



**STATE OF TENNESSEE  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
DIVISION OF TENNCARE**

**REQUEST FOR PROPOSALS  
FOR  
Employment and Community First (ECF) CHOICES Training &  
Technical Assistance, and Pre-Admission  
Screening and Resident Review (PASRR) processes and services  
RFP # 31865-00638**

**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

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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

The State of Tennessee, Division of TennCare (TennCare), Long Term Services and Supports (LTSS) is seeking a contractor to provide Employment and Community First (ECF) CHOICES Training and Technical Assistance, Pre-Admission Screening and Resident Review (PASRR) processes, services related to medical or Level of Care (LOC) eligibility assessments and appeals for Long-Term Services and Supports (LTSS), , and Supports Intensity Scale™ (SIS™) assessments. These services will need to incorporate the following:

- Training and Technical Assistance related to the following: training and certifying staff to perform the Maladaptive Behavior Assessment component of the Inventory for Client and Agency Planning (ICAP), Life Skills Assessment training, development of an electronic tool to calculate the Maladaptive Behavior Index Score, processes for conducting post-scoring audits of Maladaptive Behavior Assessment, and targeted training and technical assistance to improve assessment accuracy and performance.
- Pre-Admission Screening and Resident Review (PASRR) process: Level I assessment, Level II assessment, and appeals.
- Medical or Level of Care (LOC) eligibility assessments and appeals for Long-Term Services and Supports (LTSS) programs.

The maximum liability in RFP Attachment 6.6, Section C.1, will be populated based on the Cost Proposal rates and associated volumes as projected to complete the scope of work in the *pro forma* contract. There is no way to accurately project the amount of this project until the cost proposals are received. However, the current contracts for these services have combined expenditures of approximately \$4.5 million annually.

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

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

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

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

### 1.3. Nondiscrimination

No person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of a Contract pursuant to this RFP or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The Contractor pursuant to this RFP shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

#### 1.4. RFP Communications

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

**RFP # 31865-00638**

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  
 Department of Finance and Administration  
 Division of TennCare  
 310 Great Circle Road  
 Nashville, TN 37243  
 (615) 741-0041  
 Donovan.Morgan2@tn.gov

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

- a. staff of the Governor's Office of Diversity Business Enterprise for assistance available to minority-owned, woman-owned, 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. Actual or digital "postmarking" of a communication or response to the State by a specified deadline is not a substitute for the State's actual receipt of a communication or response. It is encouraged for Respondents 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:

**Join on your computer, mobile app or room device**

[Click here to join the meeting](#)

Meeting ID: 246 343 358 425

Passcode: rrMLoP

[Download Teams](#) | [Join on the web](#)

**Join with a video conferencing device**

stateoftn@m.webex.com

Video Conference ID: 119 660 255 8

[Alternate VTC instructions](#)

**Or call in (audio only)**

[+1 629-209-4396, 907997560#](#) United States, Nashville

Phone Conference ID: 907 997 560#

[Find a local number](#) | [Reset PIN](#)

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.

EVENT	TIME (central time zone)	DATE
1. RFP Issued		June 8, 2023
2. Disability Accommodation Request Deadline	2:00 p.m.	June 13, 2023
3. Pre-response Conference	10:30 a.m.	June 16, 2023
4. Notice of Intent to Respond Deadline		June 20, 2023
5. Written "Questions & Comments" Deadline and Organizational Conflict of Interest Deadline	2:00 p.m.	July 3, 2023
6. State Response to Written "Questions & Comments"		July 21, 2023
7. Response Deadline	2:00 p.m.	August 4, 2023
8. State Completion of Technical Response Evaluations		August 25, 2023
9. State Opening & Scoring of Cost Proposals	2:00 p.m.	August 28, 2023
10. Negotiations (optional)		August 30, 2023 through September 1, 2023
11. State Notice of Intent to Award Released <u>and</u> RFP Files Opened for Public Inspection		September 18, 2023
12. End of Open File Period		September 25, 2023
13. State sends contract to Contractor for signature		September 28, 2023
14. Contractor Signature Deadline		October 13, 2023

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

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#### 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.
- 3.1.2. **Cost Proposal.** A Cost Proposal must be recorded on an exact duplicate of the RFP Attachment 6.3., Cost Proposal & Scoring Guide.

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

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

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

### 3.2. Response Delivery

- 3.2.1. A Respondent must ensure that both the original Technical Response and Cost Proposal documents meet all form and content requirements, including all required signatures, as detailed within this RFP, as may be amended.
- 3.2.2. A Respondent must submit original Technical Response and Cost Proposal documents and copies as specified 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 USB flash drive and should be clearly identified as the:

**"RFP # 31865-00638 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 USB flash drive clearly labeled:

**"RFP # 31865-00638 TECHNICAL RESPONSE COPY"**

The sealed customer references should be delivered by each reference in accordance with RFP Attachment 6.4.

##### 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 USB flash drive clearly labeled:

**31865-00638 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 # 31865-00638 TECHNICAL RESPONSE"**



The customer references should be delivered by each reference in accordance with RFP Attachment 6.4.

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 # 31865-00638 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 # 31865-00638 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 # 31865-00638 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 # 31865-00638 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  
 Department of Finance and Administration  
 Division of TennCare  
 310 Great Circle Road  
 Nashville, TN 37243  
 (615) 741-0041  
[Donovan.Morgan2@tn.gov](mailto: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**

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### **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>

#### 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

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### 5.1. Evaluation Categories & Maximum Points

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

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

### 5.2. Evaluation Process

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

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

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

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

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

5.2.1.3. Proposal Evaluation Team members will independently evaluate each Technical Response (that is responsive to the RFP) against the evaluation criteria in this RFP,

and will score each in accordance with the RFP Attachment 6.2., Technical Response & Evaluation Guide.

- 5.2.1.4. For each response evaluated, the Solicitation Coordinator will calculate the average of the Proposal Evaluation Team member scores for RFP Attachment 6.2., Technical Response & Evaluation Guide, and record each average as the response score for the respective Technical Response section.
- 5.2.1.5. Before Cost Proposals are opened, the Proposal Evaluation Team will review the Technical Response Evaluation record and any other available information pertinent to whether or not each Respondent is responsive and responsible. If the Proposal Evaluation Team identifies any Respondent that does not 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 # 31865-00638 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:**

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**PRINTED NAME & TITLE:**

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**DATE:**

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**RESPONDENT LEGAL ENTITY  
NAME:**

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## RFP ATTACHMENT 6.2. — Section A

## TECHNICAL RESPONSE &amp; EVALUATION GUIDE

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

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

RESPONDENT LEGAL ENTITY NAME:			
Response Page # (Respondent completes)	Item Ref.	Section A— Mandatory Requirement Items	Pass/Fail
		The Response must be delivered to the State no later than the Response Deadline specified in the RFP Section 2, Schedule of Events.	
		The Technical Response and the Cost Proposal documentation must be packaged separately as required (refer to RFP Section 3.2., <i>et. seq.</i> ).	
		The Technical Response must NOT contain cost or pricing information of any type.	
		The Technical Response must NOT contain any restrictions of the rights of the State or other qualification of the response.	
		A Respondent must NOT submit alternate responses (refer to RFP Section 3.3.).	
		A Respondent must NOT submit multiple responses in different forms (as a prime and a subcontractor) (refer to RFP Section 3.3.).	
	A.1.	Provide the Statement of Certifications and Assurances (RFP Attachment 6.1.) completed and signed by an individual empowered to bind the Respondent to the provisions of this RFP and any resulting contract. The document must be signed without exception or qualification.	
	A.2.	Provide a statement, based upon reasonable inquiry, of whether the Respondent or any individual or subcontractor who shall cause to deliver goods or perform services under the contract has a possible conflict of interest ( <i>e.g.</i> , employment by the State of Tennessee) and, if so, the nature of that conflict. This shall be inclusive of any proposed subcontractor that hold current effective Contracts with the State of Tennessee.  NOTE: Any questions of conflict of interest shall be solely within the discretion of the State, and the State reserves the right to cancel any award.	
	A.3.	Provide a current bank reference indicating that the Respondent's business relationship with the financial institution is in positive standing. Such reference must be written in the form of a standard business letter, signed, and dated within the past three (3) months.	
	A.4.	Provide an official document or letter indicating the Respondent's financial standing. Respondent may submit one of the following four options:  1. Provide an official document or letter from an accredited credit bureau, verified and dated within the last three (3) months and indicating a	

<b>RESPONDENT LEGAL ENTITY NAME:</b>			
<b>Response Page # (Respondent completes)</b>	<b>Item Ref.</b>	<b>Section A— Mandatory Requirement Items</b>	<b>Pass/Fail</b>
		<p>satisfactory credit score for the Respondent (NOTE: A credit bureau report number without the full report is insufficient and will not be considered responsive).</p> <p>2. Provide documentation disclosing the amount of cash flows from operating activities for the Respondent's most current operating period. Said documentation must indicate whether the cash flows are positive or negative, and, if the cash flows are negative for the most recent operating period, the documentation must include a detailed explanation of the factors contributing to the negative cash flows.</p> <p>3. Provide a consolidated current financial statement for the parent company of Respondent, if applicable.</p> <p>4. Provide a financial guaranty from the parent company, if applicable.</p>	
<i>State Use – Solicitation Coordinator Signature, Printed Name &amp; Date:</i>			

## RFP ATTACHMENT 6.2. — SECTION B

## TECHNICAL RESPONSE &amp; 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.

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

## RFP ATTACHMENT 6.2. — SECTION B (continued)

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
		NOTE: All persons, agencies, firms, or other entities that provide legal opinions regarding the Respondent must be properly licensed to render such opinions. The State may require the Respondent to submit proof of license for each person or entity that renders such opinions.
	B.11.	Provide a brief, descriptive statement detailing evidence of the Respondent's ability to deliver the goods or services sought under this RFP (e.g., prior experience, training, certifications, resources, program and quality management systems, etc.).
	B.12.	Provide a narrative description of the proposed project team, its members, and organizational structure along with an organizational chart identifying the key people who will be assigned to deliver the goods or services required by this RFP.
	B.13.	Provide a personnel roster listing the names of key people who the Respondent will assign to meet the Respondent's requirements under this RFP along with the estimated number of hours that each individual will devote to that performance. Follow the personnel roster with a resume for each of the people listed. The resumes must detail the individual's title, education, current position with the Respondent, and employment history.
	B.14.	Provide a statement of whether the Respondent intends to use subcontractors to meet the Respondent's requirements of any contract awarded pursuant to this RFP, and if so, detail: <ul style="list-style-type: none"> <li>(a) the names of the subcontractors along with the contact person, mailing address, telephone number, and e-mail address for each;</li> <li>(b) a description of the scope and portions of the goods each subcontractor involved in the delivery of goods or performance of the services each subcontractor will perform; <u>and</u></li> <li>(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.</li> </ul>
	B.15.	Provide documentation of the Respondent's commitment to diversity as represented by the following: <ul style="list-style-type: none"> <li>(a) <u>Business Strategy</u>. Provide a description of the Respondent's existing programs and procedures designed to encourage and foster commerce with business enterprises owned by minorities, women, 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.</li> <li>(b) <u>Business Relationships</u>. 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: <ul style="list-style-type: none"> <li>(i) contract description;</li> <li>(ii) contractor name and ownership characteristics (i.e., ethnicity, gender, service-disabled veteran-owned or persons with disabilities);</li> <li>(iii) contractor contact name and telephone number.</li> </ul> </li> <li>(c) <u>Estimated Participation</u>. 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: <ul style="list-style-type: none"> <li>(i) a percentage (%) indicating the participation estimate. (Express the estimated participation number as a percentage of the total estimated contract value that will be dedicated to business with subcontractors and supply contractors having such ownership characteristics only and <b>DO NOT INCLUDE DOLLAR AMOUNTS</b>);</li> <li>(ii) anticipated goods or services contract descriptions;</li> </ul> </li> </ul>

## RFP ATTACHMENT 6.2. — SECTION B (continued)

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
		<p>(iii) names and ownership characteristics (i.e., ethnicity, gender, service-disabled veterans, or disability) of anticipated subcontractors and supply contractors.</p> <p>NOTE: In order to claim status as a Diversity Business Enterprise under this contract, businesses must be certified by the Governor's Office of Diversity Business Enterprise (Go-DBE). Please visit the Go-DBE website at <a href="https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&amp;XID=9810">https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&amp;XID=9810</a> for more information.</p> <p>(d) <u>Workforce</u>. Provide the percentage of the Respondent's total current employees by ethnicity and gender.</p> <p>NOTE: Respondents that demonstrate a commitment to diversity will advance State efforts to expand opportunity to do business with the State as contractors and subcontractors. Response evaluations will recognize the positive qualifications and experience of a Respondent that does business with enterprises owned by minorities, women, service-disabled veterans, persons with disabilities, and small business enterprises and who offer a diverse workforce.</p>
	<b>B.16.</b>	<p>Provide a statement of whether or not the Respondent, including any proposed subcontractors, has any current contracts with the State of Tennessee or has completed any contracts with the State of Tennessee within the previous five (5) year period. If so, provide the following information for all of the current and completed contracts:</p> <p>(a) the name, title, telephone number and e-mail address of the State contact knowledgeable about the contract;</p> <p>(b) the procuring State agency name;</p> <p>(c) a brief description of the contract's scope of services;</p> <p>(d) the contract period; and</p> <p>(e) the contract number ; and</p> <p>(f) any corrective action plans or sanctions during the contract term.</p>
	<b>B.17.</b>	<p>Provide a statement and any relevant details addressing whether the Respondent is any of the following:</p> <p>(a) has within the past five (5) years been debarred, suspended, had regulatory action, sanction, proposal for debarment, voluntarily exclusion from covered transactions by any federal or state department or agency, including both monetary and non-monetary sanctions imposed by any federal or state regulatory entity. If so, identify and describe any letter of deficiency and/or any overview of findings issued by, as well as any corrective actions requested or required by, any federal or state regulatory entity within the last five (5) years that relate to Medicaid or CHIP contracts;</p> <p>(b) has within the past three (3) years, been convicted of, indicted, criminally or civilly charged, or had a civil judgment rendered against the contracting party, including parent or subsidiary company, from commission of fraud (Medicaid- or Non-Medicaid-related), 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;</p>

**RFP ATTACHMENT 6.2. — SECTION B (continued)**

<b>RESPONDENT LEGAL ENTITY NAME:</b>		
<b>Response Page #</b> (Respondent completes)	<b>Item Ref.</b>	<b>Section B— General Qualifications &amp; Experience Items</b>
		<p>(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 in (a) or (b), Medicaid- or Non-Medicaid-related, including a parent or subsidiary company; and</p> <p>(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.</p>
<p><b>SCORE (for <u>all</u> Section B—Qualifications &amp; Experience Items above):</b> (maximum possible score = 30)</p>		
<p><i>State Use – Evaluator Identification:</i></p>		



## RFP ATTACHMENT 6.2. — SECTION C

## TECHNICAL RESPONSE &amp; EVALUATION GUIDE

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

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

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

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

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
	C.1.	Provide a brief, descriptive statement indicating the Respondent's credentials to deliver the services sought under this RFP. Describe how long the Respondent has been performing services and include the number of years in business.		5	
	C.2.	Provide a brief description of experience providing training and certifying staff to perform the Maladaptive Behavior Assessment component of the Inventory for Client and Agency Planning (ICAP), Life Skills Assessment training, development of an electronic tool to calculate the Maladaptive Behavior Index Score, processes for conducting post-scoring audits of Maladaptive Behavior Assessment, and targeted training and technical assistance to improve assessment accuracy and performance.		5	
	C.3.	Provide a brief description of experience providing similar scope of services/products for Pre-Admission Screening and Resident Review (PASRR) process in compliance with Federal and state regulations.		5	
	C.4.	Provide a description of experience providing similar scope of services/products for Medical or Level of Care (LOC) eligibility assessments and appeals for Long-Term Services and Supports (LTSS) programs.		5	
	C.5.	Provide a brief description of experience providing similar scope of services/products for Supports Intensity Scale™ (SIS™) Assessments.		5	
	C.6.	Provide a narrative that illustrates how the Respondent will complete the scope of services, manage the project, accomplish required objectives, and meet the State's project schedule for implementation. This should include a detailed explanation regarding how the Respondent will ensure the ability to meet Level I and Level II PASRR requirements		5	
	C.7.	Include a detailed explanation regarding how the Respondent will meet the PASRR technological requirements that allows for secure web-based submission of Level I and Level II PASRR referrals and integrates with the State's PAE tracking system. To		5	

**RFP ATTACHMENT 6.2. — SECTION C (continued)**

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
		include the ability to use restful web service calls to both send and receive information based on triggering conditions defined by the state.			
	C.8.	Include a detailed explanation regarding how the Respondent will meet the requirement to provide PASRR Stakeholder Education and engage providers and individuals for technical assistance.		5	
	C.9.	Provide a narrative that illustrates how the Respondent will support PASRR process redesign that aligns with federal PASRR guidance. Include communication strategy for reporting recommendations to the State.		5	
	C.10.	Include a detailed explanation regarding how the Respondent will ensure the ability to meet LOC assessment requirements.		5	
	C.11.	Include a detailed explanation regarding how the Respondent will meet the requirements for Katie Beckett Part A assessments.		5	
	C.12.	Include a detailed explanation regarding how the Respondent will meet the requirements for Level of Care Appeals, including required timeframes.		5	
	C.13.	Provide a narrative of the Respondent's capability to provide all services sought out in this RFP including staffing qualifications and ability to meet key personnel requirements.		5	
	C.14.	Provide a brief, descriptive statement detailing how Respondent's assessment methods and any data algorithms that will be used to evaluate individuals with MI, ID/DD, or RC are regularly assessed for bias and promote equity with generating assessment results.		5	
<p><i>The Solicitation Coordinator will use this sum and the formula below to calculate the section score. All calculations will use and result in numbers rounded to two (2) places to the right of the decimal point.</i></p>					<p><b>Total Raw Weighted Score:</b> <i>(sum of Raw Weighted Scores above)</i></p>
<p><b>Total Raw Weighted Score</b></p> <hr/> <p><b>Maximum Possible Raw Weighted Score</b> <i>(i.e., 5 x the sum of item weights above)</i></p>			<p><b>X 40</b> <i>(maximum possible score)</i></p>	<p><b>= SCORE:</b></p>	
<p><i>State Use – Evaluator Identification:</i></p>					
<p><i>State Use – Solicitation Coordinator Signature, Printed Name &amp; Date:</i></p>					

**RFP ATTACHMENT 6.3.**

**COST PROPOSAL & SCORING GUIDE**

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

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

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

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

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

<b>RESPONDENT SIGNATURE:</b>	
<b>PRINTED NAME &amp; TITLE:</b>	
<b>DATE:</b>	

<b>RESPONDENT LEGAL ENTITY NAME:</b>			
<b>Cost Item Description</b>	<b>Proposed Cost</b>	<b>State Use Only</b>	
		<b>Evaluation Factor</b>	<b>Evaluation Cost (cost x factor)</b>
<b>PASRR Level I &amp; II Screenings &amp; Evaluations</b>			
PASRR Level I Screening – without Clinical Review	\$ _____ / per screening	330,000	
PASRR Level I Screening – with Clinical Review	\$ _____ / per screening	148,000	
PASRR Level II Screening – Out of State Paper Submission	\$ _____ / per screening	250	
PASRR Level II Evaluation – Without IQ Test	\$ _____ / per assessment	14,500	
PASRR Level II Evaluation – With IQ Test	\$ _____ / per assessment	500	

## RFP ATTACHMENT 6.3. (continued)

<b>RESPONDENT LEGAL ENTITY NAME:</b>			
<b>Cost Item Description</b>	<b>Proposed Cost</b>	<b>State Use Only</b>	
		<b>Evaluation Factor</b>	<b>Evaluation Cost (cost x factor)</b>
PASRR Level II Evaluations Withdrawn	\$ _____ / per assessment	1,000	
Expedited PASRR Level II Evaluation	\$ _____ / per assessment	25	
PASRR Change of Status Review	\$ _____ / per assessment	9,650	
PASRR Document Based Review	\$ _____ / per assessment	4,500	
Supports Intensity Scale™ (SIS™) Assessment within 10 Business Days (A. 19.a – c, and e)	\$ _____ / per assessment	1,500	
Supports Intensity Scale™ (SIS™) Assessment within 30 Business Days (A. 19.d)	\$ _____ / per assessment	100	
<b>Level of Care Evaluations</b>			
Nursing Facility Onsite Assessment	\$ _____ / per assessment	250	
Home Based Onsite Assessment	\$ _____ / per assessment	1,000	
Phone Based Hearing (all activities associated with phone based hearing)	\$ _____ / per phone hearing	625	
<b>Katie Beckett Part A Assessments &amp; Reviews</b>			
Full Part A Face-to-Face Assessment	\$ _____ / per assessment	1,000	
Clinician Reviewer Reviews (for denials)	\$ _____ / per review	500	
<b>ECF CHOICES Training &amp; Technical Assistance</b>			
Life Skills Assessment	\$ _____ / per assessment	1,500	
<b>EVALUATION COST AMOUNT</b> (sum of evaluation costs above): The Solicitation Coordinator will use this sum and the formula below to calculate the Cost Proposal Score. Numbers rounded to two (2) places to the right of the decimal point will be standard for calculations.			
<b>lowest evaluation cost amount from <u>all</u> proposals</b>			

**RFP ATTACHMENT 6.3. (continued)**

<b>RESPONDENT LEGAL ENTITY NAME:</b>				
Cost Item Description	Proposed Cost	State Use Only		
		Evaluation Factor	Evaluation Cost (cost x factor)	
evaluation cost amount being evaluated	x 30 (maximum section score)	= <b>SCORE:</b>		
<i>State Use – Solicitation Coordinator Signature, Printed Name &amp; Date:</i>				

**RFP ATTACHMENT 6.4.****REFERENCE QUESTIONNAIRE**

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

The Respondent will be solely responsible for obtaining completed reference questionnaires as detailed below.. Provide references from individuals who are not current State employees of the procuring State Agency for projects similar to the goods or services sought under this RFP and which represent:

- two (2) contracts Respondent currently services that are similar in size and scope to the services required by this RFP; and
- three (3) completed contracts that are similar in size and scope to the services required by this RFP.

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 individual contact reference provided for each contract or project shall not be a current State employee of the procuring State agency. Procuring State agencies that accept references from another State agency shall document, in writing, a plan to ensure that no contact is made between the procuring State agency and a referring State agency. The standard reference questionnaire should be used and completed and is provided on the next page of this RFP Attachment 6.4.

In order to obtain and submit the completed reference questionnaires following one of the two processes below.

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;
  - (iii) seal the completed, signed, and dated reference questionnaire within the envelope provided;
  - (iv) sign his or her name in ink across the sealed portion of the envelope; and
  - (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).
- (d) Do NOT open the sealed references upon receipt.
- (e) Enclose all sealed reference envelopes within a larger, labeled envelope for inclusion in the Technical Response as required.

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 a reference questionnaire to each reference.
- (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 RFP Technical Response Deadline with the Subject line of the e-mail as "[Respondent's Name] Reference for RFP # 31865-00638".

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.

**RFP # 31865-00638 REFERENCE QUESTIONNAIRE****REFERENCE SUBJECT:** RESPONDENT NAME (completed by Respondent before reference is requested)

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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:**

- e-mail the completed questionnaire to:  
Donovan Morgan at [Donovan.Morgan2@tn.gov](mailto: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.**

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

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



- (4) **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.**
  
- (5) **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.**
  
- (6) **How satisfied are you with the reference subject's ability to perform based on your expectations and according to the contractual arrangements?**

**REFERENCE SIGNATURE:**  
(by the individual completing this request for reference information)

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

**DATE:**

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**RFP ATTACHMENT 6.5.**

**SCORE SUMMARY MATRIX**

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

**RFP # 31865-00638 *PRO FORMA* CONTRACT**

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

**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
DIVISION OF TENNCARE  
AND  
CONTRACTOR**

This Contract, by and between the State of Tennessee, Department of Finance and Administration, Division TennCare, ("State" or "TennCare") and CONTRACTOR ("Contractor"), is for the provision of 1) Pre-Admission Screening and Resident Review (PASRR) processes, and 2) training and technical assistance for the Department of Intellectual and Developmental Disabilities (DIDD) and TennCare Managed Care Organizations (MCOs) in the Employment and Community First (ECF) CHOICES program, 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.

**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. Definitions. For purposes of this Contract, definitions and abbreviations shall be as set forth in Attachment A to this Contract
- A.3. Nothing in this Contract shall be deemed to be a delegation to the Contractor of the State's non-delegable duties under the TennCare program administered by the single state agency, as designated by the State and CMS, pursuant to Title XIX of the Social Security Act, 42 U.S.C § 1396 et seq. and the Section 1115 research and demonstration waiver granted to the State and any successor programs.
- A.4. Purpose.
- a. The purpose of the Level I PASRR screening process is to identify individuals with a suspected or known diagnosis of serious mental illness and/or i ID or a RC;
  - b. The purpose of the Level II PASRR evaluation process is to ensure each individual seeking admission to any Nursing Facility (regardless of payer source) who has a serious mental illness (SMI) or ID/RC is placed appropriately whether in the community or in aNF, and ensure the individual receives the services s/he requires for MI or ID/RC wherever they are placed. This is accomplished by performing a comprehensive face-to-face evaluation, called a PASRR Level II evaluation, for each person referred through the Level I screening process; PASRR Level II evaluations may also be performed at the request of nursing facilities, the State, MCOs and other agencies when an individual has a Change of Status affecting the need for specialized services. A Change of Status request must be submitted to the Contractor when a person has a Change of Status.
- A.5. PASRR Service Requirements.
- a. All PASRR related processes and functions performed by Contractor shall be compliant with all federal requirements, applicable Tennessee statutes and rules, and this Contract;
  - b. The Contractor shall perform face-to-face or virtual face-to-face evaluations, pursuant to Section A.7.c.1 of this Contract, Level I and Level II evaluations for identified nursing home applicants statewide and share findings and outcomes with DMHSAS and/or DIDD who will have final review and approval of results;
  - c. For each completed PASRR Level II evaluation, the Contractor shall provide a written Summary of Findings Report developed using the information from the face-to-face evaluation and review of supplemental information;

- d. The Contractor shall ensure that all completed Summary of Findings Reports include accurate specialized service determinations in accordance with State Rule;
- e. The Contractor shall provide to the State all completed PASRR Level I screenings, Level II evaluations, and approved Summary of Findings Reports, as well as all applicable information in a compatible format to be received electronically via the State's web-based system for capturing, tracking and sharing PASRR related information, also referred to in this Contract as the State's designated PAE tracking system, and provided to the applicant and service provider;
- f. The Contractor shall ensure access to all completed PASRR Level I screenings, Level II evaluations, and approved Summary of Findings Reports as well as all applicable information to the assigned Managed Care Organization for any Medicaid member;
- g. The Contractor shall ensure that the Level II evaluation and the written Summary of Findings Report conforms to the requirements stated in 42 CFR §§ 483.100 through 483.138;
- h. The Contractor shall ensure that the written Summary of Findings Report includes the following:
  - i. is person centered;
  - ii. identifies services;
  - iii. supports needs of an applicant in the community;
  - iv. identifies natural and paid supports available to meet identified needs;
  - v. includes an assessment of overall needs;
  - vi. determines the level of care and whether NF placement is appropriate;
  - vii. determines specialized service needs in the NF, includes clinical recommendations for rehabilitative services; and
  - viii. includes rationales, case abstracts, and appropriate demographic information, as described in 42 CFR §§ 483.100 through 483.138;
- i. The Contractor shall include in the written Summary of Findings report e HCBS options, whether the person is admitted to a Nursing Facility, to facilitate a relationship with community providers to ease the transition from institutional to community living. The Contractor shall ensure that the Summary of Findings shall also outline transition planning processes and timelines.
- j. The Contractor shall have a system in place which allows for authorized access, tracking and reporting of Level I, categorical determinations, exemptions and Level II PASRR evaluations and outcomes, including Summary of Findings Reports;
- k. The Contractor shall ensure that a submitting screener and other authorized entities (other than the submitting screener) shall have access to view and print Level I and Level II outcomes;
- l. The Contractor shall ensure that individuals who are in PASRR population shall be tracked when transferring from one NF to another;
- m. The Contractor shall track and perform Change of Status reviews when a Change of Status is requested;
- n. Upon approval of a PASRR Appeal by TennCare (based solely on the Contractor's determination of medical necessity), the Contractor shall process the approval through the reconsideration process using the approval date specified by TennCare and provide an appropriate approval notice within the timeframe specified by TennCare.

- o. The Contractor shall link the overturned PASRR through appeal to the new reconsidered PASRR used to process the approval. The Contractor shall indicate in the tracking system that the new reconsidered PASRR is the approval of the appealed PASRR.
- p. Should TennCare find an improper notice through the appeal process, the Contractor shall correct the error immediately, and provide a notice of correction to the applicant within the timeframe specified by TennCare.
- q. The Contractor shall ensure that all mandated functions are completed in accordance with the following timelines:

Level I Screen	Six (6) business hours from Level I submission date.
Level II Evaluations and Summary of Findings Reports	Three (3) business days (from Level I screening submission completion date) to submit Level II Evaluations and Summary of Finding Reports to DIDD and/or DMHSAS for review, with final disposition to TennCare within five (5) business days of Level I submission date.
Change of Status Summary:	Three (3) business days (from Change of Status notification date)
Categorical Determinations	One (1) business days (from Level I screening submission date)
Exemptions	Three (3) business days (from Level I screening submission date)
PASRR Appeals approval letters and/or Correction letters for improper notices	One (1) business day (from the date of request from LTSS Appeals unit)

A.6. PASRR Level I Screening, Categorical Determination and Exemption Requirements. The Contractor shall:

- a. Receive Level I screening referrals from submitters via the Contractor’s PASRR system or via the States’s PAE tracking system as determined by the State and render a determination based on federal regulations and the State’s Level I screening guidelines;
- b. Complete, as appropriate, categorical determinations and exemptions, including, but not limited to, clinical reviews, document-based reviews and Level II evaluations and reports;
- c. Ensure associated timelines are met.
- d. Ensure Contractor functions meet federal PASRR requirements.
- e. Receive web-based submission of PASRR Level I screenings, Categorical Determinations and Exemptions.
- f. Ensure that any data system for processing Level I PASRR screenings, Categorical Determinations and Exemptions interconnects with the TennCare PAE tracking system for data exchange.

- g. For people discharging from a hospital and entering a Nursing Facility, the Contractor shall work with the State to ensure that the screening entity has the most comprehensive medical history and information available to inform identification of a suspected serious mental illness or intellectual disability or related conditions.
- h. Assume all buy-in and training responsibilities required to ensure accurate completion of PASRR screenings and shall employ methods deemed necessary by the State to ensure continued success.
- i. Develop and maintain a Level I screening tool, with comprehensive review and suggested revisions and approvals to the State biannually which, at a minimum, shall meet the following requirements:
- (1) Meets all state and federal requirements.
  - (2) Accommodates and anticipates emerging federal requirements.
  - (3) Identifies individuals with suspected or known diagnoses using a proven methodology for reducing false positives and preventing false negatives.
  - (4) Ensures Level I Screens with evidence of suspected PASRR conditions are routed for clinical review by a qualified clinician who will determine if a Level II evaluation is required.
  - (5) Ensures screening tool accurately identifies individuals for a Level II evaluation.
  - (6) Within one (1) day of submission, determines which Level I PASRRs require a clinician review or Level II evaluation based on the information submitted and in accordance with federal requirements.
  - (7) Within one (1) business day from submission, completes Categorical Determinations when warranted and in accordance with federal requirements.
  - (8) Within three (3) business days from submission, completes PASRR exception and exclusion functions when warranted and in accordance with federal requirements.
  - (9) Ensures that a Level I screening which indicates a prescription of anti-psychotic drugs results in a Level II evaluation.
  - (10) Incorporates measures to assure the PASRR screening tool is being completed accurately and to reduce false positives and prevent false negatives.
  - (11) Ensures the State, authorized service providers, authorized submitters and authorized contractual partners, including MCOs and Area Agencies on Aging and Disability (AAADs), have access to view completed Level I reviews, reports and decisions, even when submitted by another entity.
  - (12) Creates and makes available necessary and required applicant and provider notifications.
  - (13) Be considered work product as defined in Section E.3.
- j. The Contractor shall be responsible for making Categorical Determinations which, at a minimum, shall meet the following requirements:
- (1) Provides system tracking of all categorical determinations and associated timelines.
  - (2) Ensures categorical vetting and decisions comply with federal requirements.
  - (3) Includes retaining copies of all categorical evaluations and determination reports.
  - (4) When judgment is required, refers the individual for a Level II evaluation.
  - (5) Includes a process for categorical determinations to be made available to DMHSAS or DIDD to ensure determinations meet federal requirements and are in the best interest of the admitting resident.
  - (6) Contains individualized decisions about services and supports.
  - (7) Ensures time limited NF stays are tracked, and if necessary, Level II evaluations are performed when the limited time expires.
  - (8) Creates and makes available required applicant and provider notifications.
- k. The Contractor shall perform Change of Status functions as described below:

- (1) Provide a system whereby NFs, MCOs or the State can request a Change of Status review be completed.
- (2) Using established federal criteria, determine when a Level II evaluation should be performed due to a Change of Status notification.
- (3) Perform a Level II evaluation when criteria are met.
- (4) Notify service providers, MCOs, the State and DMHSAS or DIDD of Change of Status outcomes.
- (5) Ensure submitters, service providers, the State, DMHSAS, DIDD, MCO and other authorized users have access to Change of Status notifications and outcomes.

A.7. Level II PASRR Requirements – The Contractor shall perform the following:

a. Interview scheduling requirements:

- (1) All face-to-face evaluations of the individual shall be scheduled with the individual and/or caregiver to be assessed in advance;
- (2) All scheduling of the face-to-face evaluation of the individual shall include efforts to involve caregivers and any legal guardian, with consent of the applicant. Efforts shall include at least three (3) phone outreach attempts during both AM and PM times of the day.
- (3) The assessor shall alert the individual when involving other family members or representatives;
- (4) If the individual chooses to invite others, those people shall be notified about the time and place of the evaluation, and
- (5) When the person has a legal conservator, the Contractor shall include attempts to involve the conservator in scheduling.

b. Level II Evaluation Tools used to schedule, conduct and/or record Level II evaluations shall:

- (1) Meet all CMS requirements;
- (2) Have demonstrated compliance through PTAC scores meeting top quartile;
- (3) Have a focus on community involvement and placement opportunities, as appropriate;
- (4) Anticipate emerging federal requirements; and
- (5) Be person-centered through interview approach and content.
- (6) Be considered work product as defined in Section E.3.

c. Level II evaluations shall:

- (1) Be conducted face-to-face except in extremely rare situations as a result of an out-of-state urgent need request, public health emergency, or when a resident meets categorical criteria;
- (2) Occur with the individual, caregiver and conservator, if applicable and when available. If the conservator is not interviewed, efforts to engage the conservator must be documented. Other family members and representatives may participate in the interview so long as the individual requests or permits their involvement.
- (3) Be performed by a credentialed clinician. When the Level I indicates a suspected or known diagnosis of an intellectual disability or related condition, the Contractor shall ensure that the evaluation is conducted by a Registered Nurse and a psychologist. When the Level I indicates a suspected or known diagnosis of a serious mental illness, the Contractor shall ensure that the evaluation is conducted by an RN or Master's level clinician with at least four (4) years of psychiatric experience.
- (4) Be in writing and shall include a psychosocial assessment, physical assessment, review of medical history, level of care determination and any other evaluations as federally required.
- (5) Include a PCSP which includes an overall needs assessment and specialized



needs assessment.

- (6) Identify any necessary specialized services.
- (7) Be reviewed by a quality clinician. For a suspected or known diagnosis of an intellectual disability, the Contractor shall ensure that the quality review is conducted by a Qualified Intellectual Disability Professional . For a suspected or known diagnosis of a serious mental illness, the Contractor shall ensure that the quality review is conducted by a Qualified Mental Health Professional who is an RN and/or Master's level clinician with experience providing services to individuals evaluated through PASRR. The quality clinician will ensure the evaluation is complete, consistent, person centered, focused on community involvement and discharge planning, as applicable and meets federal and state quality standards.
- (8) Include whether the NF stay is expected to be long term or short term based on the evaluation findings and include a determination regarding the interest in and potential options for community transition.
- (9) Have a Summary of Findings Report, unless the Level II evaluation is withdrawn, with prior written approval from the State, after the face-to-face evaluation has occurred, but before the Summary of Findings Report is prepared. In these instances, reimbursement shall be made according to PASRR Level II Evaluation Withdrawn rate in Section C.3 will be applied.
- (10) Be completed within five (5) business days of the Level I screening submission, except when the state specifically requests in writing that an expedited evaluation be completed within three (3) business days of the Level I screening submission.

d. The Summary of Findings Report shall:

- (1) Meet federal requirements.
- (2) Be written by a clinician other than and independent of the person who performs the face-to-face evaluation.
- (3) Include any specialized services identified as part of the evaluation and shall include the determination regarding the interest in and potential options for community transition.
- (4) Be provided to DMHSAS and/or DIDD as applicable.
- (5) Be reviewed and approved by DMHSAS and/or DIDD which makes the final PASRR determination by electronic signature on the Summary of Findings Report.
- (6) The Summary of Findings Report and PASRR determination made by DMHSAS and/or DIDD are made available to the submitting entity, service provider, the State, the individual as well as their designee and the assigned Managed Care Organization .
- (7) Specialized Service determinations shall be based on Chapter 1200-13-01 of the Tenn. Comp. R. & Regs. and Title 42, Part 483 of the C.F.R.

e. Create and make available any necessary or required applicant and provider notifications that, at a minimum, meet the following requirements:

- (1) Notifications shall be approved by the State in advance of use.
- (2) Applicant notices shall be clear, concise and easy to understand.
- (3) Applicant notices shall be mailed within one (1) business day of decision.
- (4) Service provider notifications shall be made available immediately after making decision.

f. Ensure that any data system for processing Level I and Level II PASRR evaluations, to include categorical determinations as well as Change of Status reviews and outcomes interconnects with the PAE tracking system for data exchange or is completed via the States's PAE tracking system as determined by the State.

A.8. PASRR Technological Requirements.

- a. The Contractor shall use technology that allows for secure web-based submission of Level I and Level II PASRR referrals which provides the following functionality:
- (1) Fully automated, trackable and auditable workflow for Level I and Level II evaluation which includes date and time stamp to occur within the system throughout the entire process from submission to determination and at each new phase of an activity and/or decision or with each role change/hand off.
  - (2) Ability to expedite specific reviews when requested by the State.
  - (3) Allows the State, DMHSAS, and DIDD to access referral information and check the status of a Level II evaluation.
- b. The Contractor shall use technology that conducts Level I and Level II functions in a secure, streamlined and efficient manner that includes the following:
- (1) Acceptance, assignment and tracking of Level I and Level II evaluations.
  - (2) Documentation of PAE submission and level of care determinations
  - (3) Documentation of Summary of Findings Reports and outcomes.
  - (4) Submission of Summary of Findings Reports to DMHSAS or DIDD as applicable for review and approval.
  - (5) When outcomes are not approved by DMHSAS or DIDD as applicable, ability to return to Contractor for revision.
  - (6) When changes are requested by the State, the ability to return to Contractor for revision and/ or reconsideration.
  - (7) Sharing of evaluations to include outcomes with the State and use of or integration with the PAE tracking system so that data can be stored, shared and/or printed.
  - (8) Ability to report individual and aggregate outcome results to the State, DMHSAS and/or DIDD.
- c. The requirements listed in subsections A.8.a and A.8.b shall be met if the Contractor uses the States's PAE tracking system, as determined by the State.
- A.9. Staffing Requirements. All staff shall be employees or contracted staff, as limited to approved subcontractors per D.7, Assignment and Subcontracting, of the Contractor and shall be fully qualified to perform the work required under this Contract. The Contractor shall provide experienced, qualified professionals to ensure the success of this Contract. The Contractor shall ensure that an adequate number of appropriately qualified and trained staff are employed and available at all times to provide the services required under the Contract. The State shall have the absolute right to approve or disapprove of Contractor's and any of its subcontractor's staff, or to require the removal or reassignment of any Contractor's employee or subcontractor staff found unacceptable to the State for work under this Contract only.
- A.10. Key Personnel Requirements. The Contractor shall obtain prior State approval of all Key Personnel. Resumes for Key Personnel must be provided for State review at least thirty (30) days prior to the expected employee's start date. The State may require personal interviews with these individuals prior to the employee's start date. The same person may be able to fill a different position in different Contract phases. The State will consider suggestions for alternative alignment of duties. Changes to the proposed positions, staff and responsibilities will only be allowed with prior written permission from the State
- A.11. Key Personnel Replacements. The State retains the right to approve or disapprove proposed Key Personnel staffing and reserves the right to require the Contractor to replace specified staff. The Contractor agrees to substitute, with the State's prior approval, any employee so replaced with an employee of equal or better qualifications. The Contractor shall provide an interim resource within five (5) business days for any Key Personnel vacancies regardless of the reason for the vacancy. The Contractor shall propose within thirty (30) days, and appropriately staff within forty-five (45) days, any changes made to Key Project Personnel, regardless of the reason for the change. In the event it becomes necessary to replace key personnel during the term of this Contract, the Contractor shall:

- a. Provide the State with written notification of such replacement, providing, when possible, for a two (2) week period for knowledge transfer from the key personnel to the replacement personnel. This knowledge transfer shall be provided at no charge to the State;
- b. Provide the State with documentation describing the circumstances of the need for the replacement;
- c. Provide documentation of experience for the proposed replacement personnel; and
- d. Obtain prior written approval from the State Program Director.

A.12. The Contractor shall provide the following experience, structure, staffing and resources necessary to comply with state and federal PASRR laws and requirements:

- a. The Contractor shall:
  - (1) Offer on-site accessibility to monitor operations, including but not limited to immediate access to records and clinical and management staff.
  - (2) Maintain an office located in middle Tennessee. The Contractor’s local office shall be within 60 miles of the State TennCare office and shall have normal business hours similar to State office hours, Monday through Friday 8:00 CT through 4:30 CT, except on holidays or as otherwise approved by the State.
  - (3) Be a private agency that is not a NF, hospital or other provider of services and has no direct or indirect affiliation or relationship with a NF, hospital or other provider of services.
  - (4) Employ individuals and contractors who are not also employed by a NF, hospital or other provider of services and who do not have direct or indirect affiliation or relationship with a NF, hospital or other provider of services.
- b. The Contractor shall provide the following Key Personnel:
  - (1) Programmatic lead with demonstrated expertise in regulatory requirements.
  - (2) Quality Director to oversee quality management functions.
  - (3) Clinical Director that is licensed in Tennessee as a PhD to oversee clinical activities.
  - (4) Medical Director that is licensed in Tennessee as a M.D. to serve as a resource internally, including to Level I PASRR screen reviewers and to the State.
  - (5) Operations Director who oversees daily operations and who serves as the primary contact for State staff.
  - (6) All Key Personnel as described above shall be available for in-person meetings with the State staff; scheduled or impromptu.
- c. Staffing and Resources.
  - (1) The Contractor shall provide quality monitoring staff for Level II evaluations who review every Level II evaluation to ensure accuracy, data consistency, integrity and completeness.
  - (2) The Contractor shall provide a statewide assessor network of professionals who are qualified and trained to conduct face-to-face client evaluations, gather information and accurately and thoroughly represent the history and status of the individual.
  - (3) The Contractor shall provide clinicians to analyze information obtained by the assessor and develop a summary report. The Contractor shall provide a Level II summary of findings report with the following qualifications:

Type of Level II Summary Report	Options for Credentials by Evaluation Type
Mental Health	Master’s prepared QMHP clinician, RN, social worker or similar degreed clinician with

	at least four years' experience with PASRR populations; OR  Licensed psychiatrist who must complete Level II Summary of Findings Reports in the cases of psychiatric admission or discharge and in cases of adverse decisions either for psychiatric reasons or level of care.
ID Level II	Master's prepared QIDP clinician, RN, SW or similar degreed clinician with at least four years' experience with PASRR populations; OR  Licensed PhD psychologist
Dual (MH and ID) Level II	Master's prepared QMHP/QIDP clinician; OR  Licensed PhD psychologist

- (4) The Contractor shall provide operations support staff.
- (5) The Contractor shall provide Licensed Practical Nurses (LPNs), supervised by a RN, to perform clinical reviews of Level I screenings triggered with a possible Level II condition.
- (6) The Contractor shall ensure that all staff have the appropriate State of Tennessee licensing. The Contractor shall provide proof of licensing credentials to the State upon request.
- (7) The State shall continually evaluate performance of the personnel and, shall as necessary, refuse any personnel whose performance is found to be inadequate.
- (8) The Contractor shall conduct and/or participate with in-service training as needed and when requested by the State.
- (9) The Contractor shall participate with the State in problem solving activities involving the PASRR process.

d. Statewide Assessors.

- (1) The Contractor shall provide a statewide (represented in all areas of Tennessee) network of qualified assessors.
- (2) The Contractor shall recruit, credential and train assessors.
- (3) Assessor network shall meet volume and quality demands and requirements.
- (4) Assessors shall be thoroughly screened; credentials verified, comprehensively trained and receive ongoing training and performance feedback.
- (5) Assessors shall meet the following credential and qualification requirements:

Type of Level II Evaluation	TN Credentials by Evaluation Type
Mental Health	TN licensed RN; or  MS or higher in psychology or Social Work with 4 or more years working in MH settings
ID Level II without IQ testing	TN licensed RN with 2 or more years working in ID settings

ID Level II with IQ testing	TN licensed RN with 2 or more years working in ID settings; AND TN licensed PhD psychologist or Senior Psychological Examiner to conduct IQ testing
Dual MI and IDD Level II	TN licensed RN with 2 or more years working in ID settings; AND TN licensed PhD psychologist or Senior Psychological Examiner to conduct IQ testing, if needed.

- A.13. PASRR Stakeholder Education and Engagement Responsibilities. The Contractor shall be available to providers, individuals and guardians to provide consultation and to answer questions about the Level II evaluation process and/or the determination and Summary of Findings Report and must also offer technical assistance when needed. The Contractor shall meet the following requirements:
- a. Training system users, PASRR screeners, MCOs, AAADs, and service providers on PASRR processes, including technical requirements and assistance.
  - b. Providing technical assistance to system users.
  - c. Being available to system users to provide consultation and to answer questions about the process.
  - d. Screeners submitting a Level I PASRR shall understand how to submit an accurate Level I screen and shall understand how to access, view and print Level I and Level II outcomes.
  - e. At least one (1) statewide in-person training shall be made available to screeners and providers in the each of the three grand regions of the State on an annual basis.
  - f. At least one (1) web-based screener and provider training shall be offered quarterly. Training focus shall include, but is not limited to, recent problem areas or trends and general PASRR topics, as determined in consultation with the State
  - g. All training incurred costs shall be the responsibility of the Contractor.
- A.14. PASRR Process Redesign. The Contractor shall continue to support all State's efforts to identify efficiencies for the PASRR Process, including, at minimum, the following:
- a. Strengthen the Level I screening tool. The Contractor shall use system capabilities and clinical review to increase specificity while retaining sensitivity in order to properly identify individuals for evaluation while eliminating false negatives and reducing false positives.
  - b. Strengthen the Level I screening process to ensure that the most comprehensive medical history and information is available to inform identification of a potential mental illness or intellectual disability or related conditions. The Contractor shall ensure that new and current screeners are fully trained on use of the system and on the PASRR process in general, including intent, goals, and action steps required by federal regulation.
  - c. Ensure Level I, Level II, Change of Status and all other PASRR related processes are housed in one (1) system, operated and maintained by the Contractor. The Contractor shall be responsible for system security, development and implementation. The State will assist with Contractor system design.

- d. Ensure the Contractor's system shall integrate and allow for interconnectivity with the State's designated PAE tracking system used for medical eligibility determinations, and with DMHSAS and DIDD as needed, eliminating the need for manual intervention in data sharing.
- e. Modify the Level II process to ensure that it is person centered and identifies a person's paid and natural supports, overall needs, specialized needs and medical eligibility or LOC.
- f. Ensure the Level II evaluation focuses on community service placement options and when NF is determined appropriate, services and supports which can be provided by community providers in order to create and maintain community relationships.
- g. When NF placement is found through the Level II process to be appropriate and specialized services are identified, confirm with the admitting NF prior to admission, their ability and commitment to provide such services in accordance with each person's individualized needs.
- h. Coordination with a Medicaid eligible person's MCO to ensure specialized services and supports identified through the Level II process are included in the NF POC and are provided as specified in the NF POC.
- i. The Contractor shall be responsible for implementing an electronic screening tool for Level I PASRR that is compliant with federal PASRR requirements and State Rule and meets the State's requirements for streamlining and automating processes.
- j. The Contractor shall use technology that allows for web-based, state-wide submission of Level I PASRR screening tool that permits, at a minimum, the following functionality:
  - (1) Allow system users to submit a Level I PASRR screen 24 hours a day, 7 days a week.
  - (2) Include form completion capability and automated workflow processes.
  - (3) Shall include a mechanism for identifying individuals with a suspected PASRR condition and triggering for further review (e.g. certain psychopharmacologies, dementia with behavioral problems, etc.).
  - (4) Shall allow for Level I screens with evidence of suspected PASRR conditions to be routed for clinical review by a qualified clinician who will determine if a Level II evaluation is required.
  - (5) Shall include a mechanism for receiving, reviewing and processing categorical determinations and exemptions.
  - (6) Time and date stamping to occur within the system during each new phase of an activity and/or decision or with each role change/hand off.
  - (7) System audit to show user information when specific changes are made.
  - (8) System user roles shall be simple and efficient and serve to reduce barrier between contractor and system users.
  - (9) Level I submission processes shall be designed to be easily understood by users.
  - (10) Previously submitted screenings shall be easily accessed within the system by service providers and other authorized users, as defined by TennCare.
  - (11) System users shall have web-based capability to check the status of a submitted PASRR screen and print finalized Level I screens and outcomes.
  - (12) System users shall have the capability to provide additional information into web-based system via data entry or document upload.
  - (13) System users and service providers shall have defined routes and mechanisms in place for communication with the Contractor and problem escalation/resolution.
  - (14) Scheduled and ad hoc reporting capability shall be automated within the system and made fully available to the State, DIDD and DMHSAS as defined and when requested.

- (15) Incorporate processes to promote user fidelity, improve provider education, ensure inconsistencies are identified and individuals requiring Level II evaluations are not missed.
  - (16) Ensure system is configurable with PAE tracking system.
  - (17) Automate and generate notification letters when a Level I screen indicates that a Level II evaluation is needed. The Contractor shall ensure that a written notice is systematically generated and sent to the applicant and his designee, when identified, and shall indicate in plain language that a Level II PASRR evaluation will be conducted.
  - (18) Application down time for patching, updates or maintenance shall occur during non-peak hours and downtime should not exceed eight (8) hours. The Contractor shall provide advance notification of downtime to the State.
- k. The Contractor shall use technology that allows for the following Level II PASRR functionality:
- (1) Provide nursing facilities web-based access to indicate admission of a Level II candidate, print the Level II Summary of Findings Report for admitted Level II individuals, and to confirm the intention to arrange for the delivery of specialized services recommended in the Level II Summary of Findings Report.
  - (2) Allow statewide providers, statewide screeners and MCOs to access referral information, check the status of a Level II evaluation and print Summary of Findings Reports.
  - (3) Create and make available any necessary or required applicant and provider notification. The Contractor shall ensure that applicant notices are clear, concise and easy to understand.
  - (4) Track NF admissions and transfers for individuals with Level II conditions in accordance with federal requirements and make this information available electronically via the PAE tracking system..
- l. The Contractor shall have technology available to allow for web-based, statewide submission and processing of Change of Status notifications 24 hours a day/7 days a week.
- A. 15. The Contractor, upon written notification from the State, shall complete the following SIS Assessment Populations in the order listed below:
- a. Complete a SIS assessment on each ECF CHOICES Group Six (6) applicant who has been identified by the State to be enrolled in ECF CHOICES.
  - b. Complete a SIS reassessment due to change in status, for individuals enrolled in ECF CHOICES Group Six (6) or a DIDD waiver for Individuals with Intellectual disabilities.
  - c. Complete a SIS assessment or reassessment in specific and unique circumstances as requested by the State.
  - d. Contractor shall ensure, at the request of the State, that each person enrolled in the Statewide or Comprehensive Aggregate Cap HCBS waiver and receiving residential and/or employment or day services has a completed SIS assessment, including supplementary questions, when applicable, that is no more than three (3) years old, and shall implement a triennial reassessment schedule for persons with ID/DD in the specified target population.
  - e. The Contractor, upon notification from the State, shall complete a SIS triennial reassessment on Individuals enrolled in Employment and Community First CHOICES Group Six (6).

- A.16. Compliance with American Association on Intellectual and Developmental Disabilities Requirements. The Contractor shall develop training methodologies and techniques to ensure that individuals trained as interviewers or individuals trained to train interviewers are appropriately qualified and knowledgeable about SIS. The Contractor shall adhere to all requirements of AAIDD's quality control mechanisms and satisfaction. The Contractor shall comply with AAIDD best practice methods in the assessment process, including, but not limited to, the following:
- a. The Contractor shall use the following AAIDD Recognized SIS Interviewer Criteria:
    - (1) Complete an AAIDD-approved SIS Interviewer training session.
    - (2) Conduct at least four (4) SIS interviews to maintain skill and ability to conduct interviews to determine the support needs for diverse populations.
    - (3) Obtain a passing score on an Interviewer Reliability Review (IRR) procedures approved by AAIDD.
    - (4) To maintain AAIDD recognition, IRR shall be conducted by an AAIDD-approved trainer on at least a yearly basis.
  - b. The Contractor shall use the following AAIDD Recognized SIS Trainer Criteria:
    - (1) Meet all the requirements of an AAIDD Recognized SIS Interviewer.
    - (2) Conduct at least ten (10) SIS assessments to accumulate adequate interview experience to train others.
    - (3) Conduct a SIS presentation reviewed by an AAIDD Trainer.
    - (4) Conduct an IRR of a SIS interview with an AAIDD Trainer.
    - (5) Obtain authorization from an AAIDD Trainer on at least a yearly basis.
  - c. The Contractor shall use a data system that receives and integrates data shares from AAIDD's SIS Enterprise data system, and generate required reports based on data delivered by the AAIDD SIS Enterprise data system. The Contractor shall:
    - (1) Program and maintain a State approved SIS data storage system capable of receiving periodic or real-time SIS data and data updates from the AAIDD SIS Enterprise Online data system in the format designated by the State.
    - (2) Provide management of data shares from the AAIDD Enterprise system and integrate data updates with the Uniform Assessment Notification Website.
  - d. The State shall contract with AAIDD SIS Enterprise for the following:
    - (1) Access and use of the SIS online assessment tools, SIS online and SIS Venture software;
    - (2) software licensing;
    - (3) user manuals; and
    - (4) paper interview forms.
- A.17. The Contractor shall ensure that:
- a. Preferred informants are used for the SIS assessment interviews. Informants which are preferred include the individual, persons most familiar with the individual, guardians, family, and direct service providers.
  - b. At least three (3) informants are interviewed and when three (3) informants cannot be identified, such information is provided to the State via the State's designated PAE tracking system.
  - c. Assessments are performed by qualified bilingual or multilingual staff or contracted qualified interpreters and translators in the person's primary spoken language or in sign language or who can facilitate non-verbal forms of communication including the use of assistive technology as applicable and the use of other auxiliary aids or services in order



to achieve effective communication, including the primary language of the individual, family member, and/or conservator from whom assessment information is being collected. The Contractor shall ensure that qualified on-site, telephone, or video remote interpreters and translators are used to conduct assessments. The Contractor shall ensure that qualified mental health interpreters are used for in-person and remote assessments of individuals who are deaf or hearing impaired and individuals with MI and dual MI and ID/DD.

- A.18. Additional Data Entry, Collection and Reporting Requirements. The State, using its designated PAE tracking system or via the Contractor's system as determined by the State, shall send referral requests to the Contractor for processing. Referrals sent by the State will include applicant contact information as well as contact information for known family members, guardians and caregivers. Reports generated by the State's designated PAE tracking system will be used for contract monitoring and billing processes. The Contractor shall be responsible for producing reports of data not available in designated PAE tracking system, as specified by the State. The Contractor shall be responsible for entering the following information into the State's designated PAE tracking system:
- a. Enter scheduled assessment date;
  - b. Enter actual assessment date;
  - c. Enter assessment completion date;
  - d. Enter assessment participant data;
  - e. Upload full SIS assessment results; and
  - f. Ensure that SIS uniform assessment data is the property of the State.
- A.19. The State will provide scheduling contact information and referral via the PAE tracking system once the PAE is approved for Group Six (6). Upon referral from the State for ECF CHOICES Group Six (6) applicants and enrollees, the Contractor shall conduct and complete SIS assessments or reassessments, enter assessment results data into the SIS Enterprise system, and provide assessment results and associated dates to the State via its designated PAE tracking system, within the following timeframe benchmarks:
- a. Within five (5) business days in eighty percent (80%) of the new applicant referrals sent;
  - b. Within ten (10) business days in one hundred percent (100%) of the new applicant referrals sent;
  - c. Within ten (10) business days in one hundred percent (100%) of the reassessment referrals sent;
  - d. Within thirty (30) business days for one hundred percent (100%) of the existing enrollee referrals sent for participants in an HCBS waiver for Individuals with Intellectual disabilities; and
  - e. Within three (3) business days in one hundred percent (100%) of the emergency referrals sent.
- A.20. For AAIDD SIS purposes, the Contractor shall provide the following experience, structure, staffing and resources necessary to comply with AAIDD and State requirements in addition to the staffing requirements in A.9:
- a. The Contractor shall:

- (1) have at least two (2) years of experience successfully conducting SIS assessments;
  - (2) have a history of quality performance beyond minimal federal requirements;
  - (3) offer on-site accessibility to monitor operations, including but not limited to immediate access to records and management staff;
  - (4) be a private agency that is not a provider of services and has no direct or indirect affiliation or relationship with a provider of services; and
  - (5) employ individuals and contractors who are not also employed by a provider of services and who do not have direct or indirect affiliation or relationship with a provider of services.
- b. The Contractor shall ensure that Key Personnel have :
- (1) AAIDD/SIS Programmatic lead with demonstrated experience with SIS requirements to oversee daily operation and serve as the primary contact for the State; and
  - (2) Quality lead to oversee quality management functions related to AAIDD.
- c. Staffing and Resources: The Contractor shall be responsible for the professional and technical competence of its employees and shall select appropriately qualified and knowledgeable individuals who will perform effectively in the implementation of this Contract. The Contractor shall provide the following:
- (1) Quality monitoring staff to review assessments to ensure accuracy, data consistency, integrity and completeness.
  - (2) Individuals trained as interviewers who administer the SIS, or individuals trained to train interviewers, shall demonstrate the following criteria:
    - i. A professional (e.g. case manager, psychologist, social worker) who has completed at least a four (4) year degree program or has at least two (2) years of experience conducting individual assessments and has extensive knowledge of behavior rating or psychological testing principles;
    - ii. Has two (2) years of direct work experience with people with intellectual and developmental disabilities;
    - iii. Has the ability to request and verify information from respondents;
    - iv. Culturally sensitive to respondents and individuals whose support needs are being assessed; and
    - v. Has other significant attributes including a strong skill set in organization; time management; ability to address difficult questions and problematic respondent and/or participants; effective communication; and knowledge of adult learning strategies.
  - (3) All staff shall have the appropriate State of Tennessee licensing. Proof of licensing credentials shall be shown to the State upon request.
  - (4) Staff who are not licensed are required to pass a background check specified by the State.
  - (5) Due to the expertise required to administer SIS, the State shall continually evaluate performance of the personnel and, shall as necessary, request that the Contractor immediately stop using any personnel whose performance is found by the State to be inadequate.
  - (6) The Contractor shall conduct and/or participate with in-service training as needed and when requested by the State.
  - (7) The Contractor shall participate with the State in problem solving activities involving the PASRR process.

- (8) Data entry staff to enter SIS information into the State's designated PAE tracking system and perform compliant SIS enterprise data entry when automated retrieval and download is not available.

A.21. The Contractor shall meet the following SIS quality control and assurance requirements:

- a. In collaboration with AAIDD, the Contractor shall participate in annual quality assurance audits to assure that activities and individuals selected to conduct interviews are consistent with the most current AAIDD-recognized version of SIS and related practices.
- b. To prevent the occurrence of procedural drift, the Contractor shall perform regularly scheduled monitoring of each SIS interviewer's reliability to ensure the consistent use of the SIS, the integrity of the data collection process, and the accuracy of data scoring.
- c. Interviewer Reliability Reviews shall occur quarterly, semi-annually, or annually, depending on the needs and experiences of the Interviewer. The Contractor shall ensure that Quality Assurance activities undertaken by AAIDD include:
  - (1) a review of the Contractor's internal quality assurance program that may include an internal data management strategy around IRR data;
  - (2) observation and interviewer reliability review (IRR) of Contractor's interviewers;
  - (3) feedback, coaching, and refresher training as deemed necessary by the State; and
  - (4) the incorporation of feedback into Contractor's future activities.
- d. At the request of the State, the Contractor shall conduct a quality review of an individual SIS assessment to validate outcomes in ten (10) business days, as prescribed by the State and to report the Contractor's findings and/or recommended changes.

A.22. The Contractor shall meet the following SIS stakeholder training and engagement requirements:

- a. Collaborate with the State to help educate stakeholders as project proceeds. Stakeholders include members, families/conservators, providers and advocacy groups;
- b. Participate with the State in onsite meetings and training sessions, webinars, and conference calls;
- c. Coordinate with MCOs; and
- d. Collaborate with the State or any contracted entity assisting the State in implementing the SIS for specified purposes to include a designated consultant with expertise related to the SIS to advise the State of any impacts to existing process or implementation of new programming when the SIS is modified in any way.

A.23. The Contractor shall meet the following Data Production and Retention requirements:

- a. Maintain all Level I screens, comprehensive evaluation documentation and summaries for ten (10) years from the date of evaluation; and
- b. Maintain all SIS assessments and results for ten (10) years from the date of assessment.

A.24. The Contractor shall meet the following Quality Improvement requirements:

- a. Ensure that assessment information consistently have data integrity;
- b. Ensure that reports are useful to the State and its partners and contractors; and

- c. Ensure that complaints are investigated and responded to within two (2) business days and that responses are thorough and effective.

A.25. The Contractor shall meet the following State Alignment requirements:

- a. Maintain transparent, documented procedures for all activities that demonstrate alignment with the Contract, State Rule and federal requirements.
- b. Participate in face-to-face quarterly meetings between the State and key Contractor leadership to review performance, discuss trends, and conduct planning. The Contractor's meeting responsibilities shall, at a minimum, include:
  - (1) documenting meeting minutes;
  - (2) incorporating relevant changes in procedure; and
  - (3) demonstrating that any changes are implemented as discussed and agreed upon by the State.

A.26. 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 shall 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 shall 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 following five (5) components of the CM process described below:
  - 1. On Request Report (ORR)– a request directing the Contractor to provide information by the time and date set out in the CM.
  - 2. Control Directive (CD) – instructions that require the Contractor to complete, within a designated timeframe, one (1) or more deliverables or to perform any other request from the State that is within the scope of the Contract. A CD may also provide clarification of certain Contract terms. Once a CM/CD has been issued, it shall be considered to be incorporated into this Contract.
  - 3. Notice of Potential Damages (Actual or Liquidated) (NPD) – notification to the Contractor that the State has determined that a potential Contract performance or compliance issue exists and that the State is contemplating assessing damages, actual and/or liquidated. The NPD shall identify the Contract provision(s) on which the State determination rests.
  - 4. Notice of Calculation of Potential Damages (Actual or Liquidated) (NCPD) – notification to the Contractor that provides a calculation of the amount of potential damages, actual and/or liquidated, that the State is contemplating assessing against the Contractor. NPDs and 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 are actual damages, Liquidated Damages, or both, and setting out the

performance or compliance issue underlying each intended damage assessment. The NIAD shall identify the NPD and NCPD upon which it is based. The NIAD shall specify the total amount and type of damages, whether actual or liquidated, the State intends to assess. Following the issuance of an NIAD, the State may elect to withhold damages from payments due to Contractor. The State may not issue a NIAD without first issuing a NPD and a NPCD. The State may not obtain both Liquidated Damages and Actual Damages for the same occurrence of a Contract performance 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.8, 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 (10) days of the receipt of the appeal from the Contractor. Upon appeal or escalation, the State shall not increase the amount of the potential damages.
- A.27. The Contractor shall, as directed by the State and at no additional cost to the State, coordinate with, facilitate the prompt exchange of information between, and work collaboratively with any and all other State contractors and State Agencies. If required in order for the Contractor to proceed with any part of the Scope of Services which involves sharing or obtaining information of a confidential, proprietary, or otherwise valuable nature with or from another State contractor, the Contractor may be requested to sign mutually agreeable documents, including but not limited to Non-Disclosure Agreements (Non-Disclosure Documents), which are reasonably necessary to maintain cooperation and collaboration among and with any and all other State contractors and State agencies in the performance of the Contract.

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

Nothing in this Section, including failure to negotiate and enter into a Non-Disclosure Document acceptable to Contractor with another State contractor, shall be construed to relieve the Contractor of its duty to perform any requirements or deliverables under this Contract. Other than as permitted in Section C. of this Contract, Payment Terms and Conditions, the Contractor shall not invoice the State for any such coordination services, and the State shall not be liable to the Contractor for payment of any such coordination services, without the prior written consent of the State.

### **Level of Care (LOC) Assessment Requirements**

- A.28. All work performed under this Contract related to LOC assessments is subject to damages as specified in Attachment B. Definitions and Terms associated with LOC assessments and reliability audits are located in Attachment A.
- A.29. Upon request from TennCare, the Contractor shall conduct face-to-face medical assessments of Tennessee residents to determine if the individual meets the LOC eligibility criteria set forth in the TennCare Rules at 1200-13-01-.10. Each of these individuals will have previously been denied medical eligibility for LTSS by TennCare and have timely requested an appeal. The Contractor shall make each LOC re-assessment in accordance with criteria established by the State:
- a. The Contractor shall accurately gather and record assessment and determination information on a TennCare-approved assessment and determination tool. All LOC assessments and determinations shall be conducted by Field Assessor RNs as defined in this Contract.
  - b. The Contractor shall ensure consistent and defensible LOC determinations. In order to ensure such determinations, the Contractor shall only utilize Tennessee licensed registered nurses experienced in LTSS to conduct face-to-face LOC assessments. The Contractor shall also review each LOC determination through the use of Quality RNs as defined in this Contract to verify that all information necessary for the determination was gathered and that the PAE LOC criteria were correctly applied.
  - c. The Contractor shall create and provide mandatory training to persons who conduct LOC assessments and determinations, and to persons who conduct quality reviews, before such individuals assume responsibilities under this Contract and at least biannually thereafter. This training shall include, but not be limited to TennCare Rules, State criteria interpretation, and interview strategies, and proper completion of assessment tools. All training documents shall be prior approved by TennCare;
  - d. The Contractor shall strictly comply with all timeliness requirements mandated by applicable court orders and federal and state laws and regulations, and any amendments or changes thereto. Time is of the essence in this Contract;
- A.30. The Contractor shall hire and maintain staff and management in accordance with the terms of this Contract. The Contractor's Project Leader, Quality RN(s), and Non-Discrimination Compliance Coordinator shall be available to TennCare staff during regular State business hours for any clarifications or discussions as needed. The Contractor shall ensure that staffing includes, at a minimum, the key staff identified below:
- a. A Project Leader, whose primary office is within the Nashville metropolitan area, to assume operational responsibilities, oversee quality review responsibilities, coordinate operations with TennCare and to provide leadership and expertise in conformity with TennCare Rules and policies, state and federal regulations, laws, court orders and in accordance with the direction of TennCare.
  - b. One (1) or more Tennessee licensed Field Assessor RNs to conduct on-site, face-to-face LOC assessments and determinations. The Field Assessor RNs shall be licensed in the State of Tennessee or possess a multi-state compact license which includes Tennessee. Field Assessor RNs shall be assigned to conduct specific assessments. The Contractor shall maintain an adequate staff of Field Assessor RNs to meet the timelines required in this Contract and all applicable court orders, federal and state laws and regulations, and any amendments or changes thereto. The Field Assessor RNs shall be responsible for:
    - (1) Completing the face-to-face assessment in its entirety;
    - (2) Providing clear and consistent documentation; and
    - (3) Addressing and clarifying inconsistencies.

Upon completion of programming updates to TennCare PAE Tracking System, the sharing of information between TennCare and the Contractor shall occur via the PAE Tracking System. The Contractor shall be required to review and update its system to interact with the PAE Tracking System as updates occur to accommodate changes for on-site referrals, completed face-to-face assessments, and hearings.

- c. One (1) or more Tennessee licensed Quality RNs to conduct quality reviews of each LOC assessment and determination. The Quality RN(s) shall maintain their primary office in the Metropolitan Nashville, Tennessee area. A Quality RN shall be assigned to review every face-to-face assessment. The Contractor shall ensure that the Quality RN is responsible for:
    - (1) Ensuring the completeness of the face-to-face assessment (including interview tools);
    - (2) Ensuring the consistency of the documentation;
    - (3) Addressing and clarifying any inconsistencies and/or omissions;
    - (4) Providing ongoing feedback and training to the field assessor; and
    - (5) Ensuring that each individual assessment fully complies with the criteria for evaluations established by TennCare.
  - d. Privacy Official: The Contractor must designate a privacy official who is responsible for the development and implementation of the policies, procedures and practices according to the HIPAA Privacy and Security Rules. The Contractor must designate a contact person or office who is responsible for receiving privacy and security-related complaints and who is able to provide further information about privacy and security-related matters. This position must be documented pursuant to the regulation.
  - e. NCC: Pursuant to contract Section E.23, the Contractor's NCC shall be responsible for instructing the Contractor's staff on how to assist Potential Enrollees and TennCare LTSS Enrollees with accessing free services for individuals with disabilities who may require reasonable accommodations and/or Auxiliary Aids or Services and for Individuals with LEP. The NCC shall instruct the Contractor's staff on how to assist Potential Enrollees and LTSS Enrollees with filing discrimination complaints and to cooperate with TennCare and/or any other designated entity during discrimination investigations. The Contractor shall ensure that the NCC's nondiscrimination staff instructions are approved by TennCare prior to dissemination to the Contractor's staff.
  - f. Litigation Hold Official: The Contractor shall designate a representative who is designated to receive Litigation Hold notices.
- A.31. Within seven (7) business days of receipt of a request from TennCare, the Contractor shall complete the following:
- a. Assessment scheduling requirements.
    - (1) Scheduling of the face-to-face assessment shall include efforts to involve paid and unpaid hands-on caregivers, including home health as well as other HCBS caregivers. The Contractor shall ensure that the assessor obtains approval from the applicant when involving other family members or representatives;
    - (2) If the member chooses to invite other individuals to the assessment, those people shall be notified about the time and place of the assessment by the assessor;
    - (3) If the applicant is currently receiving care from a paid caregiver or has received paid hands on care within the past thirty (30) days, the assessor shall make attempts to get the paid caregiver to complete a collateral interview and/or obtain caregiver (agency) notes, as provided in Section A.31.a.5 of this Contract.
    - (4) When the applicant has a legal representative, the Contractor shall include attempts to involve the legal representative in scheduling;

- (5) Contractor scheduling efforts shall include documentation of at least three (3) phone outreach attempts during both AM and PM times of the day over the course of five (5) business days. If the applicant is applying for the Katie Beckett Program, Contractor shall document if the applicant's parent or legal guardian declines to schedule the assessment or communicates that they are no longer interested in services prior to the face-to-face appointment;
- (6) All failed attempts to contact caregivers, legal representatives, or family members shall be documented in a detailed call log, including the dates and times of attempts and the outcome of each attempt; and
- (7) This information of contact attempts shall be provided when returning the face-to-face assessment and determination to TennCare.

b. Assessment Requirements.

- (1) Conduct the face-to-face LOC assessment and gather appropriate ancillary information in accordance with timelines and requirements in this Contract and TennCare Rules;
- (2) Make an initial LOC determination based on the assessment and documentation gathered;
- (3) Perform a quality review of the initial LOC assessment to ensure that LOC criteria were appropriately applied and conducted interviews, applicant and collateral, are complete, and all inconsistencies are properly addressed by providing an explanation regarding any discrepancies between the signed PAE and supporting documentation, including interviews, by providing ancillary information which either:
  - a. Provides a narrative description of the attempts to resolve discrepancies; and/or
  - b. Provides a full resolution to any discrepant area.
- (4) Make a final determination of the individual's LOC eligibility as represented by all available information; and
- (5) Communicate the final LOC determination to TennCare in the format specified by TennCare, including submission of the assessment and all documentation relied upon in making the determination.

- c. If, for any reason, TennCare has to return the determination to the Contractor for inconsistencies, omissions, or incomplete submissions, either on the part of the independent contractor or the Quality review RN, the Contractor shall have one (1) business day to return the corrected assessment to TennCare via TennCare prescribed method. This time will not count against the seven (7) business day requirement.
- d. If the assessment must be returned for corrections a second time, the process will not be considered complete and the contractor forfeits the one additional business day to return the corrected assessment. Calculation of days out of compliance will continue until TennCare accepts as the Contractor's final determination

A.32. The Contractor will be notified by TennCare when an appeal hearing is scheduled. On the day of the hearing, an RN from the Contractor shall be available to participate in the hearing by phone and provide testimony on behalf of TennCare. The Contractor shall ensure that the RN is familiar with the specific face-to-face LOC assessment that is the subject of the hearing and such RN shall be able to cogently present the PAE LOC determination at hearing, consistently interpret TennCare's LOC criteria, and consistently communicate how the criteria was applied in making the specific LOC determination that is being appealed.

A.33. The Contractor shall create and maintain a Project Database to record key aspects of each LOC assessment. The Contractor shall ensure that the Project Database is fully and securely accessible by Project Leader(s), Field Assessor RNs, and Quality RNs. The Contractor shall ensure that the Project Database is capable of creating billing summaries. The Contractor shall ensure that the database includes, but is not limited to, the following functionalities:



- a. Referral documents provided by TennCare;
  - b. Any Quality RN or Project Leader special instructions to the Field Assessor RN;
  - c. Identity of the Field Assessor RN assigned to the referral, time/date of referral to the Field Assessor RN, due date for the completed LOC assessment, and the time/date the LOC assessment was received from the Field Assessor RN;
  - d. Location of the assessment completion;
  - e. Special circumstances, including any unique or unusual circumstances related to the LOC assessment, if any;
  - f. Quality RN's score on measure of quality of work submitted by the Field Assessor RN; and
  - g. Time/date of Quality RN's review, decision and Contractor's submission to TennCare.
- A.34. The Contractor shall submit a report with the data elements provided in Section A.36 of this Contract to TennCare, in a format and manner specified by TennCare, by the fifteenth (15<sup>th</sup>) of each month (or next business day if the 15<sup>th</sup> occurs on a weekend or State Holiday). The Contractor shall not release reports created, or data collected, under this Contract to persons or entities outside of TennCare without prior, express written consent from TennCare. The Contractor shall ensure that that the report includes information from the preceding month:
- a. Total number of assessments completed, with an indication of whether the assessment occurred in a Nursing Facility or home or community-based setting, pursuant to Contract Section A.31.
  - b. Total number of LOC decisions overturned;
  - c. Total number of LOC decisions upheld;
  - d. Total number of LOC decisions sent back to Contractor for corrections and/or clarification;
  - e. Total number of initial LOC decisions changed after TennCare review;
  - f. Total number of hearings for which Contractor's expert testimony was provided; and
  - g. Total number of hearings for which the Contractor called into the hearing, but did not provide expert testimony.
- A.35. The Contractor shall perform the following services within the specific timelines set forth below:
- a. Within fifteen (15) calendar days of the Contract start date, at a minimum, the Project Leader and Quality RN, shall participate in TennCare's in-person training regarding PAE LOC criteria, acuity scale, interpretation of the TennCare Rules, applicable state and federal statutes and DOE orders, and the PAE LOC assessment and appeals processes;
  - b. Within twenty (20) calendar days of completion of training by TennCare, submit for TennCare approval Contractor's proposed assessment tool. The Contractor shall not utilize the assessment tool unless and until TennCare has provided written approval of the tool;
  - c. Within twenty (20) calendar days of receipt of written approval by TennCare of the assessment tool, the Contractor shall develop and submit to TennCare for approval a PAE LOC assessment training and procedure manual to include the following:

- (1) Step-by-step protocol review;
- (2) A project procedure manual to include procedures associated with receiving, assigning, reviewing, making determinations, and hearing protocols;
- (3) A quality improvement tool and protocol;
- (4) Interview techniques;
- (5) Record review process;
- (6) Documentation requirements;
- (7) Processing requirements;
- (8) Quality management approach and related expectations; and
- (9) Medical Eligibility Criteria (Level of Care) in TennCare Rule 1200-13-01-.10.

The Contractor shall not utilize the PAE LOC assessment training and procedure manual, quality improvement tool, or any of its subparts unless and until TennCare has provided written approval of this material.

- d. Within thirty (30) calendar days of the Contract start date, the Contractor shall create, test, demonstrate to TennCare the efficacy of the Project Database required in A.33 above and obtain TennCare's written approval to begin using the Project Database.
  - e. Within thirty (30) calendar days of the Contract start date, the Contractor shall hire or execute subcontracts with a sufficient number of registered nurses to complete all on-site face-to-face PAE LOC assessments referred to Contractor by TennCare and to provide the quality assurance reviews required in this Contract. The Contractor shall ensure that the subcontracts are substantially in the form of a subcontract template approved in advance by TennCare and shall comply with the requirements of Section D.7 of this Contract. Within this timeframe, the Contractor shall complete for each such registered nurse:
    - (1) A reference check;
    - (2) A criminal background check;
    - (3) Licensure verification;
    - (4) Interviews/review of project expectations;
    - (5) Updating of HIPAA and other assurances requested by TennCare;
    - (6) Submission of selected evaluators for TennCare approval, if requested by TennCare; and
    - (7) Issuance of Contractor project contracts to RN independent contractors.
  - f. Within forty (40) calendar days of receipt of written approval by TennCare of the assessment tool, the Contractor shall create and submit to TennCare for approval a Field Assessor RN Training plan. The Contractor shall ensure that the training plan includes all materials, whether written, video or web-based, that will be used to instruct Field Assessor RNs on how to perform on-site face-to-face LOC assessments. The Contractor shall not implement the training plan unless and until TennCare has provided written approval of the plan.
  - g. Within sixty (60) calendar days of the Contract start date, the Contractor shall have an adequate number of Field Assessor RNs employed or under contract and fully trained across the State to perform all on-site LOC assessments requested by TennCare.
  - h. The Contractor shall maintain all policies, procedures, manuals, tools and other items required by this Section throughout the duration of the Contract term. When necessary or appropriate, the Contractor shall update these materials. However, such updated materials shall not be effective and shall not be utilized by the Contractor unless and until TennCare has provided written approval of those materials.
- A.36. Six (6) months prior to the final expiration of this Contract, the Contractor shall provide any staff resources necessary to assist TennCare in transitioning to a new Contractor at the end of this Contract. In addition, the Contractor shall prepare, for TennCare's approval, a transition plan for transfer of the Contractor's services to the new Contractor. The Contractor shall submit the

transition plan to TennCare no less than one hundred and eighty (180) days prior to the Contract termination date and shall include the following information:

- a. Define transition approach, all tasks and subtasks, and provide a schedule for the transition effort to achieve TennCare requirements;
  - b. Securely transfer all files, data, and other materials developed under this Contract, and any and all amendments thereto, to the State or its designated agent;
  - c. Provide copies of all procedures for performing the functions of the Contractor;
  - d. Provide an estimated inventory of all work in progress and its projected status at the end of the contract one (1) month before final termination of this Contract;
  - e. Update the work in process and inventory estimates weekly throughout the Transition Phase;
  - f. Provide a final, detailed, inventory and accounting of all work in progress and all completed work within seven (7) business days of final contract expiration;
  - g. Provide current specifications for all reports generated for TennCare; and
  - h. Prepare and securely submit a final report summarizing transition task results and certifying the completion of all transitions.
- A.37. The Contractor's staff shall report any suspected fraud or abuse by TennCare enrollees or TennCare providers as follows:
- a. All possible enrollee fraud and abuse shall be reported immediately to the Office of the Inspector General (OIG);
  - b. All possible provider fraud and abuse shall be reported immediately to TennCare and the Tennessee Bureau of Investigation (TBI) Medicaid Fraud Control Division(MFCD); and
  - c. Possible fraud and abuse by the Contractor in the administration of the program shall be reported to TennCare Office of Program Integrity.
- A.38. All policies, procedures, training materials, quality improvement tools and other materials referred to above shall be considered Work Product.

#### **Katie Beckett Program – Part A Assessments**

- A.39. For applicants in the Katie Beckett Program, the Contractor shall complete Katie Beckett assessments and annual reassessments as directed by TennCare.
- A.40. Upon receipt of Part A applicant's referral to Katie Beckett Program, the Contractor shall make contact with applicant's parent or legal guardian within three (3) business days of referral to schedule face-to-face assessment.
- A.41. The Contractor shall complete a face-to-face assessment utilizing an assessment tool as prescribed by TennCare, including interviewing legal guardians, as appropriate, and collecting documentation for Katie Beckett Program Part A applicants within seven (7) business days of receipt of referral in a format and manner as prescribed by TennCare.
- A.42. The Contractor shall make a determination of eligibility for a KB Part A applicant within two (2) business days of the face-to-face assessment.

A.43. For assessments that may result in a denial of Part A eligibility, the Contractor shall ensure that a Clinician Reviewer conducts a review within five (5) business days of the eligibility determination, and the Clinician Reviewer must either agree with or overturn the denial and issue an approval.

A.44. Level of Care (LOC) Appeals

- a. When a LOC appeal is timely filed with TennCare, based upon a decision made by the Clinician Reviewer and a request is made by TennCare, the Contractor shall ensure that the Clinician Reviewer is available for a peer-to-peer review of the case with the physician who certified the need for care.
- b. Within seven (7) business days of receipt of a request from TennCare, the Contractor shall complete the following:
  1. Schedule a peer-to-peer review between the Clinician Reviewer and the physician who certified the need for care.
    - i. Contractor scheduling efforts shall include documentation of at least three (3) phone outreach attempts during both AM and PM times of the day over the course of five (5) business days. If contact has not been made by the fourth business day, a status update must be provided to TennCare.
    - ii. All failed attempts to contact physicians shall be documented in a detailed call log, including the dates and times of attempts and the outcome of each attempt. This information of contact attempts shall be provided when returning the assessment and determination to TennCare.
  2. Conduct peer to peer review LOC assessment and gather appropriate ancillary information in accordance with timelines and requirements in this Contract and TennCare Rules.
  3. All failed attempts to contact caregivers, legal representatives, or family members shall be documented in a detailed call log, including the dates and times of attempts and the outcome of each attempt. This information of contact attempts shall be provided when returning the assessment and determination to TennCare.
  4. Make an initial LOC determination based on the assessment and documentation gathered; Perform a quality review of the initial LOC assessment to ensure that LOC criteria were appropriately applied and peer to peer evaluation is complete, and all inconsistencies are properly addressed by an explanation regarding any discrepancies between supporting documentation, including peer to peer evaluations by providing ancillary information which either:
    - i. Provides a narrative description of the attempts to resolve discrepancies; and/or
    - ii. Provides a full resolution to any discrepant area.
  5. Make a final determination of the individual's LOC eligibility to include review for a safety determination as represented by all available information.
  6. Communicate the final LOC determination to TennCare in the format specified by TennCare, including submission of the assessment and all documentation relied upon in making the determination.
  7. Upon request from TennCare, the Contractor shall conduct a secondary LSA, as part of the determining factor in establishing if potential applicant is in Target

Population, ID or DD. Individuals included will have previously been denied medical eligibility for Long-Term Services and Supports (LTSS) by TennCare and have timely requested an appeal.

- c. The Contractor will be notified by TennCare when an appeal hearing is scheduled. On the day of the hearing, a physician from the Contractor shall be available to participate in the hearing by phone and provide testimony on behalf of TennCare. The physician must be familiar with the specific LOC assessment that is the subject of the hearing and shall be able to clearly articulate the PAE LOC determination at hearing, consistently interpret TennCare's LOC criteria, and consistently communicate how the criteria was applied in making the specific LOC determination that is being appealed.

In the event of a Katie Beckett LOC appeal, contractor shall schedule a peer to peer review based upon the State's established peer to peer process.

- A.45. The Contractor shall utilize a Qualified Intellectual Disability Professional (QIDP), Qualified Mental Health Professional (QMHP), and/or Registered Nurse (RN) to conduct the face-to-face assessments.
- A.46. Katie Beckett Key Personnel Requirement. The Contractor shall designate a Katie Beckett Programmatic lead to oversee daily operation and serve as the primary contact for the State. The Katie Beckett Program lead may perform other responsibilities for the Contractor outside of the KB Contract requirements. The Contractor shall notify TennCare in writing within five (5) business days if the above primary contact permanently leaves the Contractor and no replacement staff is immediately available to assume the responsibilities. The Contractor shall include with this notification to TennCare its plan and associated timelines for replacing this staff member and for ensuring continuity of Katie Beckett functions as specified herein during this period. In addition, the Contractor must have a physician specializing in pediatrics to render level of care denials.
- A.47. Training. Contractor shall partner with TennCare or a TennCare designee to provide training for each QIDP, QMHP, RN, and Physician who conducts face-to-face assessments or conducts reviews of potential denials. The Contractor shall ensure that training on utilization of the assessment tool, as well as the use of TN PERLSS, is provided. The Contractor shall provide training upon employment, at least annually and on an ongoing basis, as needed. The Contractor shall conduct training as prescribed by TennCare, and TennCare shall be provided all training materials for review and approval prior to scheduling training.
- A.48. The Contractor shall have access to TN PERLSS for the purpose of recording required assessment data, outcomes, attaching documents, scheduling face-to-face assessments, and transmitting decisions to and from TennCare. TennCare shall provide the Contractor any required training on usage of the TN PERLSS system.

### **Employment and Community First (ECF) CHOICES**

- A.49. The Contractor shall train and certify, based on an assessment of the person's competency, the MCO, DIDD, and other staff as determined by TennCare to perform only the Maladaptive Behavior Assessment component of the Inventory for Client and Agency Planning (ICAP).
- A.50. The Contractor shall conduct Maladaptive Behavior Assessment component of the ICAP training for all TennCare identified Intake Staff in continued support of the ECF CHOICES Program. Training and certification of qualified assessors shall also be conducted on a monthly basis, as needed, for new staff that may be hired to perform contracted intake functions.
- A.51. The Contractor's certification process shall include demonstration of the person's competency in accurately performing the Maladaptive Behavior Assessment component of the ICAP.
- A.52. The Contractor shall train and certify, based on an assessment of the person's competency, MCO, DIDD and other staff as determined by TennCare, to perform the adaptive behavior

assessment tool, Tennessee Life Skills Assessment, using the TennCare-developed Life Skills Assessment instructions.

- A.53. The Contractor shall conduct Life Skills Assessment training for all TennCare identified Intake Staff in continued support of the ECF CHOICES Program. The Contractor shall conduct training and certification of qualified assessors on a monthly basis, as needed, for new staff that may be hired to perform intake functions.
- A.54. The Contractor's certification process shall include demonstration of the person's competency in accurately performing the Life Skills Assessment.
- A.55. The Contractor shall be responsible for supplying ICAP assessment booklets, as needed, to DIDD and contracted MCOs.
- A.56. The Contractor shall develop an electronic tool that uses an algorithm to calculate the Maladaptive Behavior Index score based on the completed Maladaptive Behavior Assessment component of the ICAP, including the following:
- a. The tool shall facilitate the identification of anomalies which would indicate that the Maladaptive Behavior Assessment may not have been completed accurately for review and follow-up prior to scoring;
  - b. When errors or inconsistencies are identified, the Contractor shall contact the submitter to get resolution;
  - c. Using the Contractor developed electronic tool, the Contractor shall calculate the Maladaptive Behavior Index score based on the completed Maladaptive Behavior Assessment component of the ICAP;
  - d. The Calculated Maladaptive Behavior Index score shall be made available to the submitting entity;
  - e. The Calculated Maladaptive Behavior Index score shall be made available to TennCare within two (2) business days of receipt of complete ICAP information from submitting entity staff;
  - f. The Calculated Maladaptive Behavior Index score shall be made available to submitting entity statewide to be accessed twenty-four (24) hours a day, seven (7) days a week;
  - g. Availability shall include the ability to print calculated Maladaptive Behavior Index score, and
  - h. The Contractor shall supply clear instructions for accessing and printing calculated Maladaptive Behavior Index Score.
- A.57. The Contractor shall develop processes for conducting post-scoring audits of the Maladaptive Behavior Assessment component of the ICAP assessment tool and shall provide targeted training and technical assistance as needed to the submitting entity's staff to improve assessment accuracy and performance.
- A.58. The Contractor shall provide to TennCare, on a monthly basis, a report showing the following:
- a. Number of Maladaptive Behavior Assessment components of the ICAP received in that month, separated by submitting entity;
  - b. Number of Maladaptive Behavior Index scores calculated in that month;
  - c. Number of quality reviews performed on completed Maladaptive Behavior Assessment components of the ICAP received in that month;

- d. Associated turnaround time for calculating the Maladaptive Behavior Index scores calculated in that month;
- e. When turnaround time exceeds 2 business days, reason for such delay;
- f. Number of ICAP assessment manuals and booklets distributed in that month, separated by distribution entity;
- g. Number and type, web-based or in-person, trainings conducted in that month, separated by training topic, including Maladaptive Behavior Assessment component of the ICAP or Life Skills Assessment;
- h. Number of Assessments, which based on quality review, indicate that the Maladaptive Behavior Assessment may not have been completed accurately, separated by submitting entity;
- i. Identified trends in inaccurately completed assessments; and

A.59. Warranty. Contractor represents and warrants that the term of the warranty (“Warranty Period”) shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a “Defect” and shall be considered “Defective.” If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.

Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor’s industry.

If Contractor fails to provide the goods or services as warranted, then Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide the goods or services as warranted, then the State shall be entitled to recover the fees paid to Contractor for the Defective goods or services. Any exercise of the State’s rights under this Section shall not prejudice the State’s rights to seek any other remedies available under this Contract or applicable law.

A.60. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

**B. TERM OF CONTRACT:**

- B.1. This Contract shall be effective for the period beginning on November 1, 2023 (“Effective Date”) and ending on January 31, 2027 (“Term”). The State shall have no obligation for goods delivered or services provided by the Contractor prior to the Effective Date.
- B.2. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to two (2) renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State’s sole

option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of **sixty-two (62) 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 period beginning November 1, 2023 through January 31, 2024 shall be an uncompensated transition period whereby payments for services begin on February 1, 2024.**
  - c. **The Contractor shall be compensated based upon the following payment methodology associated with PASRR Levels I & II Screenings and Evaluations:**

<b>Goods or Services Description February 1, 2024 to January 31, 2027</b>	<b>Amount (per compensable increment)</b>
PASRR Level I Screening – without Clinical Review	\$ _____ / per screening
PASRR Level I Screening – with Clinical Review	\$ _____ / per screening
PASRR Level II Screening – Out of State Paper Submission	\$ _____ / per screening
PASRR Level II Evaluation – Without IQ Test	\$ _____ / per assessment
PASRR Level II Evaluation – With IQ Test	\$ _____ / per assessment
PASRR Level II Evaluations Withdrawn	\$ _____ / per assessment
Expedited PASRR Level II Evaluation	\$ _____ / per assessment
PASRR Change of Status Review	\$ _____ / per assessment
PASRR Document Based Review	\$ _____ / per assessment
Supports Intensity Scale™ (SIS™) Assessment Within 10 Business Days (A. 19.a – c, and e)	\$ _____ / per assessment
Supports Intensity Scale™ (SIS™) Assessment Within 30 Business Days (A. 19.d)	\$ _____ / per assessment

- d. The Contractor shall be compensated the following payment rates associated with Level of Care evaluations

<b>Service Description</b>	<b>Amount</b>
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	(per compensable increment)
Nursing Facility Onsite Assessment	\$ _____ / per assessment
Home Based Onsite Assessment	\$ _____ / per assessment
Phone Based Hearing (all activities associated with phone based hearing)	\$ _____ / per Phone Hearing

- e. The Contractor shall be compensated the following payment rates associated with Katie Beckett Part A Assessments and Reviews:

Service Description	Amount (per compensable increment)
Full Part A Face-to-Face Assessment	\$ _____ / per assessment
Clinician Reviewer Reviews (for denials)	\$ _____ / per review

- f. The Contractor shall be compensated the following payment rates associated with ECF CHOICES Training & Technical Assistance:

Service Description	Amount (per compensable increment)
Life Skills Assessment	\$ _____ / per Assessment

- 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  
 Phone: (615) 507-6443

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. This Section D.9 shall not be deemed to limit or abridge any requirement set forth in Section E.24.

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 C, 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 (Definitions), Attachment B (Liquidated Damages), Attachment C (Attestation RE Personnel Used in Contract Performance) and Attachment D (Business Associate Agreement);
  - 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., 3<sup>rd</sup> 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
  - vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

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 not 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.

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, including limited disclosures of information to subcontractors to satisfy the requirements 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.

- D.35. Boycott of Israel. The Contractor certifies that it is not currently engaged in, and covenants that it will not, for the duration of the Contract, engage in a Boycott of Israel, as that term is defined in Tenn. Code Ann. § 12-4-119.

**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. 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.3. Transfer of Ownership of Custom Software Developed for the State.
- a. Definitions.
- (1) "Contractor-Owned Software," shall mean commercially available software the rights to which are owned by Contractor, including but not limited to commercial "off-the-shelf" software which is not developed using State's money or resources.
  - (2) "Custom-Developed Application Software," shall mean customized application software developed by Contractor for the State under this Contract intended to function with the Contractor-Owned Software or any Work Product provided under this Contract.
  - (3) "Rights Transfer Application Software," shall mean any pre-existing application software and documentation owned or supplied by Contractor or a third party necessary for the use, functioning, support, or maintenance of the Contractor-Owned Software, the Custom-Developed Application Software, Third Party Software, and any Work Product provided to State.
  - (4) "Third-Party Software," shall mean software supplied by Contractor under this Contract or necessary for the functioning of any Work Product not owned by the State or the Contractor.
  - (5) "Work Product," shall mean all deliverables such as software, software source code, documentation, planning, etc., that are created, designed, developed, or documented by the Contractor for the State under this Contract. Work Product shall include Rights Transfer Application Software.
- b. Rights and Title to the Software
- (1) All right, title and interest in and to the Contractor-Owned Software shall at all times remain with Contractor, subject to any license or transfer of rights or ownership granted under this Contract. Contractor grants the State a perpetual non-exclusive license to the Contractor-Owned Software to be used solely with the Custom-Developed Application Software and the Work Product.
  - (2) Contractor shall provide the source code in the Custom-Developed Application Software, Work Product and the Contractor-Owned Software, with all subsequent modifications, enhancements, bug-fixes or any other changes in the source code of the Work Product and the Contractor-Owned Software and all other code and documentation necessary for the Custom-Developed Application Software to be installed and function as intended and as set forth in this Contract, to the State.
  - (3) Contractor may lease or sell the Custom-Developed Application Software to third parties with the written permission of the State, which permission may be conditioned on the State receiving royalties from such sales or licenses.
  - (4) All right, title and interest in and to the Custom-Developed Application Software, and to modifications thereof made by State, including without limitation all copyrights, patents, trade secrets and other intellectual property and other

proprietary rights embodied by and arising out of the Custom-Developed Application Software, shall belong to State. To the extent such rights do not automatically belong to State, Contractor hereby assigns, transfers, and conveys all right, title and interest in and to the Custom-Developed Application Software, including without limitation the copyrights, patents, trade secrets, and other intellectual property rights arising out of or embodied by the Custom-Developed Application Software. Contractor and its employees, agents, contractors or representatives shall execute any other documents that State or its counsel deem necessary or desirable to document this transfer or allow State to register its claims and rights to such intellectual property rights or enforce them against third parties.

- (5) All right, title and interest in and to the Third-Party Software shall at all times remain with the third party, subject to any license or other rights granted to the State under this Contract or otherwise.
- c. The Contractor may use for its own purposes the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of performing under this Contract. The Contractor may develop for itself, or for others, materials which are similar to or competitive with those that are produced under this Contract.

#### E.4. 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 or 140-3 (current applicable version) validated encryption technologies. The State shall control all access to encryption keys. The Contractor shall provide installation and maintenance support at no cost to the State
  - (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: twelve (12) 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: twenty-four (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.

- E.5. **State Furnished Property.** The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible personal property furnished by the State

for the Contractor's use under this Contract. Upon termination of this Contract, all property furnished by the State shall be returned to the State in the same condition as when received, less ordinary wear and tear. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the fair market value of the property at the time of loss.

- E.6. 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.7. 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.8. Liquidated Damages.

In the event of a Contract performance or compliance failure by the Contractor, the State may, but is not obligated to address such Contract performance or compliance failure and/or assess damages ("Liquidated Damages") in accordance with Attachment B of the Contract. The State shall notify the Contractor of any amounts to be assessed as Liquidated Damages via the Control Memorandum process specified in Contract Section A.27. 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 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.9. 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.10. 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.11. 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. 12. Federal Funding Accountability and Transparency Act (FFATA). This Contract requires the Contractor to provide supplies or services that are funded in whole or in part by federal funds that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Contractor provides information to the State as required.

The Contractor shall comply with the following:

- a. Reporting of Total Compensation of the Contractor's Executives.

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

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

- (2) Total compensation means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 C.F.R. § 229.402(c)(2)):
  - i. Salary and bonus.
  - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
  - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

- iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
  - v. Above-market earnings on deferred compensation which is not tax qualified.
  - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.
- b. The Contractor must report executive total compensation described above to the State by the end of the month during which this Contract is awarded.
  - c. If this Contract is amended to extend the Term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the term extension becomes effective.
  - d. The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>

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

- E. 13. 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. 14. Applicable Legal Authority. The Contractor agrees to comply with all applicable legal authority, including federal and State laws, rules, regulations, policies, sub-regulatory guidance, executive orders, TennCare waivers, the State Medicaid Manual, 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. 15. 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 D).
- E. 16. 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 forty-eight (48) hours after discovery of any incident, either confirmed or suspected, that represents or may represent unauthorized access, use or disclosure of encrypted or unencrypted computerized data that materially compromises the security, confidentiality, or integrity of a TennCare enrollee's Protected Health Information (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, Smartphones, USB drives, thumb drives, flash drives, CDs, and/or disks.
- E. 17. 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 the TennCare Secure File Transfer Protocol (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.

E.18. Social Security Administration (SSA) Required Provisions for Data Security.

a. Definitions.

1. 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.

- b. The Contractor shall comply with limitations on use, treatment, and safeguarding of data under the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, related Office of Management and Budget guidelines, the Federal Information Security Management Act of 2002 (44 U.S.C. §3541, *et seq.*), and related National Institute of Standards and Technology guidelines, 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. In addition, the Contractor shall have in place administrative, physical, and technical safeguards for data. The Contractor shall also comply with Section 1106(a) of the Act (42 U.S.C. 1306) and the regulations promulgated pursuant to that section (20 C.F.R. Part 401).

- c. 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;

- d. 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.

- e. The Contractor agrees to abide by all relevant federal laws, restrictions on access, use, and disclosure, and security requirements in this Contract.

- f. 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.

- g. 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.

- h. 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.
- i. 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.
  - j. 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.
  - k. 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) otherwise violated or failed to follow the terms and conditions of this Contract.

E.19. 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.20. Medicaid and CHIP. The Contractor must provide safeguards that restrict the use or disclosure of information concerning Medicaid and Children's Health Insurance Plan (CHIP) 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 said information, and
  - 2) Information received under the Internal Revenue Code (Title 26 of the United States Code (USC)) is exchanged only with parties authorized to receive that information under that section of the United States 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 minimum, the following:
- 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 the Social Security Administration (SSA) or the Internal Revenue Service (IRS);
  - 7) Income information received from SSA or the IRS 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) Conditions for release and use of information about applicants and beneficiaries;
  - 2) Access to information concerning applicants or beneficiaries must be restricted to Contractor representatives or other individuals 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 or 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;
  - 5) The Contractor's policies must apply to all requests for information from outside sources, including governmental bodies, the courts, or law enforcement officials;
  - 6) 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.21. 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 the Social Security Act, Section 1128 (Exclusion of Certain Individuals and Entities from Participation in Medicare and State Health Care Programs).
- E.22. 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.23. Discovery and Litigation. TennCare is frequently involved in litigation as either a party or a non-party with relevant information. If any such litigation should arise, the Contractor shall cooperate fully and timely with any State attorneys or paralegals in defense of the claim at no additional cost to the State, which shall include the following responsibilities:
- a. **Litigation Support.** 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, in any case relating to this Contract.

- b. **Discovery and Litigation Hold Requirements.** The Contractor shall cooperate with all TennCare requests to aid in data and document retention and collection, as required for litigation. The Contractor shall promptly provide the State with all information within the Contractor's control if required to do so by a discovery demand or court order. The State will exert its best effort to narrow the scope of any discovery request.

The obligation to meet the requirements listed above shall survive the termination of the Contract and shall extend to any subcontractor hired by the Contractor to provide goods or perform services on its behalf as required herein.

- E.24. **Nondiscrimination Compliance Requirements.** No person on the grounds of disability, age, race, color, religion, sex, national origin, or any other classifications protected under federal or state civil rights laws 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. The Contractor agrees to cooperate with the Division of TennCare's Office of Civil Rights ("OCRC") in carrying out its federal and state nondiscrimination compliance obligations, which include and are not limited to: the Title VI of the Civil Rights Act of 1964, Section 504 and 508 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) and Section D.- of this Contract. The Contractor shall provide OCRC with the name and contact information for a staff member who will work with OCRC to fulfill the nondiscrimination compliance activities related to the terms of this Contract.

*a. Policies and Procedures and Training.* The Contractor shall be interacting with individuals from diverse cultural backgrounds including, individuals with Limited English Proficiently ("LEP"), individuals with low literacy, individuals with disabilities, including individuals with vision, cognitive, hearing, and speech disabilities, therefore, the Contractor shall have policies and procedures for providing services in a nondiscriminatory and cultural competent manner, providing free language and communication assistance services to individuals, providing individuals with reasonable accommodations, and discrimination complaint procedures. The Contractor's staff members carrying out the terms of this Contract shall receive annual training on the entity's: policies on how to provide services in a nondiscriminatory and culturally competent manner, complaint procedures, process to obtain free language assistance services for LEP individuals, process for providing free effective communication services (auxiliary aids or services) to individuals with disabilities, and process for providing reasonable accommodations for individuals with disabilities. The Contractor's new hires carrying out the terms of this Contract shall receive this training within thirty (30) days of joining the Contractor's workforce.

*b. Electronic and Information Technology Accessibility Requirements.* To the extent that the Contractor is using electronic and information communication 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 with a goal to transition to WCAG 3 level silver (For the W3C's guidelines see: <https://www.w3.org/WAI/standards-guidelines/> and Section 508 standards: <https://www.access-board.gov/ict/>). Additionally, the Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, by adding 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 a machine translate tool or translating the page into non-English languages as directed by TennCare.

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.

*c. Cultural Competency.* The Contractor shall participate in the State's efforts to promote the delivery of services in a culturally competent manner to all members, including those with Limited English Proficiency, disabilities and diverse cultural and ethnic backgrounds regardless of a member's sex. This includes the Contractor having the capabilities to ensure physical access, accommodations, and accessible equipment for the furnishing of services to members with physical or mental disabilities.

*d. Discrimination Complaints and Assistance.* The Contractor shall provide any discrimination complaint received relating to this Contract's services and activities within in two (2) days of receipt to OCRC at [HCFA.Fairment@tn.gov](mailto:HCFA.Fairment@tn.gov). The Contractor agrees to cooperate with OCRC and other federal and state authorities during discrimination complaint investigations and to assist individuals in obtaining information on how they can report a complaint or get assistance for a disability related need that involves TennCare's services or activities by contacting OCRC. To satisfy this obligation the Contractor may direct the individual to OCRC's webpage at: <https://www.tn.gov/tenncare/members-applicants/civil-rights-compliance.html> or to call TennCare Connect at 855-259-0701 if they need assistance with filing a complaint.

*e. Readiness Review.* Prior to the contract start date, the Contractor's designated staff member shall participate in a nondiscrimination/civil rights readiness review phase. This process is to assist the Contractor with implementing the Contract's nondiscrimination requirements.

*f. Nondiscrimination Compliance Reports.* The Contractor shall submit the following nondiscrimination compliance deliverables to OCRC using TennCare's Office of Compliance Management Oversight Processing System ("TOPS") as follows:

- i. Annual Compliance Questionnaire. On an annual basis, using TOPS, OCRC shall provide the Contractor with a Nondiscrimination Compliance Questionnaire. The Contractor shall answer the applicable questions and submit the completed questionnaire to OCRC within sixty (60) days of receipt of the questionnaire with any requested documentation, which shall include, the Contractor's: Assurance of Nondiscrimination, nondiscrimination policies, data capturing the amount of language and communication assistance services provided to individuals, and a civil rights and cultural compliance training report.
- ii. Quarterly Compliance Reports. The Contractor shall submit a quarterly Non-discrimination Compliance Report which shall include the following:
  - a. A civil rights and cultural compliance training report;
  - b. 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 the services provided under the scope of this Contract.
  - c. 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; large print; Sign Language) and the methods used to provide those services.

*g. Nondiscrimination Notice and Taglines.* Should the Contractor create materials (flyers, emails, text messages), the Contractor shall ensure that communications critical to obtaining services and vital documents that are targeted to participants, enrollees, applicants, and members of the public shall be printed with the notice of nondiscrimination and taglines required by TennCare. Written materials specific to TennCare program members shall be approved by TennCare prior to the materials being sent to these individuals and at a minimum vital documents shall be translated and available in Spanish and Arabic.

E.25. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's Response

to 31865-00638 (RFP Att. 6.2 Section B-Section B.15).and resulting in this Contract.

The Contractor shall assist the State in monitoring the Contractor’s performance of this commitment by providing, as requested, a 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.26. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment. If applicable and as required by 2 CFR 200.216, Contractor is prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as a critical technology as part of any system. As described in Public Law 115-232, Section 889, “covered telecommunications equipment” is as follows:
  - a. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
  - b. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
  - c. Telecommunications or video surveillance services provided by such entities or using such equipment.
  - d. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

**IN WITNESS WHEREOF,**

**CONTRACTOR:**

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**CONTRACTOR SIGNATURE**

**DATE**

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

**DEPARTMENT OF FINANCE AND ADMINISTRATION,  
DIVISION OF TENNCARE:**

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**JIM BRYSON, COMMISSIONER**

**DATE**

## DEFINITIONS AND ABBREVIATIONS

1. AAIDD - American Association on Intellectual and Developmental Disabilities
2. Auxiliary Aids and Services – Includes (1) Qualified interpreters on-site or through video remote interpreting (VRI) services; note-takers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including Telecommunications Relay Service (TRS), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing; (2) Qualified readers; taped texts; audio recordings; Brailled materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision; (3) Acquisition or modification of equipment or devices; and (4) Other similar services and actions. The provision of Auxiliary Aids or Services by the Contractor shall be in compliance with the applicable Federal and State laws and regulations and Contract section D.25.
3. Clinician Reviewer – A clinician with an MD or PhD, specializing in pediatrics, who reviews any assessments that may result in a denial of Part A eligibility.
4. Change of Status – When a resident has a significant change affecting the need for specialized services. A “significant change” is a decline or improvement in a resident’s status that: 1) Will not normally resolve itself without intervention by staff or by implementing standard disease related clinical interventions, is not “self-limiting” (for declines only); 2) Impacts more than one area of the resident’s health status; and 3) Requires interdisciplinary review and/or revision of the care plan.

### **DIDD – Tennessee Department of Intellectual and Developmental Disabilities.**

5. Division of TennCare (TennCare) - The administrative unit of TennCare which is responsible for the administration of TennCare as defined elsewhere in the Division’s Rules.
6. DMHSAS – Tennessee Department of Mental Health and Substance Abuse Services
7. DOE – Refers to the case of *Doe v. Word*, No. 3-84-1260, 1987 WL 108974 (M.D. Tenn. Jan. 14, 1987) and any Orders relating thereto. DOE is a class action filed to protect the due process rights of persons entering nursing home facilities in the State of Tennessee.
8. Effective Communication - Taking the appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others by utilizing auxiliary aids and services.
9. Enrollee - A person who has been determined eligible for TennCare and who has been enrolled in the TennCare program. Synonymous with Member.
10. Field Assessor RN - Contractor’s employee or subcontractor who is a Registered Nurse and who meets all licensing and other requirements of this Contract and who performs onsite, face-to-face PAE LOC assessments for specified TennCare enrollees or applicants on behalf of the Contractor, as directed by TennCare.
11. Hearing - a contested case proceeding held pursuant to the provisions of the Tennessee Uniform Administrative Procedures Act, Tennessee Code Annotated §§ 4-5-301, et seq., except as noted otherwise herein, to allow an enrollee to appeal an adverse decision of the TennCare Program. An evidentiary hearing is held before an impartial hearing officer or administrative judge who

renders an initial order under Tennessee Code Annotated §4-5-314. If an enrollee appeals the initial order under Tennessee Code Annotated §4-5-315, the Commissioner may render a final order.

12. Home and Community Based Services (HCBS) - Are types of person-centered care delivered in the home and community. HCBS address the needs of people with functional limitations who need assistance with everyday activities, like getting dressed or bathing. HCBS are designed to enable people to stay in their homes, rather than moving to a facility for care.
13. Individuals with Limited English Proficiency (LEP) – Means potential enrollees and enrollees who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English may be LEP and may be eligible to receive language assistance for a particular type of service, benefit, or encounter. See 42 C.F.R. §438.10(a).
14. Institutional Level of Care – For purposes of the Katie Beckett Program, institutional level of care means that a child would qualify to receive the level of care that would be provided in an institution even though the child is receiving care at home instead. Institutional level of care is prescribed as in TennCare rules.
15. Intellectual Disability (ID) – An intellectual disability is defined as substantial limitations in functioning:
  - a. As shown by significantly sub-average intellectual functioning that exists concurrently with related limitations in two (2) or more of the following adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work; and
  - b. That are manifested before eighteen (18) years of age.
16. Interviewer Reliability Reviews (IRR) - An AAIDD requirement for successful completion of the Train-the-Trainer program.
17. Katie Beckett Program (KB) - commonly referred to as a “Katie Beckett Waiver”, is a Medicaid eligibility mechanism that states can choose across several different Medicaid programs and authorities to allow children with disabilities and/or complex medical needs access to Medicaid. The Katie Beckett Program allows children whose families have income above current Medicaid eligibility thresholds an opportunity to qualify for Medicaid by only counting the child’s income, not the parents’ income, when determining Medicaid eligibility. In a Katie Beckett Program, children can qualify for Medicaid when they otherwise would not due to the parents’ income (or assets).
18. Katie Beckett Program Part A – Katie Beckett Program Part A will target children with the most significant disabilities or complex medical needs who meet institutional level of care. Part A provides Medicaid benefits provided under the Early Periodic Screening, Diagnosis and Treatment (EPSDT) program as well as case management and wraparound services not otherwise covered by the Medicaid program, including respite. Part A will consist of children who are under age 18 who (1) have medical needs that are likely to last at least twelve months or result in death; and result in severe functional limitations based on medical eligibility criteria developed specifically for children; (2) qualify for care in a medical institution; and (3) qualify for supplemental security income (SSI) due the child’s disability – except for the parent’s income and/or assets.
19. Level of Care (LOC) - Medical eligibility criteria for receipt of an institutional service, Home and Community Based Services (HCBS) offered as an alternative to the institutional service, or in the case of persons At Risk for Institutionalization, to delay or prevent institutional placement. An individual who meets the LOC criteria for NF care is an individual who has been determined by TennCare to meet the medical eligibility criteria established for that service.

20. Legal Guardian- For purposes of the Katie Beckett Program, this individual has physical custody of the child and the legal authority to make decisions concerning the child's protection, education, care, medical treatment, etc.
21. Litigation Hold - A directive from the State to preserve documents and electronically stored information that is relevant or potentially relevant to litigation. When a party reasonably anticipates litigation, that party has the duty to suspend its routine document retention and/or document destruction policies and institute a litigation hold to ensure the preservation of relevant and potentially relevant documents.
22. Long-Term Services and Supports (LTSS) Enrollee or Participant - An individual who is participating in a TennCare LTSS Program.
23. Long-Term Services and Supports (LTSS) Program - Services and supports provided under the CHOICES, Employment and Community First CHOICES (ECF CHOICES), 1915(c) Home and Community Based Services (HCBS) Waivers, Program for All-inclusive Care for the Elderly (PACE program), and to individuals in Intermediate Care Facilities for Individuals with Intellectual and Developmental Disabilities (ICF/IIDs), of all ages who have functional limitations and/or chronic illnesses that have the primary purpose of supporting the ability of the beneficiary to live or work in the setting of their choice, which may include the individual's home, a worksite, a provider-owned or controlled residential setting, a Nursing Facility, or other institutional setting.
24. 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 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 (i.e., Department of Children's Services and Department of Intellectual and Developmental Disabilities (DIDD)) that contracts with TennCare for the provision of services.
25. Managed Care Organization (MCO) - An HMO that participates in the TennCare program.
26. Nursing Facility (NF) - A Medicaid-certified nursing facility.
27. Person-Centered Support Plan (PCSP) - A written document developed through a person-centered planning process based on an individualized assessment of a person's needs which specifies the types and frequency of long term services and supports that the person needs. This includes an overall needs assessment that shall take into account all services available to the applicant including natural and paid supports, Medicaid services, and Medicare services. Also known as a Plan of Care (POC).
28. Plain Language - Any notice or explanation written at a level that does not exceed the sixth grade reading level as measured by the Flesch Index, Fog Index, or Flesch-Kincaid Index.

**Plan of Care (POC) – See Person-Centered Support Plan (PCSP).**

29. Potential Enrollee - means a Medicaid beneficiary who is subject to mandatory enrollment or may voluntarily elect to enroll in a given managed care program, but is not yet an enrollee of a specific MCO.
30. Pre-Admission Evaluation (PAE) - A process of assessment by TennCare used to determine an individual's medical (or LOC) eligibility for TennCare-reimbursed care in a NF or ICF/IID, and in the case of NF services, the appropriate level of reimbursement for such care, as well as eligibility for HCBS as an alternative to institutional care, or in the case of persons At Risk for Institutionalization, in order to delay or prevent NF placement. For purposes of CHOICES, the PAE application shall be used for the purposes of determining LOC and for persons enrolled in CHOICES Group 2, calculating the Member's Individual Cost Neutrality Cap.

31. Pre-Admission Screening and Resident Review (PASRR) Level I - a statewide federally mandated process implemented to comply with federal law and regulation pertaining to nursing home admissions and the delivery of specialized services in nursing facilities.
32. Pre-Admission Screening and Resident Review (PASRR) Level II - a statewide federally mandated process implemented to comply with federal law and regulation pertaining to nursing home admissions and the delivery of specialized services in nursing facilities.
33. Pre-Admission Screening and Resident Review Technical Assistance Center (PASRR TAC) - provides technical assistance to states that may need guidance on their PASRR programs.
34. Qualified Assessor - A practicing professional who meets the qualifications established by TennCare to certify the accuracy of a level of care assessment as reflected in the PAE application. For the CHOICES program, Qualified Assessors shall include only the following: a licensed physician, nurse practitioner, physician assistant, registered or licensed nurse, licensed social worker, or an individual who has a bachelor's degree in social work, nursing, education or other human service (e.g., psychology or sociology) and is also prior approved by TennCare on a case-by-case basis. For the ECF CHOICES program, Qualified Assessors shall include the preceding individuals and shall also include individuals who meet the federal requirements for a Qualified Intellectual Disabilities Professional or Qualified Developmental Disabilities Professional or individuals who have five (5) or more years' experience as an independent support coordinator or case manager for service recipients in a 1915(c) HCBS Waiver and have completed Personal Outcome Measures Introduction and Assessment Workshop trainings as established by the Council on Quality and Leadership and are prior approved by TennCare on a case-by-case basis.
35. Qualified Intellectual Disability Professional (QIDP) – A practicing professional who 1) has at least one year of experience working directly with persons with intellectual disability or other developmental disabilities; and 2) is one of the following: a doctor of medicine or osteopathy, a registered nurse, or an individual who holds at least a bachelor's degree in a professional category such as occupational therapist, physical therapist, social worker, etc.
36. Qualified Mental Health Professional (QMPH) – An individual who by education and experience is professionally qualified and registered to provide collaborative mental health services for adults or children. These include psychiatrist, physicians with expertise in psychiatry, psychologist with health service provider designation, licensed psychological examiner, licensed senior psychological examiner, licensed master's social worker with two years of mental health experience, licensed clinical social worker, licensed or certified marital and family therapist, licensed professional counselor, licensed nurse with a master's degree in nursing who functions as a psychiatric nurse and a licensed physician assistant with a master's degree and expertise in psychiatry as determined by training, education, or experience.
37. Quality RN – Contractor's employee or subcontractor who is a Registered Nurse and who meets all licensing and other requirements of this Contract and who provides quality review of the PAE LOC assessments performed by the Field Assessor RNs for the Contractor, as directed by TennCare.
38. Related Conditions (RC) – As defined by 42 C.F.R. § 435.1010, which states: "Persons with related conditions" means individuals who have a severe, chronic disability that meets all of the following conditions:
  1. It is attributable to:
    - (i) Cerebral palsy or epilepsy, or
    - (ii) Any other condition, other than MI, found to be closely related to MR because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with MR, and requires treatment or services similar to those required for these persons.
  2. It is manifested before the person reaches age twenty-two (22).



3. It is likely to continue indefinitely.
4. It results in substantial functional limitations in three or more of the following areas of major life activity:

- (i) Self-care;
- (ii) Understanding and use of language;
- (iii) Learning;
- (iv) Mobility;
- (v) Self-direction; and
- (vi) Capacity for independent living

39. RN – Registered Nurse

40. Serious Mental Illness (SMI) - is defined as a mental, behavioral, or emotional disorder resulting in serious functional impairment, which substantially interferes with or limits one or more major life activities.
41. Stakeholders – is defined as members, families/conservators, providers and advocacy groups.
42. Supports Intensity Scale (SIS) - The State will rely on the SIS and supplementary questions to assist in the proper identification of exceptional medical or behavioral needs in-person centered planning and other activities related to implementation of the Employment and Community First (ECF) CHOICES program, serving qualified individuals with Intellectual and/or developmental disabilities in existing HCBS waiver programs for Individuals with Intellectual disabilities. In addition to person centered planning activities, the SIS assessment shall be used for establishing a supports budget in ECF CHOICES Groups 6: Comprehensive Supports for Employment and Community Living and will be used to determine the rate of reimbursement for specified waiver services.
43. TennCare - 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.
44. TennCare CHOICES in Long-Term Services and Supports Program (CHOICES) - A program in which NF services for TennCare eligibles of any age and HCBS for individuals aged sixty-five (65) and older and/or adults aged twenty-one (21) and older with Physical Disabilities are integrated into TennCare's Managed Care System.
45. TennCare Eligible - An individual who has been determined by TennCare to be financially eligible to receive TennCare reimbursement for covered LTSS.
46. Tennessee Pre-Admission Evaluation Tracking System (PAE Tracking System) - A component of the State's Medicaid Management Information System and the system of record for all Pre-Admission Evaluation (i.e., LOC) submissions and LOC determinations, as well as enrollments into and transitions between LTSS programs, including CHOICES, ECF CHOICES and the State's Money Follows the Person Rebalancing Demonstration (MFP), as a tracking mechanism for referral list management in ECF CHOICES, and which shall also be used to gather data required to comply with tracking and reporting requirements pertaining to MFP.
47. TN PERLSS A component of the State's Medicaid Management Information System and the system of record for all Pre-Admission Evaluation (i.e., LOC) submissions and LOC determinations, as well as enrollments into and transitions between LTSS programs, as a tracking mechanism for referral list management in the Katie Beckett Program, and which shall also be used to gather data required to comply with tracking and reporting requirements pertaining to the Katie Beckett Program.
48. Vital Documents - Vital Documents may include, but are not limited to, consent and complaint forms, intake and application forms with the potential for important consequences, notices pertaining to the reduction, denial, delay, suspension or termination of services, certain critical

outreach documents (i.e. case management and Population Health documents) and any other documents designated by the State. At a minimum, all Vital Documents shall be available in the Spanish language.

## ATTACHMENT B

### LIQUIDATED DAMAGES

In the event of a Contract performance or compliance failure by Contractor and such Contract performance or compliance 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 or compliance 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 liquidated damages against Contractor for an amount that is reasonable in relation to the Contract performance or compliance failure as measured at the time of discovery of the Contract performance or compliance failure. In the event that the State chooses to assess a Liquidated Damage for a Contract performance or compliance failure according to the immediately preceding sentence, in no event shall such Liquidated Damage be in excess of \$1,000 for any single Contract performance or compliance failure.

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 performance or compliance failure 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 to the Contract performance or compliance failures listed below. Contractor acknowledges that the actual damages likely to result from 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 of the Contractor obligations under this Contract. Liquidated damages do not serve as punishment for any breach by the Contractor.

**ATTACHMENT B (CONTINUED)**

	<b><u>PROGRAM ISSUES</u></b>	<b><u>DAMAGE</u></b>
1.	Failure to meet required timelines as specified in A.5.q., A.40, A.41, A.42, and A.43	\$500.00 per each business day that timeline is not met, until resolved.
2.	Failure by the Contractor to meet the standards for privacy, security, and confidentiality of individual data as evidenced by a breach of the security per Section E. 11. and E. 16	\$1,000 per affected member per occurrence, until resolved.
3.	Failure by the Contractor to execute the appropriate agreements to effectuate transfer and exchange of enrollee PHI, PII or TennCare confidential information including, but not limited to, a data use agreement, trading partner agreement, business associate agreement or qualified protective order prior to the use or disclosure of PHI to a third party. (See E. 17. and Business Associate Agreement between the parties)	\$1,000 per affected member per occurrence, until resolved.
4.	Failure by the Contractor to seek express written approval from TennCare prior to the use or disclosure of enrollee data or TennCare confidential information in any form via any medium with any third party beyond the boundaries and jurisdiction of the United States. (See E. 15 and Business Associate Agreement between the parties)	\$1,000 per affected member per occurrence, until resolved.
5.	Failure by the Contractor to timely report violations in the access, use and disclosure of PHI or timely report a security incident or timely make a notification of breach or notification of suspected breach per Sections (See E. 11, E. 16 and Business Associate Agreement between the parties)	\$1,000 per affected member per occurrence, until resolved.
6.	Failure to provide adequate staff training as specified in Sections A.29.c, A.30, A.35, and A.47	The damage that shall be assessed shall be One Thousand Dollars (\$1000) per occurrence, until resolved.
7.	Failure to have staff and management available and trained to perform the responsibilities of this contract as specified in Section A.36, A. 4 and A.45.	The damage that shall be assessed shall be One Thousand Dollars (\$1000) per occurrence, until resolved.
8.	Failure to adhere to timelines and performance measures as specified in Section A.37, A.40, A.41, A.42, and A.43	The damage that shall be assessed shall be One Thousand Dollars (\$1000) per occurrence, until resolved.

9.	Failure to provide timely reports as specified in Section A.34.	The damage that shall be assessed shall be Five Hundred Dollars (\$500) per week per deficiency, until all reports are submitted and acceptable to TennCare.
10.	Failure to perform tasks specified in by specific timeline for each task as identified in Section A.36.	The damage that shall be assessed shall be One Thousand Dollars (\$1000) per occurrence, until resolved.
11.	Failure to obtain a third (3rd) party certification of their HIPAA transaction compliance within ninety (90) calendar days upon request by TennCare as described in Section E.17.	The damage that shall be assessed shall be up to Two Thousand Dollars (\$2,000) per incident, until resolved.
12.	Failure to comply with federal regulations regarding SSA, Medicaid, CHIP, and FTI (IRS) data that results in a disclosure or prohibited re-disclosure of recipient or applicant PHI/PII as described in Sections E.18, E.19, and E.20.	The damage that shall be assessed shall be up to One Thousand Dollars (\$1,000.00) per incident, until resolved.

**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

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

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

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**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.

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**PRINTED NAME AND TITLE OF SIGNATORY**

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**DATE OF ATTESTATION**



**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:

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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 not are not limited to, Marketing or the sharing for Commercial Use or any purpose construed by Covered Entity as Marketing or Commercial use of 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 Rule.

## **5. OBLIGATIONS OF COVERED ENTITY**

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

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

affect Business Associate's permitted or required uses.

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

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

## **6. TERM AND TERMINATION**

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

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

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

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

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

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

6.3.2 This provision (Section 6.3 and its subsections) shall not prohibit the retention of a single separate, archived file of the PHI and other confidential 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:

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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**

**BUSINESS ASSOCIATE**

By: \_\_\_\_\_  
*Stephen Smith, Director*

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

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

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

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

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