REQUEST FOR PROPOSALS
FOR
THIRD PARTY LIABILITY (TPL) SERVICES

RFP # 31865-00624

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
1. INTRODUCTION

The State of Tennessee, Department of Finance and Administration, Division of TennCare, hereinafter referred to as “the State,” issues 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 respondents, including those that are owned by minorities, women, service-disabled veterans, persons with disabilities and small business enterprises, an opportunity to do business with the state as contractors, subcontractors or suppliers.

1.1. Statement of Procurement Purpose

Third Party Liability ("TPL") refers to the legal obligation of third parties (for example, certain individuals, entities, insurers, or programs) to pay part or all the expenditures for assistance furnished under a State Medicaid program (TennCare is the State’s single state agency Title XIX Medicaid program.) or the federal Children’s Health Insurance Program (“CHIP”) (The State’s CHIP program is CoverKids.). The obligations are referred to as Third Party Resources (“TPR”). By law, all TPRs must meet their legal obligation to pay claims before the Medicaid or CHIP program pays. The division of TennCare must take all reasonable measures to ascertain the legal liability of third parties to pay for care and services that are available to TennCare and CoverKids members. The following are examples of TPRs:

1. Medicare;
2. Health insurance policies, including indemnity and supplemental insurance; casualty coverage, including part or whole of a tort settlement, compromise, action, claim, or any court award judgement;
3. Medical coverage included in conjunction with other benefit or compensation programs, including military and veteran programs, worker’s compensation, child support enforcement, etc.; and
4. Liability for medical expenses as agreed upon or ordered in negligence suits, support settlements, trust funds, etc.

Federal laws and regulations pertaining to a state’s TPL program and relevant to this Contract include, but are not limited to, Sections 1902, 1906 and 1917 of the Social Security Act within the United States Code (42 USC §§ 1396a, 1396e and 1396p, respectively) and regulations in the Code of Federal Regulations at 42 CFR §§ 433.135 through 433.154. These citations may be viewed by accessing the following site: http://www.ecfr.gov.

All Activities in this Contract must be conducted in accordance with the Health Insurance Portability and Accountability Act (“HIPAA”) of 1996 and the Deficit Reduction Act (“DRA”) of 2005.

Additional federal guidance related to TPL requirements is available in the State Medicaid Manual, Part 3 (CMS Pub. 45), as issued and maintained by the U.S. Department of Health and Human Services (“HHS”), Centers for Medicare & Medicaid Services (“CMS”) and TennCare. This manual may be viewed by accessing the following site: http://www.cms.hhs.gov/Manuals/PBM/list.asp.

Tennessee laws, rules and policies pertaining to the TPL program and relevant to this contract include Tennessee Code Annotated (T.C.A.) § 71-5-117; TENN. COMP. R. & REGS. 1200-13-13-.09(6), 1200-13-14-.09(6), 1200-13-13-.10(1)(n), and 1200-13-14-.10(1)(n); TennCare Policies CON 05-001 (rev 2), CON 09-001 (Rev 5), PAY 13-001 (Rev 1), and State Medicaid Plan Section 4, Attachment 4.22-A, 4.22-B, 4.22-C.

As authorized by T.C.A. § 71-5-117 (e), TennCare has delegated many of its TPL functions to its Managed Care Contractors (“MCCs”). See TennCare Statewide Managed Care Contractor Risk Agreement Section A.2.21.4, TennCare Pharmacy Benefits Contractor Risk Agreement with OptumRx section A.42.d.13 and TennCare Dental Benefits Contractor Risk Agreement with DentaQuest section A.70. TennCare’s Estate
Recovery Duties as defined by the Social Security Act section 1917 (b) and 42 C.F.R. § 435.700 et seq. are the subject of a separate Agreement and outside the scope of this Contract.

The purpose of this contract is to procure a Supplier to (1) Identify TPRs and assist TennCare with maintenance of TennCare's Resource File, (2) Identify and recover casualty subrogation related to Pharmacy Claims, Dental Claim and Mass Torts, (3) Provide Medicare Outreach to encourage TennCare Members who are eligible for Medicare to apply for Medicare, (4) Perform an annual review of the payment of Medicare crossover claims by TennCare and its Partners, (5) Provide Credit Balance Audits and recover recoupments, (6) Perform go-behind billing, and (7) Perform additional recovery projects as authorized by TennCare and agreed to by the parties.

1.1.2 See approximations listed within RFP Attachment 6.3. The estimated numbers are based off of a one (1) year period.

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 # 31865-00624

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:

   Donovan Morgan, Assistant Director of Contracts
   Department of Finance and Administration
   Division of TennCare
   310 Great Circle Road
   Nashville, TN 37243
   (615) 741-0041
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, service-disabled veteran-owned, businesses owned by persons with disabilities, and small businesses as well as general, public information relating to this RFP (visit https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo--governor-s-office-of-diversity-business-enterprise--godbe--godbe-general-contacts.html 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
Department of Finance and Administration
Division of TennCare
310 Great Circle Road
Nashville, TN 37243
(615) 507-6841 (Phone)
Talley.A.Olson@tn.gov

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. It is encouraged for suppliers to submit bids digitally.

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: https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo--supplier-information/request-for-proposals--rfp--opportunities1.html.

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:

[Click here to join the meeting](#)

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; and
- 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. 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.

<table>
<thead>
<tr>
<th>EVENT</th>
<th>TIME (central time zone)</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. RFP Issued</td>
<td></td>
<td>August 2, 2021</td>
</tr>
<tr>
<td>2. Disability Accommodation Request Deadline</td>
<td>2:00 p.m.</td>
<td>August 5, 2021</td>
</tr>
<tr>
<td>3. Pre-response Conference</td>
<td>10:00 a.m. – 11:00 a.m.</td>
<td>August 12, 2021</td>
</tr>
<tr>
<td>4. Notice of Intent to Respond Deadline</td>
<td>2:00 p.m.</td>
<td>August 13, 2021</td>
</tr>
<tr>
<td>5. Written “Questions &amp; Comments” Deadline</td>
<td>2:00 p.m.</td>
<td>August 27, 2021</td>
</tr>
<tr>
<td>6. State Response to Written “Questions &amp; Comments”</td>
<td></td>
<td>September 10, 2021</td>
</tr>
<tr>
<td>7. Response Deadline</td>
<td>2:00 p.m.</td>
<td>September 24, 2021</td>
</tr>
<tr>
<td>8. State Completion of Technical Response Evaluations</td>
<td></td>
<td>October 8, 2021</td>
</tr>
<tr>
<td>9. State Opening &amp; Scoring of Cost Proposals</td>
<td>2:00 p.m.</td>
<td>October 11, 2021</td>
</tr>
<tr>
<td>10. Cost Negotiation</td>
<td></td>
<td>October 12, 2021 through October 14, 2021</td>
</tr>
<tr>
<td>11. State Notice of Intent to Award Released and RFP Files Opened for Public Inspection</td>
<td>2:00 p.m.</td>
<td>October 15, 2021</td>
</tr>
<tr>
<td>12. End of Open File Period</td>
<td></td>
<td>October 22, 2021</td>
</tr>
<tr>
<td>13. State sends contract to Contractor for signature</td>
<td></td>
<td>October 26, 2021</td>
</tr>
<tr>
<td>14. Contractor Signature Deadline</td>
<td>2:00 p.m.</td>
<td>November 2, 2021</td>
</tr>
</tbody>
</table>

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 should duplicate and 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 correspond 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.


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 on a separate email or CD or USB flash drive 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 Technical Response and Cost Proposal files meet all form and content requirements, including all required signatures, as detailed within this RFP.

3.2.2. A Respondent must submit their response as specified in one of the two formats below.

3.2.1.1. Digital Media Submission

3.2.2.1.1. Technical Response

The Technical Response document should be 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 and should be clearly identified as the:

“RFP #31865-00624 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 clearly labeled:

“RFP #31865-00624 TECHNICAL RESPONSE COPY”

The sealed customer references should be delivered by each reference in accordance with RFP Attachment 6.2, Section B.17

3.2.2.1.2. Cost Proposal:

The Cost Proposal should be in the form of one (1) digital document in “PDF” or “XLS” format properly recorded on a separate, otherwise blank, standard CD-R recordable disc or USB flash drive clearly labeled:

“RFP #31865-00624 COST PROPOSAL”

An electronic or facsimile signature, as applicable, on the Cost Proposal is acceptable.

3.2.2.2. E-Mail Submission

3.2.2.2.1. Technical Response

The Technical Response document should be in the form of one (1) digital document in "PDF" format or other easily accessible digital format attached to an e-mail to the Solicitation Coordinator. Both the subject and file name should both be clearly identified as follows:

“RFP # 31865-00624 TECHNICAL RESPONSE”
The customer references should be delivered by each reference in accordance with RFP Attachment 6.2, Section B.17.

3.2.2.2.2. **Cost Proposal:**

The Cost Proposal should be in the form of one (1) digital document in “PDF” or “XLS” format or other easily accessible digital format attached to an e-mail to the Solicitation Coordinator. Both the subject and file name should both be clearly identified as follows:

"RFP # 31865-00624 COST PROPOSAL"

An electronic or facsimile signature, as applicable, on the Cost Proposal is acceptable.

3.2.3. For e-mail submissions, the Technical Response and Cost Proposal documents must be dispatched to the Solicitation Coordinator in separate e-mail messages. For digital media submissions, a Respondent must separate, seal, package, and label the documents and copies for delivery as follows:

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

"DO NOT OPEN… RFP # 31865-00624 TECHNICAL RESPONSE FROM [RESPONDENT LEGAL ENTITY NAME]"

3.2.3.2. The Cost Proposal must be placed in a separate, sealed package that is clearly labeled:

"DO NOT OPEN… RFP # 31865-00624 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 # 31865-00624 SEALED TECHNICAL RESPONSE & SEALED COST PROPOSAL FROM [RESPONDENT LEGAL ENTITY NAME]"

3.2.3.4. Any Respondent wishing to submit a Response in a format other than digital may do so by contacting the Solicitation Coordinator.

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:

Donovan Morgan, Assistant Director of Contracts
Department of Finance and Administration
Division of TennCare
310 Great Circle Road
Nashville TN, 37243
Donovan.Morgan2@tn.gov

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.

3.3.9. This RFP is also subject to Tenn. Code Ann. § 12-4-101—105.

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
The State will 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. To register, please visit the Department of Revenue’s Tennessee Taxpayer Access Point (TNTAP) website for Online Registration and the Vendor Contract Questionnaire. These resources are available at the following: [https://tntap.tn.gov/eservices/_/#1](https://tntap.tn.gov/eservices/_/#1)

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.

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 Tenn. Code Ann. § 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 Effective Date or after the Contract Term.

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, 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.

<table>
<thead>
<tr>
<th>EVALUATION CATEGORY</th>
<th>MAXIMUM POINTS POSSIBLE</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Qualifications &amp; Experience (refer to RFP Attachment 6.2., Section B)</td>
<td>15</td>
</tr>
<tr>
<td>Technical Qualifications, Experience &amp; Approach (refer to RFP Attachment 6.2., Section C)</td>
<td>60</td>
</tr>
<tr>
<td>Cost Proposal (refer to RFP Attachment 6.3.)</td>
<td>25</td>
</tr>
</tbody>
</table>

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 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 terms and conditions of a contract with the apparent best evaluated Respondent, the State reserves the right to bypass the apparent best evaluated Respondent and enter into terms and conditions 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 terms and conditions or pricing negotiations 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 ATTACHMENT 6.1.

RFP # 31865-00624 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 the RFP Attachment 6.6., Pro Forma Contract for the total Contract Term.
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 bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to §12-12-106.” For reference purposes, the list is currently available online at: https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-library--public-information-library.html.

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.

<table>
<thead>
<tr>
<th>Respondent Legal Entity Name:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>RESPONDENT LEGAL ENTITY NAME:</strong></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Response Page # (Respondent completes)</th>
<th>Item Ref.</th>
<th>Section A—Mandatory Requirement Items</th>
<th>Pass/Fail</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>The Response must be delivered to the State no later than the Response Deadline specified in the RFP Section 2, Schedule of Events.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>The Technical Response and the Cost Proposal documentation must be packaged separately as required (refer to RFP Section 3.2., et. seq.).</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>The Technical Response must NOT contain cost or pricing information of any type.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>The Technical Response must NOT contain any restrictions of the rights of the State or other qualification of the response.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>A Respondent must NOT submit alternate responses (refer to RFP Section 3.3.).</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>A Respondent must NOT submit multiple responses in different forms (as a prime and a subcontractor) (refer to RFP Section 3.3.).</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>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.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>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.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>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.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>A.3. Provide a current bank reference indicating that the Respondent’s business relationship with the financial institution is in positive standing. Such reference must be written in the form of a standard business letter, signed, and dated within the past three (3) months.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>A.4. 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, Medicaid, and/or CHIP programs pursuant to Sections 1128 of the Social Security Act.</td>
<td></td>
</tr>
<tr>
<td>Response Page # (Respondent completes)</td>
<td>Item Ref.</td>
<td>Section A—Mandatory Requirement Items</td>
<td>Pass/Fail</td>
</tr>
<tr>
<td>--------------------------------------</td>
<td>----------</td>
<td>------------------------------------------------------------------------------------------------------</td>
<td>-----------</td>
</tr>
<tr>
<td>A.5</td>
<td></td>
<td>Provider written attestation that the Respondent does attest, certify, warrant and assure that the Contract has at least 3 years’ experience working with projects of similar size and scope. (see factors listed in RFP Section 6.3 – Cost Proposal and Scoring Guide)</td>
<td></td>
</tr>
</tbody>
</table>

*State Use – Solicitation Coordinator Signature, Printed Name & Date:*
## 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.

<p>| RESPONDENT LEGAL ENTITY NAME: |  |</p>
<table>
<thead>
<tr>
<th align="left">Response Page # (Respondent completes)</th>
<th align="left">Item Ref.</th>
<th align="left">Section B—General Qualifications &amp; Experience Items</th>
</tr>
</thead>
<tbody>
<tr>
<td align="left"></td>
<td align="left">B.1.</td>
<td align="left">Detail the name, e-mail address, mailing address, telephone number, and facsimile number of the person the State should contact regarding the response.</td>
</tr>
<tr>
<td align="left"></td>
<td align="left">B.2.</td>
<td align="left">Describe the Respondent’s form of business (i.e., individual, sole proprietor, corporation, nonprofit corporation, partnership, limited liability company) and business location (physical location or domicile).</td>
</tr>
<tr>
<td align="left"></td>
<td align="left">B.3.</td>
<td align="left">Detail the number of years the Respondent has been in business.</td>
</tr>
<tr>
<td align="left"></td>
<td align="left">B.4.</td>
<td align="left">Briefly describe how long the Respondent has been providing the goods or services required by this RFP.</td>
</tr>
<tr>
<td align="left"></td>
<td align="left">B.5.</td>
<td align="left">Describe the Respondent’s number of employees, client base, and location of offices.</td>
</tr>
<tr>
<td align="left"></td>
<td align="left">B.6.</td>
<td align="left">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.</td>
</tr>
<tr>
<td align="left"></td>
<td align="left">B.7.</td>
<td align="left">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 <em>nolo contendere</em> to any felony. If so, include an explanation providing relevant details.</td>
</tr>
<tr>
<td align="left"></td>
<td align="left">B.8.</td>
<td align="left">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.</td>
</tr>
<tr>
<td align="left"></td>
<td align="left">B.9.</td>
<td align="left">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.</td>
</tr>
<tr>
<td align="left"></td>
<td align="left">B.10.</td>
<td align="left">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 impair the Respondent’s performance in a contract pursuant to this RFP.</td>
</tr>
</tbody>
</table>

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.
**RESPONDENT LEGAL ENTITY NAME:**

<table>
<thead>
<tr>
<th>Response Page # (Respondent completes)</th>
<th>Item Ref.</th>
<th>Section B—General Qualifications &amp; Experience Items</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>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.</td>
</tr>
<tr>
<td>B.11.</td>
<td></td>
<td>Provide a brief, descriptive statement detailing evidence of the Respondent’s ability to deliver the goods or services sought under this RFP (<em>e.g.</em>, prior experience, training, certifications, resources, program and quality management systems, <em>etc.</em>).</td>
</tr>
<tr>
<td>B.12.</td>
<td></td>
<td>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.</td>
</tr>
<tr>
<td>B.13.</td>
<td></td>
<td>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.</td>
</tr>
<tr>
<td>B.14.</td>
<td></td>
<td>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; and (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.</td>
</tr>
</tbody>
</table>
| B.15.                                 |           | Provide documentation of the Respondent’s commitment to diversity as represented by the following: (a) Business Strategy. Provide a description of the Respondent’s existing programs and procedures designed to encourage and foster commerce with business enterprises owned by minorities, women, service-disabled veterans, persons with disabilities, and small business enterprises. Please also include a list of the Respondent’s certifications as a diversity business, if applicable. (b) Business Relationships. Provide a listing of the Respondent’s current contracts with business enterprises owned by minorities, women, service-disabled veterans, persons with disabilities, and small business enterprises. Please include the following information: (i) contract description; (ii) contractor name and ownership characteristics (*i.e.*, ethnicity, gender, service-disabled veteran-owned or persons with disabilities); (iii) contractor contact name and telephone number. (c) Estimated Participation. Provide an estimated level of participation by business enterprises owned by minorities, women, service-disabled veterans, persons with disabilities 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 **DO NOT INCLUDE DOLLAR AMOUNTS**); (ii) anticipated goods or services contract descriptions;
### Section B—General Qualifications & Experience Items

<table>
<thead>
<tr>
<th>Item Ref.</th>
<th>(iii) names and ownership characteristics (i.e., ethnicity, gender, service-disabled veterans, or disability) of anticipated subcontractors and supply contractors.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>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.</td>
</tr>
<tr>
<td></td>
<td>(d) Workforce. Provide the percentage of the Respondent’s total current employees by ethnicity and gender.</td>
</tr>
<tr>
<td></td>
<td>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, service-disabled veterans, persons with disabilities, and small business enterprises and who offer a diverse workforce.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>B.16.</th>
<th>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:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(a) the name, title, telephone number and e-mail address of the State contact knowledgeable about the contract;</td>
</tr>
<tr>
<td></td>
<td>(b) the procuring State agency name;</td>
</tr>
<tr>
<td></td>
<td>(c) a brief description of the contract’s scope of services;</td>
</tr>
<tr>
<td></td>
<td>(d) the contract period; and</td>
</tr>
<tr>
<td></td>
<td>(e) the contract number.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>B.17.</th>
<th>Provide customer references from individuals who are not current or former State employees for projects similar to the goods or services sought under this RFP and which represent:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• two (2) accounts Respondent currently services that are similar in size to the State; and</td>
</tr>
<tr>
<td></td>
<td>• three (3) completed projects.</td>
</tr>
<tr>
<td></td>
<td>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 must 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.</td>
</tr>
<tr>
<td></td>
<td>The Respondent will be solely responsible for obtaining fully completed reference questionnaires and ensuring they are e-mailed to the solicitation coordinator or including them in the sealed Technical Response. In order to obtain and submit the completed reference questionnaires following one of the two process below.</td>
</tr>
</tbody>
</table>

#### Written:

(a) Add the Respondent’s name to the standard reference questionnaire at RFP Attachment 6.4. and make a copy for each reference.  
(b) Send a reference questionnaire and new, standard #10 envelope to each reference.  
(c) Instruct the reference to:  
   (i) complete the reference questionnaire;  
   (ii) sign and date the completed reference questionnaire;
## RESPONDENT LEGAL ENTITY NAME:

<table>
<thead>
<tr>
<th>Response Page # (Respondent completes)</th>
<th>Item Ref.</th>
<th>Section B— General Qualifications &amp; Experience Items</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>(iii) seal the completed, signed, and dated reference questionnaire within the envelope provided;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(iv) sign his or her name in ink across the sealed portion of the envelope; and</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(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).</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(d) Do NOT open the sealed references upon receipt;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(e) Enclose all sealed reference envelopes within a larger, labeled envelope for inclusion in the Technical Response as required.</td>
</tr>
</tbody>
</table>

**Email:**

- (a) Add the Respondent’s name to the standard reference questionnaire at RFP Attachment 6.4. and make a copy for each reference.
- (b) E-mail the reference with a copy of the standard reference questionnaire.
- (c) Instruct the reference to:
  - (i) complete the reference questionnaire;
  - (ii) sign and date the completed reference questionnaire;
  - (iii) E-mail the reference directly to the Solicitation Coordinator by the RFQ Technical Response Deadline with the Subject line of the e-mail as “[Respondent Name] Reference for RFP 31865-00624.”

### NOTES:

- The State will not accept late references or references submitted by any means other than the two which are described above, and each reference questionnaire submitted must be completed as required.
- The State will not review more than the number of required references indicated above.
- While the State will base its reference check on the contents of the reference e-mails or 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.
- The State is under no obligation to clarify any reference information.

### B.18. Provide a statement and any relevant details addressing whether the Respondent is any of the following:

- (a) is presently debarred, suspended, proposed for debarment, or voluntarily excluded from covered transactions by any federal or state department or agency;
- (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;
- (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
- (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

### SCORE (for all Section B—Qualifications & Experience Items above):  

(maximum possible score = 15)
# Section B — General Qualifications & Experience Items

<table>
<thead>
<tr>
<th>Response Page # (Respondent completes)</th>
<th>Item Ref.</th>
<th>Section B — General Qualifications &amp; Experience Items</th>
</tr>
</thead>
</table>

**State Use – Evaluator Identification:**
# 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:

<table>
<thead>
<tr>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 = little value</td>
</tr>
<tr>
<td>1 = poor</td>
</tr>
<tr>
<td>2 = fair</td>
</tr>
<tr>
<td>3 = satisfactory</td>
</tr>
<tr>
<td>4 = good</td>
</tr>
<tr>
<td>5 = excellent</td>
</tr>
</tbody>
</table>

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.

<table>
<thead>
<tr>
<th>RESPONDENT LEGAL ENTITY NAME:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Response Page #</strong> (Respondent completes)</td>
<td><strong>Section C—Technical Qualifications, Experience &amp; Approach Items</strong></td>
</tr>
<tr>
<td>C.1.</td>
<td>Provide a narrative that illustrates the Respondent’s understanding of the State’s requirements and project schedule.</td>
</tr>
<tr>
<td>C.2.</td>
<td>Provide a narrative that illustrates how the Respondent will complete the scope of services, accomplish required objectives, and meet the State’s project schedule.</td>
</tr>
<tr>
<td>C.3.</td>
<td>Provide a narrative that illustrates how the Respondent will manage the project, ensure completion of the scope of services, and accomplish required objectives within the State’s project schedule.</td>
</tr>
<tr>
<td>C.4.</td>
<td>Provide a narrative that illustrates how Respondent will comply with the requirements of pro forma Section A.6. that addresses each subparagraph of that section.</td>
</tr>
<tr>
<td>C.5.</td>
<td>Provide a narrative that illustrates how Respondent will comply with the requirements of pro forma Section A.7. that addresses each subparagraph of that section.</td>
</tr>
<tr>
<td>C.6.</td>
<td>Provide a narrative that discloses and describes any relationship that Respondent has with a TennCare partner under pro forma Section A.10. For each relationship disclosed please provide a narrative describing any potential conflicts of interest or explains why Respondent believes that no conflict exists</td>
</tr>
<tr>
<td>C.7.</td>
<td>Provide a Narrative that illustrates how the Respondent will comply with the requirements of pro forma Section A.12.</td>
</tr>
<tr>
<td>C.8.</td>
<td>Provide a Narrative that illustrates how the Respondent will comply with the requirements of pro forma Section A.13.</td>
</tr>
<tr>
<td>C.9.</td>
<td>Provide a Narrative that illustrates how the Respondent will comply with the requirements of pro forma Section A.15</td>
</tr>
<tr>
<td>C.10.</td>
<td>Provide a Narrative that illustrates how the Respondent will comply with the requirements of pro forma Section A.16</td>
</tr>
<tr>
<td>C.11.</td>
<td>Provide a Narrative that illustrates how the Respondent will comply with the requirements of pro forma Section A.17</td>
</tr>
</tbody>
</table>
RESPONDENT LEGAL ENTITY NAME:

<table>
<thead>
<tr>
<th>Response Page # (Respondent completes)</th>
<th>Item Ref.</th>
<th>Section C — Technical Qualifications, Experience &amp; Approach Items</th>
<th>Item Score</th>
<th>Evaluation Factor</th>
<th>Raw Weighted Score</th>
</tr>
</thead>
</table>

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.

**Total Raw Weighted Score:**

(sum of Raw Weighted Scores above)

<table>
<thead>
<tr>
<th>Total Raw Weighted Score</th>
<th>X 60</th>
<th>= SCORE:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maximum Possible Raw Weighted Score</td>
<td>(maximum possible score)</td>
<td>(i.e., 5 x the sum of item weights above)</td>
</tr>
</tbody>
</table>

State Use – Evaluator Identification:

State Use – Solicitation Coordinator Signature, Printed Name & Date:
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.

| RESPONDENT SIGNATURE: | | |
|---|---|---
| PRINTED NAME & TITLE: | | |
| DATE: | | |
| RESPONDENT LEGAL ENTITY NAME: | | |

<table>
<thead>
<tr>
<th>Cost Item Description</th>
<th>Proposed Cost</th>
<th>State Use Only</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Evaluation Factor</td>
</tr>
<tr>
<td>Each new resource added to TennCare’s file A.12.c (February 1, 2022 through January 31, 2025) *Amount listed is an approximation over a three-year term</td>
<td>$ / resource added</td>
<td></td>
</tr>
<tr>
<td>Casualty Subrogation A.13 (February 1, 2022 through January 31, 2025) *Amount listed is an approximation over a three-year term</td>
<td>% per $ collected</td>
<td></td>
</tr>
<tr>
<td>Flat Fee - Annual Report on Medicare Crossover Claims A.15 (February 1, 2022 through January 31, 2025)</td>
<td>$ / Annual Report</td>
<td></td>
</tr>
<tr>
<td>Contingency Fee - Credit Balance Audits and Recoupments A.16 (February 1, 2022 through January 31, 2025) *Amount listed is an approximation over a three-year term</td>
<td>% per $ collected</td>
<td></td>
</tr>
</tbody>
</table>
## RESPONDENT LEGAL ENTITY NAME:

<table>
<thead>
<tr>
<th>Cost Item Description</th>
<th>Proposed Cost</th>
<th>State Use Only</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Evaluation Factor</td>
<td>Evaluation Cost (cost x factor)</td>
</tr>
<tr>
<td>Contingency Fee - Go-behind billing A.17</td>
<td>% per $ collected</td>
<td>96,660,000</td>
</tr>
<tr>
<td>(February 1, 2022 through January 31, 2025)</td>
<td>Amount listed is an approximation over a three-year term</td>
<td></td>
</tr>
</tbody>
</table>

### Additional Recovery Projects

<table>
<thead>
<tr>
<th>% of Collections Per Project</th>
<th>(February 1, 2022 through January 31, 2025)</th>
</tr>
</thead>
<tbody>
<tr>
<td>*Amount listed is an approximation over a three year term</td>
<td>50,000</td>
</tr>
</tbody>
</table>

### Option Year 1
(February 1, 2025 through January 31, 2026)

<table>
<thead>
<tr>
<th>Cost Item Description</th>
<th>Proposed Cost</th>
<th>State Use Only</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Evaluation Factor</td>
<td>Evaluation Cost (cost x factor)</td>
</tr>
<tr>
<td>Each new resource added to TennCare’s file A.12.c</td>
<td>$ / resource added</td>
<td>185,000</td>
</tr>
<tr>
<td>(February 1, 2025 through January 31, 2026)</td>
<td>*Amount listed is an approximation over a one-year option term</td>
<td></td>
</tr>
<tr>
<td>Casualty Subrogation A.13</td>
<td>% per $ collected</td>
<td>560,000</td>
</tr>
<tr>
<td>(February 1, 2025 through January 31, 2026)</td>
<td>*Amount listed is an approximation over a one-year option term</td>
<td></td>
</tr>
<tr>
<td>Flat Fee - Annual Report on Medicare Crossover Claims A.15</td>
<td>$ / Annual Report</td>
<td>1</td>
</tr>
<tr>
<td>(February 1, 2025 through January 31, 2026)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contingency Fee - Credit Balance Audits and Recoupments A.16</td>
<td>% per $ collected</td>
<td>50,000</td>
</tr>
<tr>
<td>(February 1, 2025 through January 31, 2026)</td>
<td>*Amount listed is an approximation over a one-year option term</td>
<td></td>
</tr>
<tr>
<td>Contingency Fee - Go-behind billing A.17</td>
<td>% per $ collected</td>
<td>32,220,000</td>
</tr>
<tr>
<td>(February 1, 2025 through January 31, 2026)</td>
<td>*Amount listed is an approximation over a one-year option term</td>
<td></td>
</tr>
</tbody>
</table>

### Additional Recovery Projects

<table>
<thead>
<tr>
<th>% of Collections Per Project</th>
<th>(February 1, 2025 through January 31, 2026)</th>
</tr>
</thead>
<tbody>
<tr>
<td>*Amount listed is an approximation over a one-year option term</td>
<td>25,000</td>
</tr>
<tr>
<td>Cost Item Description</td>
<td>Proposed Cost</td>
</tr>
<tr>
<td>--------------------------------------------------------------------------------------</td>
<td>---------------</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Option Year 2</strong></td>
<td></td>
</tr>
<tr>
<td><em>(February 1, 2026 through January 31, 2027)</em></td>
<td></td>
</tr>
<tr>
<td>Each new resource added to TennCare’s file A.12.c <em>(February 1, 2026 through January 31, 2027)</em></td>
<td>$ / resource added</td>
</tr>
<tr>
<td>Casually Subrogation A.13 <em>(February 1, 2026 through January 31, 2027)</em></td>
<td>% per $ collected</td>
</tr>
<tr>
<td>Flat Fee - Annual Report on Medicare Crossover Claims A.15 <em>(February 1, 2026 through January 31, 2027)</em></td>
<td>$ / Annual Report</td>
</tr>
<tr>
<td>Contingency Fee - Credit Balance Audits and Recoupments A.16 <em>(February 1, 2026 through January 31, 2027)</em></td>
<td>% per $ collected</td>
</tr>
<tr>
<td>Contingency Fee - Go-behind billing A.17 <em>(February 1, 2026 through January 31, 2027)</em></td>
<td>% per $ collected</td>
</tr>
<tr>
<td><strong>Additional Recovery Projects</strong></td>
<td></td>
</tr>
<tr>
<td>% of Collections Per Project <em>(February 1, 2026 through January 31, 2027)</em></td>
<td></td>
</tr>
</tbody>
</table>

**EVALUATION COST AMOUNT** *(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.

\[
\text{SCORE:} = \frac{\text{lowest evaluation cost amount from all proposals} \times 25}{\text{evaluation cost amount being evaluated}}
\]
<table>
<thead>
<tr>
<th>Cost Item Description</th>
<th>Proposed Cost</th>
<th>State Use Only</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Evaluation Factor</td>
</tr>
</tbody>
</table>

State Use – Solicitation Coordinator Signature, Printed Name & Date:
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.).
RFP # 31865-00624 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 and follow either process outlined below;

Physical:
- 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

E-Mail:
- email the completed Questionnaire to Donovan Morgan at Donovan.Morgan2@tn.gov

(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.

<table>
<thead>
<tr>
<th>NAME:</th>
</tr>
</thead>
<tbody>
<tr>
<td>TITLE:</td>
</tr>
<tr>
<td>TELEPHONE #:</td>
</tr>
<tr>
<td>E-MAIL ADDRESS:</td>
</tr>
</tbody>
</table>

(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.

1 2 3 4 5
least satisfied most satisfied
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.*

1 2 3 4 5

least satisfied most satisfied

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.

1  2  3  4  5
least satisfied  most satisfied

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.

1  2  3  4  5
least satisfied  most satisfied

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

<table>
<thead>
<tr>
<th>GENERAL QUALIFICATIONS &amp; EXPERIENCE (maximum: 15)</th>
<th>RESPONDENT NAME</th>
<th>RESPONDENT NAME</th>
<th>RESPONDENT NAME</th>
</tr>
</thead>
<tbody>
<tr>
<td>EVALUATOR NAME</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>EVALUATOR NAME</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>REPEAT AS NECESSARY</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>AVERAGE:</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>TECHNICAL QUALIFICATIONS, EXPERIENCE &amp; APPROACH (maximum: 60)</th>
<th>RESPONDENT NAME</th>
<th>RESPONDENT NAME</th>
<th>RESPONDENT NAME</th>
</tr>
</thead>
<tbody>
<tr>
<td>EVALUATOR NAME</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>EVALUATOR NAME</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>REPEAT AS NECESSARY</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>AVERAGE:</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>COST PROPOSAL (maximum: 25)</th>
<th>SCORE:</th>
<th>SCORE:</th>
<th>SCORE:</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>TOTAL RESPONSE EVALUATION SCORE: (maximum: 100)</th>
<th>SCORE:</th>
<th>SCORE:</th>
<th>SCORE:</th>
</tr>
</thead>
</table>

Solicitation Coordinator Signature, Printed Name & Date:
RFP # 31865-00624 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.
This Contract, by and between the State of Tennessee, Department of Finance and Administration, Division of TennCare (“State” or “TennCare”) and Contractor Legal Entity Name (“Contractor”), is for the provision of Third Party Liability services, as further defined in the "SCOPE.” State and 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, 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 or Contractor, the Contractor may be requested to sign mutually agreeable documents, including but not limited to Non-Disclosure Agreements, 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. As determined and prescribed by TennCare, Non-Disclosure Agreements shall govern all information the Contractor receives or has disclosed to it, or otherwise becomes known to Contractor during the performance of this Contract, from any other State Contractor.

Nothing in this Section, including failure to negotiate and enter into a Non-Disclosure Document acceptable to Contractor with another State Contractor, relieves the Contractor of its duty to perform any requirements or deliverables under this Contract. 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.

A.3 Definitions. For purposes of this Contract, definitions shall be as follows and as set forth in the Contract:

a. Accredited Standards Committee (ASC): a committee that endeavors to structure data standards in a manner that computer programs can translate data to and from internal formats without extensive reprogramming.

b. Adjudicated Claim: A claim for which TennCare or Partners has made a final determination of the amount owed to the provider (Adjudicated Claim Amount).

c. Casualty Subrogation: Recoveries that are obtained from settlements or awards to Members, as well as Joint Liability and Mass Tort Cases for injuries or illness resulting from automobile accidents, malpractice suits, workers’ compensation cases, or any other matter identified in writing by TennCare.
d. Casualty Subrogation Reports: Reports concerning the Vendors Casualty Subrogation activities.

e. Claim: Any payment made or owed by TennCare, its MCOs, its DBM, its PBM or any of TennCare’s Partners. Unless explicitly limited “Claim” shall include all services rendered in every category that TennCare administers now or will administer during the term of this contract. Currently TennCare administers Medicaid (“TennCare”) CHIP (“CoverKids”), regardless of which program (Medicaid, CHIP, etc.) under which the member receives services.

f. Claim level: generally, refers to posting items to the relevant Claim.

g. Contractor backlog: An accumulation of uncompleted work that Contractor is required to perform or matters that the Contractor needs to deal with.

h. Cost Avoidance: When the provider of the services must bill and collect from a liable third party before seeking payment from TennCare.

i. CoverKids Program (“CoverKids”): is a federal program, the “State Child Health Plan Under Title XXI of the Social Security Act State Children’s Health Insurance Program” and is distinct and separate from the Title XIX TennCare program and was created by T.C.A. §§ 71-3-1101, et seq.

j. CHAMPUS: Civilian Health and Medical Program of the Uniformed Services.

k. Date of Service: The date of service on the claim submitted by the provider. In the event that service took place over more than one day, then the date of service is the last day of service.

l. DBM (Dental Benefits Manager): a contractor approved by the Tennessee Department of Finance and Administration to provide dental benefits to enrollees in the TennCare Program.

m. DEERS: Military’s Defense Enrollment Eligibility and Reporting System.

n. Denial Report: a report containing information about claims that were filed by the Contractor and Denied.

o. Filed Claims Report: a report containing information about claims that were filed by the Contractor.

p. Go-Behind Billing: occurs when TennCare pays a claim and then seeks reimbursement from a TPR. Third Party Resource.

q. Implementation Date: February 1, 2022

r. Key Staff : Dedicated full-time staff performing Third Party Liability services exclusively for TennCare TPL

s. Lockbox: A remote secure location, such as a post office box, where payors send payments and where a local financial institution receives those payments and transfers to TennCare’s account.

r. MCC (Managed Care Contractor): (a) A Managed Care Organization, Pharmacy Benefits Manager and/or a Dental Benefits Manager which has signed a TennCare Contractor Risk Agreement with the State and operates a provider network and provides covered health services to TennCare or CoverKids enrollees; or (b) A Pharmacy Benefits Manager, Behavioral Health Organization or Dental Benefits Manager which subcontracts with a Managed Care Organization to provide services; or (c) A State government agency that contracts with TennCare for the provision of services.
s. MCO (Managed Care Organization): an appropriately licensed Health Maintenance Organization (HMO) approved by the Bureau of TennCare as capable of providing medical, behavioral, and long-term care services in the TennCare or CoverKids Program.

t. Mass Tort: a civil action involving numerous plaintiffs against one or a few defendants that arises because the defendant caused numerous injuries through the same or similar act of harm (e.g. a prescription drug, a medical device, a defective product, a train accident, a plane crash, pollution or construction disaster).

u. Medicaid: the federal- and state-financed, state-run program of medical assistance pursuant to Title XIX of the Social Security Act. Medicaid eligibility in Tennessee is determined by the Tennessee Department of Human Services, under contract to the Tennessee Department of Finance and Administration. Tennessee residents determined eligible for SSI benefits by the Social Security Administration are also enrolled in Tennessee’s TennCare Medicaid program.

v. Medicare Crossover Claims Report: A report that Contractor shall submit to TennCare on an annual basis.

w. Medicare Crossover Claims Services: A group of services provided by the Contractor regarding the payment of claims for which Medicare is partially liable.

x. Medicaid Management Information System (MMIS): a mechanized claims processing and information retrieval system for Medicaid that's required by the federal government.

y. Medicare: the program administered through the Social Security Administration pursuant to Title XVIII, available to most individuals upon attaining age sixty-five (65), to some disabled individuals under age sixty-five (65), and to individuals having End Stage Renal Disease (ESRD).

z. Monthly Report: Report due on the tenth (10th) business day of each month.

aa. National Provider Identifier (NPI): a Health Insurance Portability and Accountability Act (HIPAA) Administrative Simplification Standard. The NPI is a unique identification number for covered health care providers.

bb. “Non-Disclosure Agreement” or “Non-Disclosure Documents”: An agreement by which one or more parties agree not to disclose confidential information that they have shared with each other as a necessary part of doing business together.

c. Paid Claims Report: a report containing information about claims that were filed by the Contractor.

dd. Pay and Chase: occurs when TennCare pays a claim and then seeks reimbursement from a TPR. Third Party Resource.

ee. PBM (Pharmacy Benefits Manager): an organization approved by the Tennessee Department of Finance and Administration to administer pharmacy benefits to enrollees to the extent such services are covered by the TennCare and/or the CoverKids Program. A PBM may have a signed TennCare Contractor Risk Agreement with the State or may be a subcontractor to an MCO.

ff. Provider: an appropriately licensed institution, facility, agency, person, corporation, partnership, or association that delivers health care services. Providers are categorized as either TennCare Providers or Non-TennCare Providers. TennCare Providers may be further categorized as being one of the following: (a) Participating Providers or In-Network Providers (b) Non-Participating Providers or Out-of-Network Providers (c) Out-
of-State Emergency Providers. Definitions of each of these terms are contained in TENN. COMP. R. & REGS. 1200-13-13-.01.

**gg. Readiness Review:** A process by which the Contractor demonstrates its Readiness to perform the requirements of this contract.

**hh. Report Module:** Part of a computer system that merges information from the system into reports using pre-defined Templates.

**ii. Resource File:** TennCare’s file containing TPR information provided to TennCare from a variety of sources.

**jj. Systems Audit Trail:** is a series of records of computer events, about an operating system, an application, or user activities.

**kk. Template:** standardized file with text, formatting and field codes used as a starting point for new work.

**kk. TennCare:** shall mean the program administered by the Single State agency as designated by the State and CMS pursuant to Title XIX of the Social Security Act and the Section 1115 Research and Demonstration waiver granted to the State of Tennessee.

**ll. TennCare’s Internal Control Number (ICN):** A unique number assigned to each claim processed by TennCare.

**mm. TennCare Partner:** Any entity that is authorize by contract, statute or otherwise to aid TennCare in performance of its duties. Examples include but are not limited to: TennCare MCO’s, PBM or DBM, CMS, TennCare Contractor’s, other State agencies, and TennCare affiliates.

**nn. TennCare Resource File:** A file created, maintained and distributed by TennCare containing information on potential third party resources.

**oo. Third Party Liability (TPL):** an entity’s legal obligation to pay party or all of the expenditures for assistance furnished by TennCare or its Partners.

**pp. Third Party Resource (TPR):** an entity that has a legal obligation to pay part or all of the expenditures for assistance furnished by TennCare or its Partners.

**qq. TPL Lead:** A collection of data regarding a potential, but unverified, source of TPR.

**rr. TPR Process Reports:** Reports concerning Third Party Resources.

**ss. Transition Plan:** A document that outline the hand-off process between and incumbent and successor.

**tt. Valid Active Resource:** A resource that will or could provide coverage for a member during a time period in which the member was also covered by TennCare.

**uu. Verified TPR Information: shall mean (1) that the Contractor has taken appropriate steps to assure that the coverage does apply to a TennCare member, and (2) that all information needed to bill the TPR is included in the TennCare Resource File.**

A.3. **Staffing Requirements.**

a. **Key Staff:** The Contractor shall, at all times during this Contract, have the following "Key Staff":
1. **Project Manager.** One Project Manager assigned directly to the scope of the work included in this Contract. The Project Manager shall possess a clear understanding of the nature and scope of work to be performed. The Project Manager must have at least a bachelor’s degree.

2. **Data Analyst.** One Data Analyst assigned directly to the scope of the work included in this Contract.

Key Staff shall exclusively work full time (at least 37.5 hours per week) performing services for TennCare under this Contract.

b. **Removal of Key Staff.** The State may, at any time during the Contract period, require the removal of any Key Staff from work covered by this Contract. Upon request by the State to remove a Key Staff person, the Contractor shall remove that person and they shall immediately cease work under this Contract. The decision of the State on these matters shall not be subject to appeal.

c. **Vacancies in Key Staff.** Any vacancy in a Key Staff position, regardless of cause, shall be filled by the Contractor within thirty (30) calendar days following the last day of work by the former Key Staff member in that position.

e. **Key Staff Location.** The Contractor shall provide office space for Key Staff members. Key Staff members must work within a 100-mile radius of 310 Great Circle Road, Nashville, Tennessee.

g. **Key Staff Training.** The Contractor shall ensure that all Key Staff complete any training designated as mandatory by TennCare. TennCare shall have discretion to determine the need, frequency, and manner of any follow-up training of Key Staff. In addition to the training materials provided by TennCare, the Contractor shall develop training materials for Key Staff. All training material developed by the Contractor shall be subject to review and written approval by TennCare prior to use and/or distribution by the Contractor.

### A.4. Data Provided by TennCare to Contractor.

a. **Minimum Data Requirements.** The Contractor shall utilize, at minimum, the following data provided by TennCare in order to facilitate the Contractor’s duties under this contract:

1. Medicaid Paid Claims file;
2. Medicaid Recipient file;
3. Medicaid Provider file;
4. Medicaid Diagnosis file;
5. Medicaid Procedure file;
6. Third Party Resource file;
7. TennCare master death file;
8. Third Party Carrier file; and
9. Medicare file

b. **Additional Data Requirements.** The Contractor shall be provided additional data by TennCare so long as (1) TennCare possesses the data; and (2) the data is necessary for Contractor to carry out its duties required under this Contract. To the extent necessary, TennCare will authorize data exchanges between Contractor and any TennCare Partner, as applicable. In the event that TennCare determines that Contractor requires additional data in order to perform its duties under the contract, Contractor agrees that determination is at the sole discretion of TennCare.

c. **Data Exchanges.** The Contractor shall ensure that all data exchanges will be conducted in the manner and format directed by TennCare and as outlined by the Accredited Standards Committee (ASC) X12. TennCare shall work with Contractor to facilitate efficient and effective electronic data exchange; however, Contractor shall have ultimate responsibility to assure that Contractor’s Data is compatible with TennCare’s Data and
vice-versa. In the event that there are data incapability issues that remain unresolved for more than 14 business days, Contractor shall be required to manually update and input information into TennCare’s MMIS to the extent necessary to comply with the requirements of this Contract.


a. The Contractor shall be responsible for all costs it incurs as a result of the performance of services under this Contract.

b. TennCare shall not be responsible for providing administrative, technical, legal, or clerical assistance to the Contractor except as otherwise provided herein.

c. The Contractor shall provide its own office space, furniture, equipment, supplies, and staff. In the event, Contractor uses State equipment, furniture, or supplies the Contractor shall return such items at the conclusion of this Contract and as otherwise directed by the State.

d. The Contractor shall be responsible for all postage expenses. Any correspondence requesting a response from a TennCare member shall include a postage paid return envelope at Contractor’s expense.

e. Upon discovery of any problem, issue or that may jeopardize the Contractor’s ability to perform any function of this Contract, the Contractor shall immediately notify TennCare in person, by phone, or e-mail. If possible, Contractor shall notify TennCare by 5:00 p.m. (Central Time) of the business day that the problem, issue or error is discovered. However, under all circumstances the notification should occur prior to 9:00 a.m. (Central Time) the following business day.

f. Upon discovery of any Contractor backlog or delay for any component of this Contract, the Contractor shall immediately notify TennCare in person, by phone, or e-mail. If possible, Contractor shall notify TennCare by 5:00 p.m. (Central Time) of the business day that the problem, issue or error is discovered. However, under all circumstances the notification should occur prior to 9:00 a.m. (Central Time) the following business day.


a. MMIS Compliance. The Contractor shall cooperate, coordinate, and adapt its systems to the requirements of the Medicaid Management Information System (MMIS).

b. Software and Web Browsers. The Contractor shall use the same operating system software package as TennCare (or the most current, up-to-date software and web browser versions as specified by TennCare).

c. IT Resources. The Contractor shall maintain sufficient information technology resources, including hardware, software, and personnel, to manage this Contract and to generate all data, including but not limited to liens, claims, fulfillment of records requests, and reports required for this Contract.

d. Computer Facilities. The Contractor shall own, lease, or have access to computer facilities in order to be able to accept the following:

1. electronic data,
2. produce electronic billings,
3. data match electronically,
4. generate liens,
5. claims and records requests, and produce Medicaid voids,
6. adjustments,
7. accounts receivables,
8. cash receipts,
9. provider expenditures,
10. refunds, and
11. reports through TennCare designated electronic or paper media.

e. For interface with State-owned systems, the Contractor shall obtain and supply all
hardware, software, communication, and equipment necessary to perform the duties
associated with this Contract and be responsible for any associated programming,
equipment, installation of software, maintenance, and troubleshooting at no cost to
TennCare.

f. Information Management Processes and Systems. The Contractor shall have information
management processes and information systems that enable it to meet Federal and State
reporting requirements, all other Contract requirements, and any other applicable Federal
and State laws, rules, and regulations, including the Health Insurance Portability and
Accountability Act requirements.

g. Workload Capacity. The Contractor’s system shall possess capacity sufficient to handle
the workload projected for the start of this Contract and shall be scalable and flexible so it
can be adapted as needed, within negotiated timeframes, in response to increases in
caseload estimates.

h. Information Integrity Controls. The Contractor’s systems shall contain controls to maintain
information integrity. These controls shall be in place at all appropriate points of processing.
The Contractor shall ensure controls are tested in periodic and spot audits, including SAS-
70 audits. The Contractor shall provide the results of SAS-70 audits to TennCare upon
request.

i. Access Restrictions and Safeguards. The Contractor shall establish appropriate
restrictions and safeguards against unauthorized access to all non-public data entrusted
to Contractor staff. The Contractor shall restrict access to information to users that are
permitted inquiry privileges. The Contractor shall also limit attempts to access system
functions to a set number with a system function that automatically prevents further access
attempts and records these occurrences.

1. The Contractor shall put in place measures and technical security to prohibit
unauthorized access to the regions of the data communications network inside the
Contractor’s span of control.

2. The Contractor shall provide for the physical safeguarding of its data processing
facilities and the systems and information housed therein, as well as accountability
control to record access attempts, including attempts of unauthorized access.

3. The Contractor shall be responsible for submitting and managing Contractor staff
requests for access connectivity to the State’s data communications network, and
the relevant information systems attached to this network in accordance with all
applicable State policies, standards, and guidelines.

j. System Training. The Contractor shall ensure staff are properly trained to utilize TennCare
and Contractor systems and maintain confidentiality of system passwords.

k. System Capabilities. The Contractor’s system shall be capable of receiving and
transmitting data in the manner and format directed by TennCare and as outlined by the
Accredited Standards Committee (ASC) X12. The Contractor system shall ensure that it
colleccts, stores, maintains, and updates all data relevant to this Contract that is necessary
for T-MSIS reporting. The Contractor’s system shall date and time-stamp every event
occurring within the case file.

l. System Audit Trail. The Contractor’s system shall contain an audit trail for every record in
the system. The audit trail shall keep track of all changes made to each record. The
Contractor shall ensure that no person can modify the audit trail in any way.
m. TennCare Access to System. The Contractor shall allow complete interactive access to all of Contractor’s system and data used in performance of this contract to specified TennCare staff and any additional parties that are designated by TennCare. At any given time, TennCare may request and Contractor shall provide log-in credentials to up to 20 separate people.

A.7. Contractor Data Requirements.

a. On-Demand Access. The Contractor shall provide TennCare, Federal, or State auditors, investigators, and other authorities with full on-demand access to its data facilities and data as directed by TennCare.

b. State Interest in Data and Information. The State shall have exclusive ownership of all data, data files, documents, papers, records, or other information, in any form created, that it acquires in the course of its performance under this Contract.

c. The Contractor shall capture and maintain the fields listed below to carry out Contractor’s duties under this Contract. The Contractor shall capture and maintain the fields related to the Contractor’s duties under this Contract and listed in the table below. The Contractor shall create, modify, and maintain additional fields within forty-five (45) day of a request submitted by TennCare to the Contractor in writing. The Contractor shall ensure that all fields are created and maintained in a format that is approved by TennCare. The Contractor shall ensure that all required fields are searchable. The Contractor shall produce reports based upon the fields required by section A.7.c. of this Contract. The Contractor shall create the fields that are specified in the following table:

<table>
<thead>
<tr>
<th>Field (with Notes / Examples)</th>
<th>Required #</th>
<th>Function</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Name</td>
<td>1</td>
<td>All</td>
</tr>
<tr>
<td>Last Name</td>
<td>1</td>
<td>All</td>
</tr>
<tr>
<td>Social Security #</td>
<td>1</td>
<td>All</td>
</tr>
<tr>
<td>Medicaid ID #</td>
<td>2</td>
<td>All</td>
</tr>
<tr>
<td>TennCare Coverage Code</td>
<td>3</td>
<td>All</td>
</tr>
<tr>
<td>TennCare Coverage Sub-Code</td>
<td>3</td>
<td>All</td>
</tr>
<tr>
<td>Enrollment Date</td>
<td>3</td>
<td>All</td>
</tr>
<tr>
<td>Termination Date</td>
<td>3</td>
<td>All</td>
</tr>
<tr>
<td>Date of Birth</td>
<td>1</td>
<td>All</td>
</tr>
<tr>
<td>Date of Death</td>
<td>1</td>
<td>All</td>
</tr>
<tr>
<td>TEDS Member ID</td>
<td>2</td>
<td>All</td>
</tr>
<tr>
<td>TEDS Application ID</td>
<td>3</td>
<td>All</td>
</tr>
<tr>
<td>Member Address: Street Address, City, State &amp; ZipCode</td>
<td>1 (Contractor may capture this information in 1-4 fields, as appropriate)</td>
<td>All</td>
</tr>
<tr>
<td>Carrier Name</td>
<td>Varies depending on number of resources for Member</td>
<td>All</td>
</tr>
<tr>
<td>Carrier #</td>
<td>Varies depending on number of resources for Member</td>
<td>All</td>
</tr>
<tr>
<td>Policy #</td>
<td>Varies depending on number of resources for Member</td>
<td>All</td>
</tr>
<tr>
<td>Group #</td>
<td>Varies depending on number of resources for Member</td>
<td>All</td>
</tr>
<tr>
<td>Insured Name</td>
<td>Varies depending on number of resources for Member</td>
<td>All</td>
</tr>
<tr>
<td>Insured SSN</td>
<td>Varies depending on number of resources for Member</td>
<td>All</td>
</tr>
<tr>
<td>Coverage Code</td>
<td>Varies depending on number of resources for Member</td>
<td>All</td>
</tr>
<tr>
<td>Field (with Notes / Examples)</td>
<td>Required #</td>
<td>Function</td>
</tr>
<tr>
<td>---------------------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------</td>
<td>----------</td>
</tr>
<tr>
<td>Service Type Code</td>
<td>Varies depending on number of resources for Member</td>
<td>All</td>
</tr>
<tr>
<td>Coverage Start Date</td>
<td>Varies depending on number of resources for Member</td>
<td>All</td>
</tr>
<tr>
<td>Coverage End Date</td>
<td>Varies depending on number of resources for Member</td>
<td>All</td>
</tr>
<tr>
<td>Lead Date</td>
<td>Varies depending on number of resources for Member</td>
<td>All</td>
</tr>
<tr>
<td>Validation Code</td>
<td>Varies depending on number of resources for Member</td>
<td>All</td>
</tr>
<tr>
<td>Validation Date</td>
<td>Varies depending on number of resources for Member</td>
<td>All</td>
</tr>
<tr>
<td>Last Update</td>
<td>Varies depending on number of resources for Member</td>
<td>All</td>
</tr>
<tr>
<td>Medicare A (e.g., T/F)</td>
<td>Varies depending on number of resources for Member</td>
<td>All</td>
</tr>
<tr>
<td>Medicare B (e.g., T/F)</td>
<td>Varies depending on number of resources for Member</td>
<td>All</td>
</tr>
<tr>
<td>Medicare C (e.g., T/F)</td>
<td>Varies depending on number of resources for Member</td>
<td>All</td>
</tr>
<tr>
<td>Medicare D (e.g., T/F)</td>
<td>Varies depending on number of resources for Member</td>
<td>All</td>
</tr>
<tr>
<td>TennCare Lead Origin (i.e., Define how lead was provided to TennCare)</td>
<td>Varies depending on number of resources for Member</td>
<td>All</td>
</tr>
<tr>
<td>Contractor Lead Origin (i.e., Define how Contractor was provided with lead)</td>
<td>Varies depending on number of resources for Member</td>
<td>All</td>
</tr>
<tr>
<td>Chronological Notes (i.e., Describe the last 10 changes to any resource record)</td>
<td>10 per Resource</td>
<td>All</td>
</tr>
<tr>
<td>Date Information Transmitted to TennCare (i.e., List the last 10 dates on which new or updated information was provided to TennCare)</td>
<td>10 per Resource</td>
<td>All</td>
</tr>
<tr>
<td>TennCare Internal Control #</td>
<td>1 per Claim</td>
<td>Casualty, Go-Behind</td>
</tr>
<tr>
<td>Provider Internal Control #</td>
<td>1 per Claim</td>
<td>Casualty, Go-Behind</td>
</tr>
<tr>
<td>Insurance Company Claim #</td>
<td>Varies per Claim because a claim may have more than one active insurance coverage</td>
<td>Casualty, Go-Behind</td>
</tr>
<tr>
<td>Billing NPI</td>
<td>1 per Claim</td>
<td>Casualty, Go-Behind</td>
</tr>
<tr>
<td>Referring NPI</td>
<td>1 per Claim</td>
<td>Casualty, Go-Behind</td>
</tr>
<tr>
<td>Rendering NPI</td>
<td>1 per Claim</td>
<td>Casualty, Go-Behind</td>
</tr>
<tr>
<td>Facility NPI</td>
<td>1 per Claim</td>
<td>Casualty, Go-Behind</td>
</tr>
<tr>
<td>Prescriber #</td>
<td>1 per Claim</td>
<td>Casualty, Go-Behind</td>
</tr>
<tr>
<td>Submitter # (e.g., In most cases, this will be a TennCare Partner)</td>
<td>1 per Claim</td>
<td>Casualty, Go-Behind</td>
</tr>
<tr>
<td>Submitter Name (e.g., In most cases, this will be a TennCare Partner)</td>
<td>1 per Claim</td>
<td>Casualty, Go-Behind</td>
</tr>
<tr>
<td>Claim Type (i.e., The general service category) (e.g., Pharmacy, Medical, Dental, DME, Behavioral, LTSS)</td>
<td>1 per Claim</td>
<td>Casualty, Go-Behind</td>
</tr>
</tbody>
</table>

a. Report Module. The Contractor shall develop and maintain a Report Module within its system. The Contractor shall ensure that the Report Module has the ability to create on-demand reports from pre-defined Templates. The Contractor shall ensure that TennCare employees can create on-demand reports from the Report Module by interfacing directly with Contractors’ system. The Contractor shall ensure that TennCare employees have the necessary capability and access required to create reports for existing templates without Contractor’s assistance or permission.
b. Report Templates: The Contractor shall be responsible for creating report templates. The Contractor shall create and modify Report templates within ten (10) business days of the date TennCare requests creation or modification of a template. TennCare may request an unlimited amount of report templates, at no cost to the State, so long as said reports utilize data contained within Contractor’s system.

c. Report Formats. The Contractor shall ensure that the Report Module is capable of creating reports in .pdf, Excel, and (.txt formats. The Contractor shall ensure that the Report Module exports reports in the following formats: CSV, Tab-Delineated, .accdb, .mdb, and all other widely recognized data file types.

d. Monthly Reports. TennCare may designate any report as a “Monthly Report”. On the tenth (10th) business day of each month, the Contractor shall save all Monthly Reports to the Report Module and email the Monthly Reports to TennCare at TennCare’s request.


The Contractor shall avoid any real/actual conflicts of interest on the part of Contractor, subcontractors, or employees, officers, and directors of Contractor or subcontractors in alignment with this section and section A.10. below. TennCare reserves the right to determine, at its sole discretion, whether any information, assertion, or claim received from any source indicates the existence of a real/actual conflict of interest. If a conflict is found to exist, TennCare may require Contractor to submit additional information and/or a plan for resolving the conflict, subject to TennCare’s review and prior approval. The Contractor shall use reasonable efforts to avoid the appearance of a conflict and resulting allegations, assertions, or claims that a conflict exists.

Examples of Conflicts of interest include, but are not limited to, the following: (1) an instance where Contractor or any of its subcontractors, or any employee, officer, or director of Contractor or any subcontractor has an interest, financial or otherwise, whereby the use or disclosure of information obtained while performing services under the Contract would allow for private or personal benefit or for any purpose that is contrary to the goals and objectives of the Contract; or (2) an instance where Contractor’s or any subcontractor’s employees, officers, or directors use their positions for purposes that are, or give the appearance of being, motivated by a desire for private gain for themselves or others, such as those with whom they have family, business, or other ties.

If TennCare is or becomes aware of a known or suspected conflict of interest, the Contractor shall be given an opportunity to submit additional information or to resolve the conflict. The Contractor shall have five (5) business days, unless otherwise specified by TennCare, from the date of notification of the conflict by TennCare to provide complete information regarding the suspected conflict. If a conflict of interest is determined to exist by TennCare and cannot be resolved to the satisfaction of TennCare, TennCare may cancel the Contract for cause as provided under Section D.6 of this Contract.

A.10. Contractor’s Business Relationships with TennCare Partners.

a. Any independent business relationship that Contractor has or will have with any TennCare Partner shall be subject to this provision and the general Conflicts of Interest provision above. The Contractor’s disclosure duties under Section A.10 of this Contract are affirmative duties. The Contractor’s duties under this section apply regardless of the nature of services that are being provided to the TennCare Partner.

Within two (2) business days of the date that Contractor enters into an contractual relationship with a TennCare Partner, the Contractor shall disclose the relationship to TennCare, as follows:

1. The Contractor shall name the TennCare Partner that it is or will provide services to under a direct agreement between the Contractor and the TennCare Partner;
2. Contractor shall describe the nature of the services provided to the TennCare Partner and shall supply a general description of the compensation agreement, such as a flat fee, per-unit price, or a contingency fee.

b. If TennCare determines that the services provided under this Contract are related to the services provided by TennCare, a TennCare Partner, or Contractor, the Contractor shall provide, at the request of TennCare, any additional information including the following items:

1. all documents relevant to the contract between the Contractor and the TennCare Partner;
2. an accounting of fees received from the TennCare Partner in the last two calendar years;
3. an estimation of all fees that the Contractor expects to receive over the next two calendar years from the TennCare Partner; and
4. a list of any data collected from, transferred from, or transferred to the Contractor pursuant to its agreement with the TennCare Partner.

If Contractor fails to timely disclose any of the information required by this Section A.10., including the affirmative disclosures, then the failure shall be a material breach of the Contract and TennCare may terminate the Contract for cause, as provided in Section D.6 of this Contract, or assess liquidated damages, as provided in Section E.5. of this Contract.

Upon receipt of the information, TennCare shall review the information and reserves the right to either require the Contractor to resolve the conflict or to terminate the Contract for cause, as provided in Section D.6 of this Contract.

A.11. Review of Payment Deposits, Payment Posting, and Tracking. The Contractor shall, on each business day, review all payments deposited in TennCare’s Lockboxes. The Contractor shall keep a record of all payments received as a result of Contractor’s duties under this Contract. The Contractor shall post all payments to the claim level in Contractor’s records and post to the claim level in TennCare’s MMIS. The Contractor shall ensure that the outstanding balance, as represented in Contractor’s system and TennCare’s MMIS, continuously and accurately reflects the total outstanding amount of all claims. All payment postings shall occur within one (1) business day of the date of deposit.

A.12. Identifying TPRs, Verifying TPRs, and Assistance with Maintenance of TennCare’s Resource File

a. The Contractor shall identify new TPRs, verify existing TPRs, and assist TennCare in maintaining the TennCare Resource File (collectively, the “TPR Process”). Specifically, the Contractor, at a minimum, shall:

1. Conduct weekly data exchanges with insurance carriers and other identified third parties necessary to identify TPRs;
2. Conduct weekly data exchanges with CMS to identify Medicaid consumers receiving Medicare coverage;
3. Conduct weekly data exchanges with TennCare MCOs, PBMs and DBMs to identify TPRs;
4. Conduct monthly data matches with DEERS to identify TennCare Members with TRICARE formerly known as the CHAMPUS;
5. Conduct monthly reviews of wage and income data provided by the Tennessee Department of Labor and Workforce Development to TennCare to identify working recipients or caretakers who have or could have access to employer-based insurance;
6. Conduct weekly reviews of claims information from TennCare and/or any TennCare Partners to locate TPL information;

7. Conduct weekly follow-ups on TPR leads from any source, including mailing leads letters to providers and recipients when TennCare’s data indicates that a claim has been paid by a TPR and the TPR information is missing or incomplete;

8. Conduct daily updates and maintenance checks of all TPR information on Contractor’s database;

9. Transfer Verified TPR Information to TennCare at such time intervals as TennCare directs. Initially the transfer will take place once per month; however, at any time, TennCare may require more frequent transfers up to a maximum of four transfers per month.

10. Submit a monthly report to TennCare listing each third party who refused to cooperate with the reasonable actions taken by the Contractor for TPL identification;

11. Verify and update all valid TPRs contained TennCare’s Resource File. The Contractor shall ensure that each resource is verified and updated at least once every six (6) months from the date that the resource was last verified and updated.

12. Within five (5) business days of TennCare’s request, supply resource information directly to any third party as directed by TennCare.

b. TPR Data Exchanges. The Contractor shall maintain on the Contractor’s database all data transmitted or received through the TPR Process, including eligibility data, claims data, and other data deemed necessary by TennCare. The Contractor shall transfer this data to TennCare and any other party, as directed by TennCare. If at any time, the data provided to Contractor by TennCare or a TennCare Partner is incomplete or otherwise deficient, Contractor shall notify TennCare of the deficiency within two business days of the date that the transfer occurred.

c. Verified Information Requirement. Payment shall be due when Contractor has transferred verified information to TennCare, which results in TennCare adding a new active resource to its files or results in TennCare updating the status of an existing active resource to “Valid” from any other coverage code. An active resource is a resource for which coverage is active on the date of transmission. The Contractor shall ensure that payment is made if the transfer results in TennCare adding a terminated resource to its file, so long as the policy has been terminated eleven (11) months or less from the current date and the policy eligibility dates coincide with a Medicaid eligibility segment. The Contractor is required to regularly verify and update all TPRs but no payment by the State shall be made to Contractor except for updates that result in a new valid resource being added to the resource file.

d. TPR Process Reports. The Contractor shall create reports pursuant to written instructions by TennCare.


Casualty Subrogation refers to recoveries that are obtained from settlements or awards to Members, as well as Joint Liability and Mass Tort Cases for injuries or illness resulting from automobile accidents, malpractice suits, workers’ compensation cases, or any other matter identified in writing by TennCare.
a. Subrogation Inquiries. The Contractor shall maintain an accessible website and a toll-free number to receive incoming subrogation inquiries. When the Contractor receives an inquiry, the Contractor shall direct the inquirer to the party that is responsible for handling the subrogation claim. The Contractor’s duty to direct the inquirer to the appropriate party shall apply even if the party responsible is a TennCare partner other than the Contractor.

b. Review of Paid Pharmacy and Dental Claims. The Contractor shall review paid Pharmacy and Dental claims and identify claims that could be subject to Casualty Subrogation. In accordance with 42 CFR § 433.138(e), the Contractor shall utilize claim information provided by TennCare and identify claims that are subject to Casualty Subrogation. The Contractor shall treat all claims identified through this process as new Casualty Subrogation referrals. The Contractor shall also review all other referrals that come from a variety of sources, including but not limited to the following: Providers, MCOs, DBM, PBM, attorneys, insurance companies, and members.

c. Collection of Pharmacy Subrogation and Dental Subrogation Claims. The Contractor is responsible for pursuing Pharmacy and Dental Subrogation Claim. The Contractor shall file claims with applicable insurance carriers and collect on all Pharmacy and Dental casualty subrogation claims, no matter the source of the referral.

d. Referral of Medical Subrogation Claims. The Contractor shall promptly refer all Medical subrogation claims to the appropriate TennCare MCO or any other party as directed by TennCare. If a subrogation concerns a combination of Medical claims and Pharmacy or Dental claims, the Contractor shall pursue the Pharmacy or Dental portion of the claim subrogation and refer the Medical portion to the appropriate MCO. The Contractor shall keep record of all casualty subrogation matters referred to MCOs.

e. Collection of Casualty Subrogation for Mass Torts. The Contractor shall be responsible for pursuing all subrogation claims arising from a Mass Tort that affect five or more TennCare members. In this case, the Contractor shall pursue all portions of the claim, including the medical portion. In these cases, the Contractor will handle subrogation for all claims paid by TennCare or a TennCare Partner, regardless of the type of claim. To the extent necessary, the Contractor shall coordinate with TennCare and TennCare Partners to determine the amount of the claims eligible for reimbursement. In the event there is a dispute between Contractor and one of the TennCare Partners over responsibility for any claim, TennCare will determine which party shall handle the claim.

f. Contingency Fee. The Contractor shall receive a contingency fee for Casualty Subrogation services. Payments to the Contractor shall be due when Casualty Subrogation recoveries are deposited in an account that TennCare maintains for said purpose.

h. Casualty Subrogation Reports. The Contractor shall produce reports Pursuant to written instructions by TennCare


a. The Contractor shall conduct an annual review of TennCare’s Medicare Crossover Claims and shall produce a Medicare Crossover Claims Report that reviews a statistically valid sample of Crossover Claims (Medicare Crossover Claims Services). The annual review shall examine compliance with established Crossover Claims policies, procedures, and rates. The annual review shall have a review period based on the state fiscal year of July 1 – June 30. The Contractor shall submit the Medicare Crossover Claims Report to TennCare no later than December 1 of each year.

A.15. Credit Balance Audits and Provider Recoupments.
a. The Contractor shall identify and recover overpayments from providers via on-site audits and desk reviews (Credit Balance Audit Services). The Contractor shall ensure that Credit Balance Audits are conducted on providers that have been approved by TennCare.

A.16. **Go-Behind Billing.**

a. **Identification of Claims for Go-Behind Billing.** The Contractor shall use data provided by TennCare and identify claims that should have been, but were not, submitted to another insurance carrier prior to being submitted to TennCare or a TennCare Partner, as applicable. For purposes of this Contract, insurance carriers shall include administrators of a Medicare Part C Plan or Medicare Part D plan, commercial health insurance carriers, and any entity that TennCare or a TennCare Partner can bill directly. The Contractor shall initiate go-behind billing for all claims no matter how small the claim. The Contractor shall bill the insurance carrier for the claims paid by TennCare or a TennCare Partner as indicated.

b. **Timeframes.** For purposes of the timeframes further detailed below, the period begins to run on the date that TennCare or a TennCare Partner pays the provider for the claim.

i. **Claims paid by a TennCare MCO.** The Contractor shall pursue all identified claims that are over one hundred eighty (180) calendar days old and for which the reported encounter data does not show an amount for TPL recovery or an offset for TPL billing. The Contractor shall file a claim with the applicable carrier(s) no earlier than the day that a claim is one hundred eighty (180) calendar days old and no later than the day that the claim is two hundred twenty (220) calendar days old.

ii. **Claims paid by TennCare’s PBM.** The Contractor shall pursue file with the applicable insurance carriers all identified claims that are over thirty (30) calendar days old and for which the reported encounter data does not show an amount for TPL recovery. The Contractor shall file the claim with the applicable insurance carrier no earlier than the day that the claim is thirty (30) calendar days old and no later than the day that the claim is seventy (70) calendar days old.

iii. **Claims paid by TennCare DBM.** – The Contractor shall pursue all identified claims that are over thirty (30) calendar days old and for which the reported encounter data does not show an amount for TPL recovery. The Contractor shall file a claim with the applicable insurance carriers no earlier than the day that the claim is thirty (30) calendar days old and no later than the day that the claim is seventy (70) calendar days old.

c. **Rebilling Process.** The Contractor shall review the explanation of benefits provided by insurance carriers in response to Contractor’s claim filing activities. If claims are denied, then Contractor shall re-bill the claims as appropriate. All TPR information acquired during this process shall be deemed a TPL Lead and treated in accordance with section “Identifying TPRs, verify TPRs and Assistance with Maintenance of TennCare’s Resource File (See Section A.12).” Any response from the carrier, even if it is a denial, that indicates that coverage is valid shall cause the resource to be valid, verified resource. The Contractor shall ensure that leads that validated and verified pursuant to this section shall be transmitted to TennCare with forty-five calendars days of the response.

If the initial attempt to collect is unsuccessful, the Contractor shall make at least three (3) additional attempts. The Contractor shall ensure that each attempt is in increments of thirty (30) days and is the form of a bill, phone call. At the conclusion of the required number of attempts, if Contractor is unsuccessful then Contractor may continue to make collection attempts but is not required to do so.

d. **Posting and Sharing Payments.** The Contractor shall post all payments received pursuant to this section to the claim level in TennCare’s MMIS and shall also provide this information to the MCO, PBM, DBM, or other TennCare Partner, as applicable.
e. Go-Behind Billing Reports.

i. **Denial Report** – The Contractor shall submit a monthly Denial Report to TennCare. This report shall contain a list of the ten (10) most frequent denial reasons and the adjudicated claims amount attributable to each denial reason. The Denial Reports shall contain a list of the ten (10) carriers that have submitted the greatest number of claim denials for the previous calendar month. The Denial Report shall also contain a list of the ten (10) carriers that have denied the largest dollar amount, measured by adjudicated claim amount, per month.

ii. **Filed Claims Report** – The Contractor shall submit a monthly Filed Claims Report to TennCare that contains information on each claim filed during the previous calendar month. For each claim, the Filed Claims Report shall contain the following information:

1. Member’s name;
2. Member’s Social Security Number;
3. Members Date of Birth; Member’s Medicaid ID Number;
4. Insurance Carrier Name; Carrier Code;
5. Group Number;
6. Name of the MCO, PBM or DBM that processed and paid the claim on TennCare’s behalf; the “From” Date of Service; the “To” Date of Service; TennCare’s Internal Control Number (ICN);
7. the adjudicated claim amount;
8. the date that the claim was paid by TennCare or one of its partners;
9. the date the claim was filed with the carrier;
10. an indication of how the claim was transmitted to the carrier; and
11. the provider’s National Provider Identifier (NPI).

iii. **Paid Claims Report** – The Contractor shall submit a monthly Paid Claims Report to TennCare that contains information on each claim that Contractor received a payment on during the previous calendar month. For each claim the Paid Claims Report shall contain the following information:

1. Member’s name;
2. Member’s Social Security Number;
3. Members Date of Birth;
4. Member’s Medicaid ID Number;
5. Insurance Carrier Name;
6. Carrier Code;
7. Group Number;
8. Name of the MCO, PBM or DBM that processed and paid the claim on TennCare’s behalf; the “From” Date of Service;
9. the “To” Date of Service;
10. TennCare’s Internal Control Number (ICN);
11. the adjudicated claim amount;
12. the date that the claim was paid by TennCare or one of its partners;
13. the date the claim was filed with the carrier;
14. an indication of how the claim was transmitted to the carrier;
15. the provider’s National Provider Identifier (NPI);
16. the Date the Contractor received payment on the Claim;
17. the Check number; and
18. the amount of Payment.

The reports listed in this section are the initial reports that the Contractor shall supply for Go-Behind Billing Services. However, please see Section A.8 (Reporting Requirements) for additional information regarding TennCare’s right to require additional reports as well as modifications to any existing reports.
A.17. **ADDITIONAL RECOVERY PROJECTS.**  

a. Additional Recovery Project Requests. The Contractor shall perform additional recovery projects as requested and approved by TennCare to recover funds where other insurance coverage is available, including but not limited to hospitalization, major medical, or incidental policies as determined and requested by TennCare.

b. The Contractor shall perform any additional recovery project as authorized by a Control Memorandum the terms of which must be agreed to by both parties prior to starting the project.

A.18. **Litigation Support.** If any litigation should arise that requires the defense of a TennCare claim before any court or tribunal, the Contractor shall cooperate fully and timely with any TennCare Office of General Counsel attorneys or paralegals in defense of the claim at no additional cost to the State. The Contractor shall make its personnel available to testify in Tennessee, whether in person before a tribunal or by deposition. The Contractor agrees to waive any objections to any subpoena issued by a Tennessee tribunal. The Contractor shall promptly provide OGC with all information within the Contractor's control if required to do so by a discovery demand or court order.

A.19. **End of Contract Transition Plan.** The Contractor shall develop and provide to the State a Transition Plan no later than one hundred and eighty (180) days prior to the Contract end date. The Transition Plan shall contain the information requested by TennCare in a Control Memorandum as described in Section A.21.

A.20. **Readiness Review and Implementation.** The Readiness Review shall begin on the effective date of the Contract as defined in Section B.1. The period beginning December 1, 2021 through January 31, 2022 shall be an unfunded period for readiness review. The "Implementation Date" shall be the date by which compensated services begin as defined in Section C.3. Prior to Implementation Date, the Contractor shall demonstrate to the State's satisfaction that the Contractor is able to meet the requirements of this Contract. Once TennCare has verified the Contractor meets all requirements of this Contract, TennCare shall notify the Contractor in writing of readiness to begin providing services.

A.21. **Control Memorandum Process.**  

a. 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.

b. A CM may include one (1) or more of the 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. The CD may include a Corrective Action Plan. 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. 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 that the State is contemplating assessing against the Contractor. NPDs
and NPCDs 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, due to a performance or compliance failure, are actual damages or
Liquidated Damages 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, that 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 NPCD. The State may not obtain both Liquidated Damages
and Actual Damages for the same occurrence of a Contract performance or
compliance failure.

c. 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.6., including Liquidated Damages as listed in Contract Attachment B, a
corrective action plan, and/or termination of the Contract.

d. 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 ten (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.

B. TERM OF CONTRACT:

B.1. This Contract shall be effective on December 1, 2021 (“Effective Date”) and extend for a period of
36 months after the Effective Date (“Term”). The State shall have no obligation for goods or
services provided by the Contractor prior to the Effective Date.

B.2. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The
State reserves the right to execute up to two (2) renewal options under the same terms and
conditions for a period not to exceed twelve (12) months each by the State, at the State’s sole
option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) 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:

c. The period beginning December 1, 2021 through January 31, 2022 shall be an uncompensated Readiness Review period (see Section A.20) whereby payments for services begin on February 1, 2022.

<table>
<thead>
<tr>
<th>Goods or Services Description</th>
<th>Amount (per compensable increment)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Uncompensated Readiness Review Period (December 1, 2021 through January 31, 2022)</td>
<td>Uncompensated</td>
</tr>
<tr>
<td>Each New Resource Added to TennCare’s Resource file pursuant to Section A.12.c (February 1, 2022 through January 31, 2025)</td>
<td>$ /resource added</td>
</tr>
<tr>
<td>Casualty Subrogation A.13 (February 1, 2022 through January 31, 2025)</td>
<td>_____% per $ collected</td>
</tr>
<tr>
<td>Flat Fee - Annual Report on Medicare CrossOver Claims A.15 (February 1, 2022 through January 31, 2025)</td>
<td>$_____ per annual report</td>
</tr>
<tr>
<td>Contingency Fee - Credit Balance Audit and Recoupments* A.16 (February 1, 2022 through January 31, 2025)</td>
<td>_____% per $ collected</td>
</tr>
<tr>
<td>Contingency Fee - Go-Behind Billing A.17 (February 1, 2022 through January 31, 2025)</td>
<td>_____% per $ collected</td>
</tr>
<tr>
<td>*Additional Recovery Projects % of Collection Per Project</td>
<td>_____% per $ collected</td>
</tr>
</tbody>
</table>
(not to exceed $50,000.00)  
(February 1, 2022 through January 31, 2025)

<table>
<thead>
<tr>
<th>Option Year 1</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Each New Resource Added to TennCare’s Resource file pursuant to Section A.12.c</td>
<td>$ /resource added</td>
</tr>
<tr>
<td>(February 1, 2025 through January 31, 2026)</td>
<td></td>
</tr>
<tr>
<td>Casualty Subrogation A.13</td>
<td>_____% per $ collected</td>
</tr>
<tr>
<td>(February 1, 2025 through January 31, 2026)</td>
<td></td>
</tr>
<tr>
<td>Flat Fee - Annual Report on Medicare CrossOver Claims A.15</td>
<td>$___ per annual report</td>
</tr>
<tr>
<td>(February 1, 2025 through January 31, 2026)</td>
<td></td>
</tr>
<tr>
<td>Contingency Fee - Credit Balance Audit and Recoupments* A.16</td>
<td>_____% per $ collected</td>
</tr>
<tr>
<td>(February 1, 2025 through January 31, 2026)</td>
<td></td>
</tr>
<tr>
<td>Contingency Fee - Go-Behind Billing A.17</td>
<td>_____% per $ collected</td>
</tr>
<tr>
<td>(February 1, 2025 through January 31, 2026)</td>
<td></td>
</tr>
<tr>
<td>*Additional Recovery Projects % of Collection Per Project (not to exceed $25,000.00)</td>
<td>_____% per $ collected</td>
</tr>
<tr>
<td>(February 1, 2025 through January 31, 2026)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Option Year 2</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Each New Resource Added to TennCare’s Resource file pursuant to Section A.12.c</td>
<td>$ /resource added</td>
</tr>
<tr>
<td>(February 1, 2026 through January 31, 2027)</td>
<td></td>
</tr>
<tr>
<td>Casualty Subrogation A.13</td>
<td>_____% per $ collected</td>
</tr>
<tr>
<td>(February 1, 2026 through January 31, 2027)</td>
<td></td>
</tr>
<tr>
<td>Flat Fee - Annual Report on Medicare CrossOver Claims A.15</td>
<td>$___ per annual report</td>
</tr>
<tr>
<td>(February 1, 2026 through January 31, 2027)</td>
<td></td>
</tr>
<tr>
<td>Contingency Fee - Credit Balance Audit and Recoupments* A.16</td>
<td>_____% per $ collected</td>
</tr>
<tr>
<td>(February 1, 2026 through January 31, 2027)</td>
<td></td>
</tr>
<tr>
<td>Contingency Fee - Go-Behind Billing A.17</td>
<td>_____% per $ collected</td>
</tr>
<tr>
<td>(February 1, 2026 through January 31, 2027)</td>
<td></td>
</tr>
<tr>
<td>Additional Recovery Projects % of Collection Per Project* (not to exceed $25,000.00)</td>
<td>_____% per $ collected</td>
</tr>
<tr>
<td>(February 1, 2026 through January 31, 2027)</td>
<td></td>
</tr>
</tbody>
</table>

*No payments shall be due or made for Credit Balance Audits or Additional Recovery Projects unless projects are authorized by CM.

d. In the event that the Contractor has an independent contractual relationship with any TennCare Partner, which requires Contractor to perform a service for the TennCare Partner that is determined by TennCare to be the same service that the Contractor provides for TennCare, then TennCare shall pay Contractor the lesser of (1) the contracted rate between Contractor and TennCare, and (2) the contracted rate between Contractor and TennCare Partner. For example, if the Contractor performs go-behind billing services for a TennCare Managed Care Organization (MCO) at a 5% rate of the amount collected, and also performs the same service for TennCare at a 7% rate, and the Contractor collects on claims that the
MCO failed to collect on, the Contractor shall remit the proceeds to TennCare and the Contractor shall receive 5%.

e. Contingency Fee - Go-Behind Billing. The Contractor shall receive a contingency fee for the Go-Behind Billing Services detailed herein. Payments shall be due when Go-Behind Billing recoveries are deposited in an account designated by TennCare and when Contractor has posted those payments to the claim level. However, Contractor shall receive no payment for claims that are deposited, unless those claims are posted to the claim level within sixty (60) calendar days of the date that the recovery is deposited in the Lockbox. If Contractor pursues and collects on a claim prior to date specified by TennCare, Contractor shall not receive a commission on that collection from TennCare.

f. Flat Fee - Annual Report on Medicare CrossOver Claims. The Contractor shall receive a flat-fee for each Medicare Crossover Claims Report. Payment will be invoiced in the first calendar month following delivery of the Medicare Crossover Claims Report.

g. Contingency Fee - Credit Balance Audit and Recoupments. The Contractor shall receive a contingency fee for Credit Balance Audit Services. Payments shall be due when recoveries are deposited in an account that TennCare maintains for said purpose.

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 TennCare  
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 TennCare;
   (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 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 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 E.23 (Nondiscrimination Compliance Requirements), and this Section D.9 shall not be deemed to limit or abridge any requirement set forth in Section E.23.

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 ten (10) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the 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 from 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, 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. For clarity, except as otherwise expressly set forth in this Section, Contractor’s indemnification obligations and other
remedies available under this Contract are subject to the limitations on liability set forth in this Section.

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’ fees, court costs, expert witness fees, and other litigation expenses 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, disqualified, or presently fall under any of the prohibitions of sections a-d.

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 for the affected obligations 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 State and federal laws and regulations applicable to Contractor in the Contractor’s performance of this Contract.
D.26. **Governing Law.** This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. 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 - 408.

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 (Personnel Attestation), Attachment B (Liquidated Damages), Attachment C (Business Associate Agreement), and Attachment D (Diversity Letter);

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 as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, 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.

D.32. **Insurance.** Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor’s failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers’ compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible or self-insured retention ("SIR") over fifty thousand dollars ($50,000) must be approved by the State. The deductible or SIR and any premiums are the Contractor’s sole responsibility. The Contractor agrees that the insurance requirements specified
in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an aggregate meeting or exceeding the required coverage amounts is acceptable. For example: If the required policy limit under this Contract is for two million dollars ($2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars ($1,000,000) combined with an umbrella policy for an additional one million dollars ($1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers’ Liability Accident), Contractor shall provide a copy of the umbrella insurance policy documents to ensure that no aggregate limit applies to the umbrella policy for that coverage area. In the event that an umbrella policy is being provided to achieve any required coverage amounts, the umbrella policy shall be accompanied by an endorsement at least as broad as the Insurance Services Office, Inc. (also known as “ISO”) “Noncontributory—Other Insurance Condition” endorsement or shall be written on a policy form that addresses both the primary and noncontributory basis of the umbrella policy if the State is otherwise named as an additional insured.

Contractor shall provide the State a certificate of insurance (“COI”) evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer’s National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) business days prior to the Effective Date and again thirty (30) calendar days before renewal or replacement of coverage. Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor’s policy. At any time, the State may require Contractor to provide a valid COI. The Parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor’s letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses. The State reserves the right to require complete, copies of all required insurance policies, including endorsements required by these specifications, at any time.

The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. 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 or its insurer, 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.

The insurance obligations under this Contract shall be: (1)—all the insurance coverage and policy limits carried by the Contractor; or (2)—the minimum insurance coverage requirements and policy limits shown in this Contract; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and minimum required policy limits, which are applicable to a given loss, shall be available to the State. No representation is made that the minimum insurance requirements of the Contract are sufficient to cover the obligations of the Contractor arising under this Contract. The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.

a. Commercial General Liability (“CGL”) Insurance
   1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises and operations products and completed operations, bodily injury, personal and advertising injury,
and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
The Contractor shall maintain single limits not less than one million dollars ($1,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this policy or location of occurrence or the general aggregate limit shall be twice the required occurrence limit.

b. Workers’ Compensation and Employer Liability Insurance
1) For Contractors statutorily required to carry workers’ compensation and employer liability insurance, the Contractor shall maintain:
   i. Workers’ compensation in an amount not less than one million dollars ($1,000,000) including employer liability of one million dollars ($1,000,000) per accident for bodily injury by accident, one million dollars ($1,000,000) policy limit by disease, and one million dollars ($1,000,000) per employee for bodily injury by disease.
2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
   i. The Contractor employs fewer than five (5) employees;
   ii. The Contractor is a sole proprietor;
   iii. The Contractor is in the construction business or trades with no employees;
   iv. The Contractor is in the coal mining industry with no employees;
   v. The Contractor is a state or local government; or

c. Automobile Liability Insurance
1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).
2) The Contractor shall maintain bodily injury/property damage with a limit no less than one million dollars ($1,000,000) per occurrence or combined single limit.

d. Technology Professional Liability (Errors & Omissions)/Cyber Liability Insurance
1) The Contractor shall maintain technology professional liability (errors & omissions)/cyber liability insurance appropriate to the Contractor’s profession in an amount not less than ten million dollars ($10,000,000) per occurrence or claim and ten million dollars ($10,000,000) annual aggregate, covering all acts, claims, errors, omissions, negligence, infringement of intellectual property (including copyright, patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, information theft, damage to destruction of or alteration of electronic information, breach of privacy perils, wrongful disclosure and release of private information, collection, or other negligence in the handling of confidential information, and including coverage for related regulatory fines, defenses, and penalties.
2) Such coverage shall include data breach response expenses, in an amount not less than ten million dollars ($10,000,000) and payable whether incurred by the State or Contractor, including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services and expenses in the performance of services for the State or on behalf of the State hereunder.

e. Crime Insurance
1) The Contractor shall maintain crime insurance, which shall be written on a “loss sustained form” or “loss discovered form” providing coverage for third party fidelity, including cyber theft and extortion. The policy must allow for reporting of
circumstances or incidents that may give rise to future claims, include an extended reporting period of no less than two (2) years with respect to events which occurred but were not reported during the term of the policy, and not contain a condition requiring an arrest or conviction.

2) Any crime insurance policy shall have a limit not less than one million dollars ($1,000,000) per claim and one million dollars ($1,000,000) in the aggregate. Any crime insurance policy shall contain a Social Engineering Fraud Endorsement with a limit of not less than two hundred and fifty thousand dollars ($250,000). This insurance may be written on a claims-made basis, but in the event that coverage is cancelled or non-renewed, the Contractor shall purchase an extended reporting or “tail coverage” of at least two (2) years after the Term.

D.33. Major Procurement Contract Sales and Use Tax. Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Contractor and the Contractor’s subcontractors shall remit sales and use taxes on the sales of goods or services that are made by the Contractor or the Contractor’s subcontractors and that are subject to tax.

D.34. 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. 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. 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, TennCare waivers, and all current, modified or future Court decrees, orders or judgments applicable to the State’s TennCare program. Such compliance shall be performed at no additional cost to the State.

E.3. Intellectual Property Indemnity. 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 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.4. **Software License Warranty.** Contractor grants a license to the State to use all software provided under this Contract in the course of the State’s business and purposes.

E.5. **Software Support and Maintenance Warranty.** Contractor shall provide to the State all software upgrades, modifications, bug fixes, or other improvements in its software that it makes generally available to its customers.

E.6. **Liquidated Damages.** In the event of a Contract performance or compliance failure by the Contractor relating to the specific Contract Sections identified in Contract Attachment B, 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.21. 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 Contract 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 or compliance failures may exceed the compensation provided by Liquidated Damages. 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.7. **Business Associate.** As the Contractor will provide services to TennCare pursuant to which the Contractor will have access to, receive from, create, or receive on behalf of TennCare Protected Health Information, or Contractor will have access to, create, receive, maintain or transmit on behalf of TennCare Electronic Protected Health Information (as those terms are defined under HIPAA and HITECH), 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 (See Attachment C).

E.8. **Notification of Breach and Notification of Suspected Breach.** The Contractor shall notify TennCare’s Privacy Office immediately upon becoming aware of and in no case later than 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.9. **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 TENNCARE and Contractor via the data transfer method specified in advance by TENNCARE. This may include, but shall not be limited to, transfer through TENNCARE's SFTP system. Failure by the Contractor to transmit information or data that is necessary for a deliverable in the manner specified by TENNCARE, may, at the option of TENNCARE, result in liquidated damages as set forth on Contract Attachment B, hereto.


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 TennCare, the data governed by the Contract for any purpose other than that set forth in this Contract for the administration of the TennCare program. Should the Contractor propose a redisclosure of said data, the Contractor must specify in writing to TennCare the data the Contractor proposes to redisclose, to whom, and the reasons that justify the redisclosure. TennCare will not give permission for such redisclosure unless the redisclosure is required by law or essential to the administration of the TennCare program.

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 maintain a current list of the employees of such contractor with access to SSA data and provide such lists to TennCare upon request and at any time there are changes.

e. The Contractor shall restrict access to the data obtained from TennCare to only those authorized employees who need such data to perform their official duties in connection with purposes identified in this Contract. The Contractor shall not further duplicate, disseminate, or disclose such data without obtaining TennCare’s prior written approval.

f. The Contractor shall ensure that its employees:

1. Properly safeguard SSA-supplied data furnished by TennCare under this Contract from loss, theft or inadvertent disclosure;

2. Receive regular, relevant and sufficient SSA data related training, including use, access and disclosure safeguards and information regarding penalties for misuse of information;

3. Understand and acknowledge that they are responsible for safeguarding this information at all times, regardless of whether or not the Contractor employee is at his or her regular duty station;

4. Ensure that laptops and other electronic devices/media containing SSA-supplied data are encrypted and/or password protected;

5. Send emails containing SSA-supplied data only if the information is encrypted or if the transmittal is secure; and,
(6) Limit disclosure of the information and details relating to a SSA-supplied data loss only to those with a need to know.

Contractor employees who access, use, or disclose TennCare or TennCare 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 SSA-supplied data, the Contractor must notify TennCare immediately upon becoming aware to report the actual or suspected loss. The Contractor must provide TennCare with timely updates as any additional information about the loss of SSA-supplied data becomes available.

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

h. TennCare may immediately and unilaterally suspend the data flow under this Contract, or terminate this Contract, if TennCare, in its sole discretion, determines that the Contractor has: (1) made an unauthorized use or disclosure of TennCare SSA-supplied data; or (2) violated or failed to follow the terms and conditions of this Contract Section E.21.

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

“SSA-supplied data” or “data” as used in this section means an individual’s personally identifiable information (e.g. name, social security number, income), supplied by the Social Security Administration to TennCare to determine entitlement or eligibility for federally-funded programs pursuant to a Computer Matching and Privacy Protection Act Agreement and Information Exchange Agreement between SSA and the State of Tennessee.

E.11. 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 TennCare or its designee. When this is not possible, the Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy print-outs and will provide the TennCare or its 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 TennCare and, upon request, to the IRS reviewing office.

(10) TennCare 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.

c) Inspection.

The IRS and TennCare with 24-hour notice, shall have the right to send their 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 TennCare'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.12. Medicaid and CHIP. The Contractor must provide safeguards that restrict the use or disclosure of information concerning applicants and beneficiaries to purposes directly connected with the administration of the plan:

a) Purposes directly related to the administration of Medicaid and CHIP include:

1) establishing eligibility;
2) determining the amount of medical assistance;
3) providing services for beneficiaries; and,
4) conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to Medicaid or CHIP administration.

b) The Contractor must have adequate safeguards to assure that:

1) Information is made available only to the extent necessary to assist in the valid administrative purposes of those receiving the information, and information received under 26 USC is exchanged only with parties authorized to receive that information under that section of the Code; and, 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 TENNCARE 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 TENNCARE;
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 TENNCARE, 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 TENNCARE 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 TENNCARE at least ten (10) days prior to the required production date so TENNCARE 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 TENNCARE.

E.13. **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.14. **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 TennCare 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.15. **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.16. **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.17. **Survival.** The terms, provisions, representations, and warranties contained in this Contract which by their sense and context are intended to survive the performance and termination of this Contract, shall so survive the completion of performance and termination of this Contract.

E.18. **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.19. **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.20. **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 or ensure 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 forty-eight (48) 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. The obligations set forth in this Section shall survive the termination of this Contract.

E.21. **Discovery and Litigation Hold Requirements.** TennCare is frequently involved in litigation as either a party or a non-party with relevant information. Contractor shall cooperate with all TennCare requests to aid in data and document retention, and collection, as required for litigation. Contractor will also provide subject matter experts as needed for depositions or as witnesses at
trial. These services will be provided at no cost to the state. TennCare and its attorneys will exert all reasonable efforts to limit the scope and cost of discovery and litigation requests.

E.22.  **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. 23. **Nondiscrimination Compliance Requirements.**

   a. **General 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.

      1. **Nondiscrimination Compliance Coordinator.** 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 Director of Civil Rights Compliance ("DCRC") 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 the DCRC by name.

         Within ten (10) calendar days of the commencement of any period of time that the Contractor does not have a NCC, the Contractor shall provide written notice of this event to the DCRC. The name and contact information for the new NCC shall be reported in writing to the DCRC within ten (10) calendar days of assuming the duties of the NCC.

      2. **Policies and Procedures.** The Contractor shall, at a minimum, implement 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. **Implementation.** Prior to implementation of this Contract, the NCC shall participate in a readiness review phase. The DCRC shall provide the NCC with the nondiscrimination/civil rights readiness review expectations for this Contract and provide technical assistance to the NCC.

         (i) The NCC shall provide the Contractor’s written policies and procedures that demonstrate nondiscrimination in the provision of services provided under this Contract to DCRC. These policies shall include topics, such as, discrimination complaint workflows and procedures, the provision of effective communication services (i.e. language assistance services to individuals with Limited English Proficiency and auxiliary aids or services to individuals with disabilities), and providing other forms of assistance to individuals with disabilities (i.e. reasonable accommodations). 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. Any nondiscrimination policies and procedures that are specific to TennCare program members and/or participants shall be prior approved in writing by the DCRC.

         (ii) 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 DCRC. This training plan shall detail how the Contractor’s annual
civil rights training will be provided to staff and tracked for compliance. The plan
shall include the Contractor’s procedures for training new hires and capturing the
new hire training data. On a quarterly and annual basis, the Contractor’s new
hire and annual training data shall be provided to DCRC. If needed, the NCC
may request an extension of time for providing the training plan to DCRC.
Thereafter, the Contractor shall update the training plan as needed to conform to
changes in federal and State law and provided to the DCRC on an annual basis
and upon request.

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

5. **Access.** The Contractor shall permit access as set forth in the applicable civil rights laws,
such as, 45 C.F.R. § 80.6 to HHS, DOJ, TennCare, 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. **Complaint Forms.** The Contractor shall use and have available TennCare’s
discrimination complaint forms to provide to individuals who want to file a complaint and
the Contractor may direct the individual to TennCare’s real-time complaint form at

Upon request, the Contractor shall mail the individual a copy of the TennCare Complaint
form and post the forms on the Contractor’s website that is specific to the TennCare
program. TennCare’s discrimination complaint forms are vital documents and must be
available at a minimum in the English, Spanish, Arabic languages. The DCRC shall
provide the NCC with a link to TennCare’s discrimination complaint forms that may be
placed on the Contractor’s website, which will direct individuals to TennCare’s complaint
forms.

The Contractor shall provide assistance to individuals that request that the Contractor
assist them with filing discrimination complaints with the TennCare program(s) 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 DCRC.

7. **Nondiscrimination Notice and Taglines.** As required by the applicable federal civil
rights laws, including 45 C.F.R. pt 80 and 42 C.F.R. § 438.10, the Contractor shall ensure
that applicant and member materials, 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 TennCare and set forth in TennCare’s tagline templates. Written
materials specific to TennCare’s programs’ members shall be prior approved in writing by
TennCare prior to the materials being sent to these individuals.
8. **Limited English Proficiency.** In accordance with 68 Fed. Reg 47311-02, within ninety (90) calendar days of notification from TennCare, all vital Contractor documents related to this Contract shall be translated and available to each Limited English Proficiency ("LEP") group identified by TennCare 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. **Nondiscrimination Compliance Reports.** The Contractor shall submit the following nondiscrimination compliance deliverables to TennCare as follows:

1. **Annual Compliance Questionnaire.** Annually, the DCRC shall provide the NCC with a Nondiscrimination Compliance Questionnaire. The NCC shall answer the questions contained in the Compliance Questionnaire and submit the completed Questionnaire to DCRC 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 TennCare.

   (i) As part of the requested documentation for the Nondiscrimination Compliance Questionnaire, the NCC shall submit copies of the Contractor’s nondiscrimination policies and procedures (e.g. 45 C.F.R. § 80.3) that demonstrate nondiscrimination in the provision of its services, programs, or activities provided under this Contract.

   (ii) The NCC shall include, as part of the requested documentation for the Nondiscrimination Compliance Questionnaire, reports that capture data for all language and communication assistance services used and provided by the Contractor under this Contract. The Contractor shall ensure that language and communication assistance section of the questionnaire contains:

   A. the names of the Contractor’s language and communication assistance service providers;
   B. the languages in which interpretation and translation services are available;
   C. the auxiliary aids or services that are provided and are available;
   D. the hours that language and communication assistance services are available;
   E. numbers individuals call to access language and communication assistance services;
   F. a separate Excel spreadsheet report that captures a listing of language and communication assistance services that were requested by members and/or participants (e.g. Arabic; Braille) and the methods used to provide the language and alternative communication service to the members (i.e. interpretation; translation).
Upon request, the NCC 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. Quarterly Compliance Reports. The NCC 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/non-discrimination 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, participants, and subcontractors in which the discrimination allegation is related to the provision of and/or access to TennCare covered services provided by the Contractor, which the NCC is assisting the DCRC 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 NCC 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 TennCare's covered services provided by the Contractor. The Contractor shall ensure that the listing includes, at a minimum, the:

   A. Identity of the complainant;
   B. Complainant's relationship to the Contractor;
   C. Circumstances of the complaint;
   D. Type of covered service related to the complaint;
   E. Date complaint filed;
   F. Contractor's resolution; and
   G. 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 and/or participants (i.e. Arabic; Braille) and the methods used to provide the language and alternative communication service to the members and/or participants (i.e. interpretation; translation). Upon request, the NCC 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 TennCare’s programs
are reported to the Contractor, the NCC shall send such complaints within two (2) business days of receipt to the DCRC. The DCRC shall investigate and resolve all alleged acts of discrimination committed by the Contractor and/or its employees. The Contractor shall cooperate with TennCare during the investigation and resolution of such complaints. The DCRC reserves the right to request that the NCC assist with conducting the initial investigations and to suggest resolutions of alleged discrimination complaints. If the DCRC requests that the NCC assist TennCare with conducting the initial investigation, the NCC shall start the initial investigation within five (5) business days from the date of the request. The NCC shall provide the DCRC 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. The DCRC shall review the NCC’s initial investigations and determine the appropriate resolutions for the complaints as set forth in subsection c below. During the complaint investigation, the NCC shall have the opportunity to provide the DCRC with any information that is relevant to the complaint investigation. The Contractor shall take reasonable methods to keep such documentation and materials confidential and shall not disclose the documentation or materials related to such investigation, to any third party unless 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 TennCare’s programs be reported to the Contractor, the NCC shall inform the DCRC of such complaints within two (2) business days from the date Contractor learns of such complaints. If the DCRC requests that the NCC assist TennCare with conducting the initial investigation, the NCC’s nondiscrimination compliance officer shall start the initial investigation within five (5) business days from the date of the request. Once an initial investigation has been completed, the NCC’s shall report his/her determinations to the DCRC. At a minimum, the NCC’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. The DCRC shall review the NCC’s initial investigations and determine the appropriate resolutions for the complaints as set forth in subsection (3) below. The DCRC 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 TennCare 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 the DCRC to be valid, the DCRC 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 the DCRC 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 the DCRC, or approval of the Contractor’s proposed corrective action plan by the DCRC, the Contractor shall implement the approved corrective action plan to resolve the discrimination complaint. TennCare, 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 the DCRC. Time periods for the implementation of the corrective action plan nondiscrimination training shall be designated by TennCare.
d. **Electronic and Information Technology Accessibility Requirements.**

1. The Contractor shall comply with the civil rights requirements set forth in 42 C.F.R. § 433.112 regarding the design, development, installation or enhancement of mechanized processing and information retrieval systems. In addition, the Contractor shall participate in the State’s effort to comply with the nondiscrimination requirements for acquiring automatic data and processing equipment and services set forth in 45 C.F.R. § 95.633.

2. 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"), the Americans with Disabilities Act, and 45 C.F.R. pt. 92 (or any subsequent standard adopted by an oversight administrative body, including the Federal Accessibility Board). To comply with the accessibility requirements for Web content and non-Web electronic documents and software, the Contractor shall use the most current W3C’s Web Content Accessibility Guidelines ("WCAG") level AA or higher (For the W3C’s guidelines see: https://www.w3.org/WAI/ and https://www.access-board.gov/guidelines-and-standards/communications-and-it).

   Contractor agrees to perform regularly scheduled (i.e., automatic) scans and manual testing for the most current WCAG level AA or higher compliance for all user content and applications in order to meet the standards for compliance. The Contractor must ensure that any system additions, updates, changes or modifications comply with the most current WCAG level AA or higher. Commercial Off-the-shelf ("COTS") products may be used to verify aspects of the most current WCAG level AA or higher compliance.

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

E.24. **Contractor Commitment to Diversity.** The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor’s Response to 31865-00618 (Attachment E) 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 monthly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, service-disabled veterans, and persons with disabilities. Such reports shall be provided to the State of Tennessee Governor’s Office of Diversity Business Enterprise in the TN Diversity Software available online at: https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810.

E.25. **Contractor Hosted Services Confidential Data, Audit, and Other Requirements**

a. "Confidential State Data" is defined as data deemed confidential by State or Federal statute or regulation. The Contractor shall protect Confidential State Data as follows:

   (1) The Contractor shall ensure that all Confidential State Data is housed in the continental United States, inclusive of backup data.

   (2) The Contractor shall encrypt Confidential State Data at rest and in transit using the current version of Federal Information Processing Standard ("FIPS") 140-2 validated encryption technologies.
(3) The Contractor and the Contractor’s processing environment containing Confidential State Data shall either (1) be in accordance with at least one of the following security standards: (i) International Standards Organization (“ISO”) 27001; (ii) Federal Risk and Authorization Management Program (“FedRAMP”); or (2) be subject to an annual engagement by a CPA firm in accordance with the standards of the American Institute of Certified Public Accountants (“AICPA”) for a System and Organization Controls for service organizations (“SOC”) Type II audit. The State shall approve the SOC audit control objectives. The Contractor shall provide proof of current ISO certification or FedRAMP authorization for the Contractor and Subcontractor(s), or provide the State with the Contractor’s and Subcontractor’s annual SOC Type II audit report within 30 days from when the CPA firm provides the audit report to the Contractor or Subcontractor. The Contractor shall submit corrective action plans to the State for any issues included in the audit report within 30 days after the CPA firm provides the audit report to the Contractor or Subcontractor.

If the scope of the most recent SOC audit report does not include all of the current State fiscal year, upon request from the State, the Contractor must provide to the State a letter from the Contractor or Subcontractor stating whether the Contractor or Subcontractor made any material changes to their control environment since the prior audit and, if so, whether the changes, in the opinion of the Contractor or Subcontractor, would negatively affect the auditor’s opinion in the most recent audit report.

No additional funding shall be allocated for these certifications, authorizations, or audits as these are included in the Maximum Liability of this Contract.

(4) The Contractor must annually perform Penetration Tests and Vulnerability Assessments against its Processing Environment. “Processing Environment” shall mean the combination of software and hardware on which the Application runs. “Application” shall mean the computer code that supports and accomplishes the State’s requirements as set forth in this Contract. “Penetration Tests” shall be in the form of attacks on the Contractor’s computer system, with the purpose of discovering security weaknesses which have the potential to gain access to the Processing Environment’s features and data. The “Vulnerability Assessment” shall be designed and executed to define, identify, and classify the security holes (vulnerabilities) in the Processing Environment. The Contractor shall allow the State, at its option, to perform Penetration Tests and Vulnerability Assessments on the Processing Environment.

(5) Upon State request, the Contractor shall provide a copy of all Confidential State Data it holds. The Contractor shall provide such data on media and in a format determined by the State.

(6) Upon termination of this Contract and in consultation with the State, the Contractor shall destroy all Confidential State Data it holds (including any copies such as backups) in accordance with the current version of National Institute of Standards and Technology (“NIST”) Special Publication 800-88. The Contractor shall provide a written confirmation of destruction to the State within ten (10) business days after destruction.

b. Minimum Requirements

(1) The Contractor and all data centers used by the Contractor to host State data, including those of all Subcontractors, must comply with the State’s Enterprise Information Security Policies as amended periodically. The State’s Enterprise Information Security Policies document is found at the following URL: https://www.tn.gov/finance/strategic-technology-solutions/strategic-technology-solutions/sts-security-policies.html.
(2) The Contractor agrees to maintain the Application so that it will run on a current, manufacturer-supported Operating System. "Operating System" shall mean the software that supports a computer's basic functions, such as scheduling tasks, executing applications, and controlling peripherals.

(3) If the Application requires middleware or database software, Contractor shall maintain middleware and database software versions that are at all times fully compatible with current versions of the Operating System and Application to ensure that security vulnerabilities are not introduced.

c. Comptroller Audit Requirements

Upon reasonable notice and at any reasonable time, the Contractor and Subcontractor(s) agree to allow the State, the Comptroller of the Treasury, or their duly appointed representatives to perform information technology control audits of the Contractor and all Subcontractors used by the Contractor. Contractor will maintain and cause its Subcontractors to maintain a complete audit trail of all transactions and activities in connection with this Contract. Contractor will provide to the State, the Comptroller of the Treasury, or their duly appointed representatives access to Contractor and Subcontractor(s) personnel for the purpose of performing the information technology control audit.

The information technology control audit may include a review of general controls and application controls. General controls are the policies and procedures that apply to all or a large segment of the Contractor’s or Subcontractor’s information systems and applications and include controls over security management, access controls, configuration management, segregation of duties, and contingency planning. Application controls are directly related to the application and help ensure that transactions are complete, accurate, valid, confidential, and available. The audit shall include the Contractor’s and Subcontractor’s compliance with the State’s Enterprise Information Security Policies and all applicable requirements, laws, regulations or policies.

The audit may include interviews with technical and management personnel, physical inspection of controls, and review of paper or electronic documentation.

For any audit issues identified, the Contractor and Subcontractor(s) shall provide a corrective action plan to the State within 30 days from the Contractor or Subcontractor receiving the audit report.

Each party shall bear its own expenses incurred while conducting the information technology controls audit.

d. Business Continuity Requirements. The Contractor shall maintain set(s) of documents, instructions, and procedures which enable the Contractor to respond to accidents, disasters, emergencies, or threats without any stoppage or hindrance in its key operations ("Business Continuity Requirements"). Business Continuity Requirements shall include:

(1) "Disaster Recovery Capabilities" refer to the actions the Contractor takes to meet the Recovery Point and Recovery Time Objectives defined below. Disaster Recovery Capabilities shall meet the following objectives:

i. Recovery Point Objective ("RPO"). The RPO is defined as the maximum targeted period in which data might be lost from an IT service due to a
major incident: 24-hours

ii. Recovery Time Objective (“RTO”). The RTO is defined as the targeted duration of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity: 24-hours

(2) The Contractor and the Subcontractor(s) shall perform at least one Disaster Recovery Test every three hundred sixty-five (365) days. A “Disaster Recovery Test” shall mean the process of verifying the success of the restoration procedures that are executed after a critical IT failure or disruption occurs. The Disaster Recovery Test shall use actual State Data Sets that mirror production data, and success shall be defined as the Contractor verifying that the Contractor can meet the State’s RPO and RTO requirements. A “Data Set” is defined as a collection of related sets of information that is composed of separate elements but can be manipulated as a unit by a computer. The Contractor shall provide written confirmation to the State after each Disaster Recovery Test that its Disaster Recovery Capabilities meet the RPO and RTO requirements.

IN WITNESS WHEREOF,

CONTRACTOR LEGAL ENTITY NAME:

<table>
<thead>
<tr>
<th>CONTRACTOR SIGNATURE</th>
<th>DATE</th>
</tr>
</thead>
</table>

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

STATE OF TENNESSEE, DEPARTMENT OF FINANCE AND ADMINISTRATION, DIVISION OF TENNCARE:

<table>
<thead>
<tr>
<th>BUTCH ELEY, COMMISSIONER</th>
<th>DATE</th>
</tr>
</thead>
</table>
# ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

<table>
<thead>
<tr>
<th>SUBJECT CONTRACT NUMBER:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CONTRACTOR LEGAL ENTITY NAME:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>EDISON VENDOR IDENTIFICATION NUMBER:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

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**
ATTACHMENT B

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.

TennCare 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 TennCare that the Contractor has failed to meet any of the requirements of this Contract in a proper and/or timely manner, TennCare 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 TennCare, TennCare 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 TennCare’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 TennCare and may continue until such time as the TennCare Deputy Commissioner, or the Deputy Commissioner’s representative, determines the performance or compliance failure has been cured.

If Liquidated Damages are assessed, TennCare 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 TennCare is to pay to Contractor in a given payment, TennCare 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 TennCare, the Contractor must submit a written notice of dispute, including the reasons for disputing the Liquidated Damages, to the TennCare Deputy Commissioner or the Deputy Commissioner’s representative within thirty (30) calendar days of receipt of the notice from TennCare 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 for the Contract performance or compliance failures listed below. 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.

<table>
<thead>
<tr>
<th>PROGRAM ISSUES</th>
<th>DAMAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Contractor’s failure to provide complete global interactive access to all its systems and data to any staff specified by TennCare or any additional parties appointed by TennCare pursuant to section A.7.a</td>
<td>Upon notification by TennCare, $10,000 per calendar day until issue is resolved.</td>
</tr>
<tr>
<td>2. Contractor’s failure to timely create a report template pursuant to section A.8.b</td>
<td>$5,000 per calendar day for each day the template is late.</td>
</tr>
<tr>
<td>3. Contractor’s failure to export reports in formats pursuant to A.8.c</td>
<td>Upon notification by TennCare, $2,500 per calendar day until issue is resolved.</td>
</tr>
<tr>
<td>4. Contractor’s failure to timely produce a report pursuant to A.8.d</td>
<td>$5,000 per calendar day for each day the report is late.</td>
</tr>
<tr>
<td>5. Contractor’s failure to capture or maintain any field required by this Contract or required by TennCare. A.7.C</td>
<td>Upon notification by TennCare, $5,000 per calendar day until issue is resolved.</td>
</tr>
<tr>
<td>6. Contractor’s failure to timely create or modify a field that TennCare requests pursuant to A.7.c</td>
<td>$10,000 per calendar day for each day the creation or modification is late.</td>
</tr>
<tr>
<td>7. Contractor’s failure to affirmatively disclose Potential Conflicts of Interest pursuant to A.9</td>
<td>$25,000 per calendar day for each day the disclosure is late.</td>
</tr>
<tr>
<td>8. Contractor’s failure to supply requested information relevant to Potential Conflicts of Interest, pursuant to A.9</td>
<td>$5,000 per calendar day for each day that the information is late.</td>
</tr>
<tr>
<td>9. Contractor’s failure to post claims within the time required pursuant to A.11</td>
<td>$500 per claim for each day late.</td>
</tr>
<tr>
<td>10. Contractor’s failure to conduct any data exchange that is required daily pursuant to A.12</td>
<td>$25,000 for each data exchange that is not conducted.</td>
</tr>
<tr>
<td>11. Contractor’s failure to conduct any data exchange that is required on a weekly basis pursuant to A.12.</td>
<td>$50,000 for each data exchange that is not conducted.</td>
</tr>
<tr>
<td>12. Contractor’s failure to conduct any data exchange that is required on a monthly basis, pursuant to A.12.</td>
<td>$100,000 for each data exchange that is not conducted.</td>
</tr>
<tr>
<td>13. Contractor’s failure to timely transfer verified TPR information to TennCare pursuant to A.12.</td>
<td>$25,000 for each calendar day that the transfer is late.</td>
</tr>
<tr>
<td>14.</td>
<td>Contractor’s failure to notify TennCare that information provided by TennCare or a TennCare Partner, as applicable, to Contractor is deficient or defective pursuant to A.12.</td>
</tr>
<tr>
<td>15.</td>
<td>Contractor’s failure to timely pursue go-behind billing claims pursuant to A.16.b</td>
</tr>
<tr>
<td>16.</td>
<td>Contractor’s failure to transmit information to TennCare when the validation and verification is provided during the go-behind billing process. Pursuant to A.16.c</td>
</tr>
<tr>
<td>17.</td>
<td>Contractor bills TennCare for a go-behind recovery that was not posted to the claim level within 60 calendar days of receipt of payment. C.3.d</td>
</tr>
</tbody>
</table>
HIPAA Business Associate Agreement

THIS HIPAA BUSINESS ASSOCIATE AGREEMENT ("Agreement") is between The State of Tennessee, Division of TennCare ("TennCare" or "Covered Entity"); located at 310 Great Circle Road, Nashville, TN 37243 and __________ (“Business Associate”), located at __________, including all office locations and other business locations at which Business Associate data may be used or maintained. Covered Entity and Business Associate may be referred to herein individually as “Party” or collectively as “Parties.”

BACKGROUND

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

LIST OF AGREEMENTS AFFECTED BY THIS HIPAA BUSINESS ASSOCIATE AGREEMENT:

_____________________________________________________________________________
_____________________________________________________________________________

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

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

1. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.13 Accounting for Disclosures of PHI. The Business Associate agrees to provide to Covered Entity or to an Individual, or Individual’s designee, in time and manner designated by Covered Entity, information collected in accordance with this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. The Covered Entity shall forward the Individual’s request requiring the participation of the Business Associate to the Business Associate in a timely manner, after which the Business Associate shall provide such information as follows:
(a) If Covered Entity directs Business Associate to provide an accounting of disclosures of the Individual’s PHI directly to the Individual, the Business Associate shall have sixty (60) days from the date of the Individual’s request to provide access to or deliver such information to the Individual or Individual’s designee. The Covered Entity shall provide notice to the Business Associate in time to allow the Business Associate a minimum of thirty (30) days to timely complete the Individual’s request.

(b) If the Covered Entity elects to provide the accounting to the Individual, the Business Associate shall have thirty (30) days from date of Covered Entity’s notice of request to provide information for the Accounting to the Covered Entity so that the Covered Entity may timely respond to the Individual within the sixty (60) day period.

(c) If either of the Parties is unable to complete the response to the request in the times provided above, that Party shall notify the Individual with a written statement of the reasons for the delay and the date by which the Party will complete its action on the request. The Parties may extend the response time once for no more than thirty (30) additional days.

(d) The accounting of disclosures shall include at least the following information:

   (1) date of the disclosure;
   (2) name of the third party to whom the PHI was disclosed,
   (3) if known, the address of the third party;
   (4) brief description of the disclosed information; and
   (5) brief explanation of the purpose and basis for such disclosure.

(e) The Parties shall provide one (1) accounting in any twelve (12) months to the Individual without charge. The Parties may charge a reasonable, cost-based fee, for each subsequent request for an accounting by the same Individual if he/she is provided notice and the opportunity to modify his/her request. Such charges shall not exceed any applicable State statutes or rules.

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

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

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

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

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

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

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

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

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

3.3 Security Provisions in Business Associate Contracts. Business Associate shall ensure that any agent to whom it provides Electronic PHI received from, maintained, or created for Covered Entity or that carries out any duties for the Business Associate involving the use, custody, disclosure, creation of, or access to PHI supplied by Covered Entity, shall execute a bilateral contract (or the appropriate equivalent if the agent is a government entity) with Business Associate, incorporating substantially similar, but not less stringent restrictions and conditions in this Agreement with Business Associate regarding PHI except for the provision in Section 4.6.

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

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

_____________________________________________________________________
_____________________________________________________________________
_____________________________________________________________________
_____________________________________________________________________

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.11 Business Associates shall implement and maintain information security policies that comply with the HIPAA Security
5. OBLIGATIONS OF COVERED ENTITY

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

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

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

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

6. TERM AND TERMINATION

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

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

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

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

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

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

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

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

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

7. MISCELLANEOUS

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

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

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

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

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

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

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

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

BUSINESS ASSOCIATE:

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

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

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

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

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

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

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

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

**DIVISION OF TENNCARE:**

By: ________________________________

Stephen M. Smith, Director

Date: _______________________________

Division of TennCare
310 Great Circle Road
Nashville, TN 37243
Fax: (615) 253-5607

**BUSINESS ASSOCIATE:**

By: ________________________________

Date: _______________________________

---

*Division of TennCare*
(Filled out only by selected Contractor)

SAMPLE LETTER OF DIVERSITY COMMITMENT

(Company Letterhead/Logo)
(Address)
(Date)
(Salutation),

(Company Name) is committed to achieving or surpassing a goal of (numeral) percent spend with certified diversity business enterprise firms on State of Tennessee contract # (Edison document #). Diversity businesses are defined as those that are owned by minority, women, service-disabled veterans, businesses owned by persons with disabilities, and small businesses which are certified by the Governor's Office of Diversity Business Enterprise (Go-DBE).

We confirm our commitment of (percentage) participation on the (Contract) by using the following diversity businesses:

(i) Name and ownership characteristics (i.e., ethnicity, gender, service-disabled veteran, or disability) of anticipated diversity subcontractors and suppliers:

(ii) Participation estimates (expressed as a percent of the total contract value to be dedicated to diversity subcontractors and suppliers):

(iii) Description of anticipated services to be performed by diversity subcontractors and suppliers:

We accept that our commitment to diversity advances the State’s efforts to expand opportunity of diversity businesses to do business with the State as contractors and sub-contractors.

Further, we commit to:

1. Using applicable reporting tools that allow the State to track and report purchases from businesses owned by minority, women, service-disabled veterans, businesses owned by persons with disabilities, and small businesses.

2. Reporting monthly to the Go-DBE office the dollars spent with certified diversity businesses owned by minority, women, service-disabled veterans, businesses owned by persons with disabilities, and small business accomplished under contract # (Edison number).

(Company Name) is committed to working with the Go-DBE office to accomplish this goal.

Regards,

(Company authority – signature and title)