Transmission of PHI or Other Confidential Information. Regardless of the transmittal methods permitted above, Covered Entity and Business Associate agree that all deliverables set forth in this Agreement that are required to be in the form of data transfers shall be transmitted between Covered Entity and Business Associate via the data transfer method specified in advance by Covered Entity. This may include, but shall not be limited to, transfer through Covered Entity's SFTP system. Failure by the Business Associate to transmit such deliverables in the manner specified by Covered Entity, may, at the option of the Covered Entity, result in liquidated damages as set forth in one (1) or more of the Service Agreements between Covered Entity and Business Associate listed above. All such deliverables shall be considered effectively submitted upon receipt or recipient confirmation as may be required.

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

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

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

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

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

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

**HEALTH CARE FINANCE & ADMINISTRATION**

**BUSINESS ASSOCIATE**

By: \_\_\_\_\_

***Wendy Long, MD, Director***

Date: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

State of Tennessee, Dept. of Finance & Adm.  
Health Care Finance and Administration  
310 Great Circle Road Nashville, TN 37243  
Fax: (615) 253-5607

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_