STATE OF TENNESSEE
DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES

REQUEST FOR PROPOSALS
FOR
DRUG TESTING SERVICES

RFP # 33901-00001

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1. **INTRODUCTION**

The State of Tennessee, Department of Mental Health and Substance Abuse Services, 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 purpose of this procurement is to secure administration of a comprehensive employee drug and alcohol testing program and related services for the Tennessee Department of Mental Health and Substance Abuse Services (TDMHSAS). Based on spending over the past five years, State estimates a maximum liability over $200,000.00 to cover random drug testing (including Central Office staff and staff at the four Mental Health Institutes), pre-employment drug testing, change-of-job drug testing, extended absence drug testing, return-to-work drug testing and follow-up drug testing for the Department.

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 # 33901-00001

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:
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:

Helen Crowley, Procurement Compliance Supervisor
Central Procurement Office, Department of General Services
William R Snodgrass TN Tower-3rd Floor
312 Rosa L Parks Avenue, Nashville, TN 37243
Helen.Crowley@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.

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 1.7.

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--opportunities.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. **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.

1.8. **Response Deadline**

A Respondent must ensure that the State receives a response no later than the Response Deadline time and date detailed in the RFP Section 2, Schedule of Events. The State will not accept late responses, and a Respondent’s failure to submit a response before the deadline will result in disqualification of the response. It is the responsibility of the Respondent to ascertain any additional security requirements with respect to packaging and delivery to the State of Tennessee. Respondents should be mindful of any potential delays due to security screening procedures, weather, or other filing delays whether foreseeable or unforeseeable.
2. **RFP SCHEDULE OF EVENTS**

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

<table>
<thead>
<tr>
<th>EVENT</th>
<th>TIME (central time zone)</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. RFP Issued</td>
<td></td>
<td>May 8, 2019</td>
</tr>
<tr>
<td>2. Disability Accommodation Request Deadline</td>
<td>2:00 p.m.</td>
<td>May 13, 2019</td>
</tr>
<tr>
<td>3. Notice of Intent to Respond Deadline</td>
<td>2:00 p.m.</td>
<td>May 14, 2019</td>
</tr>
<tr>
<td>4. Written “Questions &amp; Comments” Deadline</td>
<td>2:00 p.m.</td>
<td>May 17, 2019</td>
</tr>
<tr>
<td>5. State Response to Written “Questions &amp; Comments”</td>
<td></td>
<td>May 24, 2019</td>
</tr>
<tr>
<td>6. Response Deadline</td>
<td>2:00 p.m.</td>
<td>June 3, 2019</td>
</tr>
<tr>
<td>7. State Completion of Technical Response Evaluations</td>
<td></td>
<td>June 6, 2019</td>
</tr>
<tr>
<td>8. State Opening &amp; Scoring of Cost Proposals</td>
<td>2:00 p.m.</td>
<td>June 7, 2019</td>
</tr>
<tr>
<td>9. Negotiations</td>
<td></td>
<td>June 11, 2019</td>
</tr>
<tr>
<td>10. State Notice of Intent to Award Released and RFP Files Opened for Public Inspection</td>
<td>2:00 p.m.</td>
<td>June 12, 2019</td>
</tr>
<tr>
<td>11. End of Open File Period</td>
<td></td>
<td>June 19, 2019</td>
</tr>
<tr>
<td>12. State sends contract to Contractor for signature</td>
<td></td>
<td>June 20, 2019</td>
</tr>
<tr>
<td>13. Contractor Signature Deadline</td>
<td>2:00 p.m.</td>
<td>June 25, 2019</td>
</tr>
</tbody>
</table>

2.2. The State reserves the right, at its sole discretion, to adjust the RFP Schedule of Events as it deems necessary. Any adjustment of the Schedule of Events shall constitute an RFP amendment, and the State will communicate such to prospective Respondents from whom the State has received a Notice of Intent to Respond (refer to section 1.7).
3. RESPONSE REQUIREMENTS

3.1. Response Form

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

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

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

3.1.1.1. A Respondent must use the RFP Attachment 6.2., Technical Response & Evaluation Guide to organize, reference, and draft the Technical Response by duplicating the attachment, adding appropriate page numbers as required, and using the guide as a table of contents covering the Technical Response.

3.1.1.2. A response should be economically prepared, with emphasis on completeness and clarity. A response, as well as any reference material presented, must be written in English and must be written on standard 8 ½” x 11” pages (although oversize exhibits are permissible) and use a 12 point font for text. All response pages must be numbered.

3.1.1.3. All information and documentation included in a Technical Response should correspond to or address a specific requirement detailed in the RFP Attachment 6.2., Technical Response & Evaluation Guide. All information must be incorporated into a response to a specific requirement and clearly referenced. Any information not meeting these criteria will be deemed extraneous and will not contribute to evaluations.

3.1.1.4. The State may determine a response to be non-responsive and reject it if:

   a. the Respondent fails to organize and properly reference the Technical Response as required by this RFP and the RFP Attachment 6.2., Technical Response & Evaluation Guide; or

   b. the Technical Response document does not appropriately respond to, address, or meet all of the requirements and response items detailed in the RFP Attachment 6.2., Technical Response & Evaluation Guide.


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

3.1.2.1. A Respondent must only record the proposed cost exactly as required by the RFP Attachment 6.3., Cost Proposal & Scoring Guide and must NOT record any other rates, amounts, or information.
3.1.2.2. The proposed cost shall incorporate ALL costs for services under the contract for the total contract period, including any renewals or extensions.

3.1.2.3. A Respondent must sign and date the Cost Proposal.

3.1.2.4. A Respondent must submit the Cost Proposal to the State in a 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.

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

   “RFP # 33901-00001 TECHNICAL RESPONSE ORIGINAL”

   and seven (7) digital copies of the Technical Response each in the form of one (1) digital document in “PDF” format properly recorded on its own otherwise blank, standard CD-R recordable disc or USB flash drive labeled:

   “RFP # 33901-00001 TECHNICAL RESPONSE COPY”

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

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

   “RFP # 33901-00001 COST PROPOSAL ORIGINAL”

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

   “RFP # 33901-00001 COST PROPOSAL COPY”

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

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

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

   “DO NOT OPEN… RFP # 33901-00001 TECHNICAL RESPONSE FROM [RESPONDENT LEGAL ENTITY NAME]”

3.2.3.2. The Cost Proposal original document and digital copy must be placed in a separate, sealed package that is clearly labeled:
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 # 33901-00001 SEALED TECHNICAL RESPONSE & SEALED COST PROPOSAL FROM [RESPONDENT LEGAL ENTITY NAME]"

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

Nancy Ternes, Sourcing Account Specialist
Central Procurement Office
Department of General Services
William R Snodgrass TN Tower-3rd Floor
312 Rosa L Parks Avenue, Nashville, TN 37243
615-253-4008
Nancy.M.Ternes@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.

3.4. Response Errors & Revisions

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

3.5. Response Withdrawal

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

3.6. Additional Services

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

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

3.7. Response Preparation Costs

The State will not pay any costs associated with the preparation, submittal, or presentation of any response.
4. GENERAL CONTRACTING INFORMATION & REQUIREMENTS

4.1. RFP Amendment

The State at its sole discretion may amend this RFP, in writing, at any time prior to contract award. However, prior to any such amendment, the State will consider whether it would negatively impact the ability of potential Respondents to meet the response deadline and revise the RFP Schedule of Events if deemed appropriate. If an RFP amendment is issued, the State will convey it to potential Respondents who submitted a Notice of Intent to Respond (refer to RFP Section 1.7). 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. To register, please visit the Department of Revenue’s Tennessee Taxpayer Access Point (TNTAP) website for Online Registration and the Vendor Contract Questionnaire. These resources are available at the following: [https://tntap.tn.gov/eservices/ #/1](https://tntap.tn.gov/eservices/ #/1)

4.8. **Disclosure of Response Contents**

4.8.1. All materials submitted to the State in response to this RFP shall become the property of the State of Tennessee. Selection or rejection of a response does not affect this right. By submitting a response, a Respondent acknowledges and accepts that the full response contents and associated documents will become open to public inspection in accordance with the laws of the State of Tennessee.

4.8.2. The State will hold all response information, including both technical and cost information, in confidence during the evaluation process.

4.8.3. Upon completion of response evaluations, indicated by public release of a Notice of Intent to Award, the responses and associated materials will be open for review by the public in accordance with Tenn. Code Ann. § 10-7-504(a)(7).

4.9. **Contract Approval and Contract Payments**

4.9.1. After contract award, the Contractor who is awarded the contract must submit appropriate documentation with the Department of Finance and Administration, Division of Accounts.

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

4.9.3. No payment will be obligated or made until the relevant Contract is approved as required by applicable statutes and rules of the State of Tennessee.
4.9.3.1. The State shall not be liable for payment of any type associated with the Contract resulting from this RFP (or any amendment thereof) or responsible for any goods delivered or services rendered by the Contractor, even goods delivered or services rendered in good faith and even if the Contractor is orally directed to proceed with the delivery of goods or the rendering of services, if it occurs before the Contract Effective Date or after the Contract Term.

4.9.3.2. All payments relating to this procurement will be made in accordance with the Payment Terms and Conditions of the Contract resulting from this RFP (refer to RFP Attachment 6.6., Pro Forma Contract, Section C).

4.9.3.3. If any provision of the Contract provides direct funding or reimbursement for the competitive purchase of goods or services as a component of contract performance or otherwise provides for the reimbursement of specified, actual costs, the State will employ all reasonable means and will require all such documentation that it deems necessary to ensure that such purchases were competitive and costs were reasonable, necessary, and actual. The Contractor shall provide reasonable assistance and access related to such review. Further, the State shall not remit, as funding or reimbursement pursuant to such provisions, any amounts that it determines do not represent reasonable, necessary, and actual costs.

4.10. Contractor Performance

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

4.11. Contract Amendment

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

4.12. Severability

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

4.13. Next Ranked Respondent

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

5.1. Evaluation Categories & Maximum Points

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

<table>
<thead>
<tr>
<th>EVALUATION CATEGORY</th>
<th>MAXIMUM POINTS POSSIBLE</th>
</tr>
</thead>
</table>
| General Qualifications & Experience  
(refer to RFP Attachment 6.2., Section B)            | 20                       |
| Technical Qualifications, Experience & Approach  
(refer to RFP Attachment 6.2., Section C)            | 40                       |
| Cost Proposal  
(refer to RFP Attachment 6.3.)             | 40                       |

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. **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).

5.2.4. **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.

5.2.4.1. **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.

5.2.4.2. **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.

5.2.4.3 **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.

5.2.4.4. If the State determines that it is unable to successfully negotiate a contract with the apparent best evaluated Respondent, the State reserves the right to bypass the apparent best evaluated Respondent and enter into contract negotiations with the next apparent best evaluated Respondent.
5.3. **Contract Award Process**

5.3.1 The Solicitation Coordinator will submit the Proposal Evaluation Team determinations and scores to the head of the procuring agency for consideration along with any other relevant information that might be available and pertinent to contract award.

5.3.2 The procuring agency head will determine the apparent best-evaluated Response. To effect a contract award to a Respondent other than the one receiving the highest evaluation process score, the head of the procuring agency must provide written justification and obtain the written approval of the Chief Procurement Officer and the Comptroller of the Treasury.

5.3.3 The State will issue a Notice of Intent to Award identifying the apparent best-evaluated response and make the RFP files available for public inspection at the time and date specified in the RFP Section 2, Schedule of Events.

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

5.3.4 The Respondent identified as offering the apparent best-evaluated response must sign a contract drawn by the State pursuant to this RFP. The Contract shall be substantially the same as the RFP Attachment 6.6., *Pro Forma Contract*. The Respondent must sign the contract by the Contractor Signature Deadline detailed in the RFP Section 2, Schedule of Events. If the Respondent fails to provide the signed Contract by this deadline, the State may determine that the Respondent is non-responsive to this RFP and reject the response.

5.3.5 Notwithstanding the foregoing, the State may, at its sole discretion, entertain limited negotiation prior to Contract signing and, as a result, revise the *pro forma* contract terms and conditions or performance requirements in the State’s best interests, PROVIDED THAT such revision of terms and conditions or performance requirements shall NOT materially affect the basis of response evaluations or negatively impact the competitive nature of the RFP and contractor selection process.

5.3.6 If the State determines that a response is non-responsive and rejects it after opening Cost Proposals, the Solicitation Coordinator will re-calculate scores for each remaining responsive Cost Proposal to determine (or re-determine) the apparent best-evaluated response.
RFP # 33901-00001 STATEMENT OF CERTIFICATIONS AND ASSURANCES

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

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

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

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

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

SIGNATURE: __________________________________________________________________________

PRINTED NAME & TITLE: __________________________________________________________________________

DATE: __________________________________________________________________________

RESPONDENT LEGAL ENTITY NAME: __________________________________________________________________________

RFP # 33901-00001
Page 15
# TECHNICAL RESPONSE & EVALUATION GUIDE

## SECTION A: MANDATORY REQUIREMENTS

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

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

<table>
<thead>
<tr>
<th>RESPONDENT LEGAL ENTITY NAME:</th>
<th>Item Ref.</th>
<th>Section A—Mandatory Requirement Items</th>
<th>Pass/Fail</th>
</tr>
</thead>
<tbody>
<tr>
<td>Response Page # (Respondent completes)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- 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., et. seq.).
- 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 who shall cause to deliver goods or perform services under the contract has a possible conflict of interest (e.g., employment by the State of Tennessee) and, if so, the nature of that conflict.

**NOTE:** Any questions of conflict of interest shall be solely within the discretion of the State, and the State reserves the right to cancel any award.

A.3. Provide a current bank reference indicating that the Respondent’s business relationship with the financial institution is in positive 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 two current positive credit references from vendors with which the Respondent has done business written in the form of standard business letters, signed, and dated within the past three (3) months.
### Section A—Mandatory Requirement Items

<table>
<thead>
<tr>
<th>Item Ref.</th>
<th>Section A—Mandatory Requirement Items</th>
<th>Pass/Fail</th>
</tr>
</thead>
</table>

#### A.5. Provide EITHER:

- (a) an official document or letter from an accredited credit bureau, verified and dated within the last three (3) months and indicating a satisfactory credit rating for the Respondent (NOTE: A credit bureau report number without the full report is insufficient and will not be considered responsive.) OR
- (b) Dun and Bradstreet short-form report, verified and dated within the last three (3) months and indicating a positive credit rating for the Proposer.

#### A.6. Provide a valid, Certificate of Insurance that is verified and dated within the last six (6) months and which details all of the following:

- (a) Name of the Insurance Company
- (b) Respondent’s Name and Address as the Insured
- (c) Policy Number
- (d) The following minimum insurance coverages:
  - i. Workers' Compensation/Employers' Liability (including all states coverage) with a limit not less than the relevant statutory amount or one million dollars ($1,000,000) per occurrence for employers' liability;
  - ii. Comprehensive Commercial General Liability (including personal injury and property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than one million dollars ($1,000,000) per occurrence;
  - iii. Automobile Coverage (including owned, leased, hired, and non-owned vehicles) with a bodily injury/property damage combined single limit not less than one million dollars ($1,000,000) per occurrence; and
  - iv. Professional Malpractice Liability with a limit of not less than one million dollars ($1,000,000) per claim.
- (e) The following information applicable to each type of insurance coverage:
  - (i) Coverage Description,
  - (ii) Exceptions and Exclusions,
  - (iii) Policy Effective Date,
  - (iv) Policy Expiration Date, and
  - (v) Limit(s) of Liability.

#### A.7. Provide signed documentation from company official confirming the efficacy of the proposed random selection algorithm and/or software.

*State Use – Solicitation Coordinator Signature, Printed Name & Date:*
### TECHNICAL RESPONSE & EVALUATION GUIDE

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

<table>
<thead>
<tr>
<th>RESPONDENT LEGAL ENTITY NAME:</th>
<th>Section B—General Qualifications &amp; Experience Items</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Response Page #</strong> (Respondent completes)</td>
<td><strong>Item Ref.</strong></td>
</tr>
<tr>
<td><strong>B.1.</strong></td>
<td>Detail the name, e-mail address, mailing address, telephone number, and facsimile number of the person the State should contact regarding the response.</td>
</tr>
<tr>
<td><strong>B.2.</strong></td>
<td>Describe the Respondent’s form of business (i.e., individual, sole proprietor, corporation, non-profit corporation, partnership, limited liability company) and business location (physical location or domicile).</td>
</tr>
<tr>
<td><strong>B.3.</strong></td>
<td>Detail the number of years the Respondent has been in business.</td>
</tr>
<tr>
<td><strong>B.4.</strong></td>
<td>Briefly describe how long the Respondent has been providing the goods or services required by this RFP.</td>
</tr>
<tr>
<td><strong>B.5.</strong></td>
<td>Describe the Respondent’s number of employees, client base, and location of offices.</td>
</tr>
<tr>
<td><strong>B.6.</strong></td>
<td>Provide a statement of whether there have been any mergers, acquisitions, or change of control of the Respondent within the last ten (10) years. If so, include an explanation providing relevant details.</td>
</tr>
<tr>
<td><strong>B.7.</strong></td>
<td>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 nolo contendere to any felony. If so, include an explanation providing relevant details.</td>
</tr>
<tr>
<td><strong>B.8.</strong></td>
<td>Provide a statement of whether, in the last ten (10) years, the Respondent has filed (or had filed against it) any bankruptcy or insolvency proceeding, whether voluntary or involuntary, or undergone the appointment of a receiver, trustee, or assignee for the benefit of creditors. If so, include an explanation providing relevant details.</td>
</tr>
<tr>
<td><strong>B.9.</strong></td>
<td>Provide a statement of whether there is any material, pending litigation against the Respondent that the Respondent should reasonably believe could adversely affect its ability to meet contract requirements pursuant to this RFP or is likely to have a material adverse effect on the Respondent’s financial condition. If such exists, list each separately, explain the relevant details, and attach the opinion of counsel addressing whether and to what extent it would impair the Respondent’s performance in a contract pursuant to this RFP.</td>
</tr>
<tr>
<td><strong>NOTE:</strong> All persons, agencies, firms, or other entities that provide legal opinions regarding the Respondent must be properly licensed to render such opinions. The State may require the Respondent to submit proof of license for each person or entity that renders such opinions.</td>
<td></td>
</tr>
</tbody>
</table>
| **B.10.** | 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
RFP ATTACHMENT 6.2. — SECTION B (continued)

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

RFP # 33901-00001  
Page 19
### Section B—General Qualifications & Experience Items

<table>
<thead>
<tr>
<th>Response Page # (Respondent completes)</th>
<th>Item Ref.</th>
<th>(iii) names and ownership characteristics (i.e., ethnicity, gender, service-disabled veterans, or disability) of anticipated subcontractors and supply contractors.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>NOTE: In order to claim status as a Diversity Business Enterprise under this contract, businesses must be certified by the Governor’s Office of Diversity Business Enterprise (Go-DBE). Please visit the Go-DBE website at <a href="https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&amp;XID=9810">https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&amp;XID=9810</a> for more information.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(d) Workforce. Provide the percentage of the Respondent’s total current employees by ethnicity and gender.</td>
</tr>
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<td></td>
<td></td>
<td>NOTE: Respondents that demonstrate a commitment to diversity will advance State efforts to expand opportunity to do business with the State as contractors and subcontractors. Response evaluations will recognize the positive qualifications and experience of a Respondent that does business with enterprises owned by minorities, women, service-disabled veterans, persons with disabilities, and small business enterprises and who offer a diverse workforce.</td>
</tr>
<tr>
<td>B.16.</td>
<td></td>
<td>Provide a statement of whether or not the Respondent has any current contracts with the State of Tennessee or has completed any contracts with the State of Tennessee within the previous five (5) year period. If so, provide the following information for all of the current and completed contracts:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(a) the name, title, telephone number and e-mail address of the State contact knowledgeable about the contract;</td>
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<td>(b) the procuring State agency name;</td>
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<td>(c) a brief description of the contract’s scope of services;</td>
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<td>(d) the contract period; and</td>
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<td></td>
<td>(e) the contract number.</td>
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<td>NOTES:</td>
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<tr>
<td></td>
<td></td>
<td>• Current or prior contracts with the State are not a prerequisite and are not required for the maximum evaluation score, and the existence of such contracts with the State will not automatically result in the addition or deduction of evaluation points.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Each evaluator will generally consider the results of inquiries by the State regarding all contracts noted.</td>
</tr>
<tr>
<td>B.17.</td>
<td></td>
<td>Provide customer references from individuals who are not current or former State employees for projects similar to the goods or services sought under this RFP and which represent:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• two (2) accounts Respondent currently services that are similar in size to the State; and</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• three (3) completed projects.</td>
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<td></td>
<td></td>
<td>References from at least three (3) different individuals are required to satisfy the requirements above, e.g., an individual may provide a reference about a completed project and another reference about a currently serviced account. The standard reference questionnaire, which must be used and completed, is provided at RFP Attachment 6.4. References that are not completed as required may be deemed non-responsive and may not be considered.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The Respondent will be solely responsible for obtaining fully completed reference questionnaires and including them in the sealed Technical Response. In order to obtain and submit the completed reference questionnaires follow the process below.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(a) Add the Respondent’s name to the standard reference questionnaire at RFP Attachment 6.4 and make a copy for each reference.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(b) Send a reference questionnaire and new, standard #10 envelope to each reference.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(c) Instruct the reference to:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(i) complete the reference questionnaire;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(ii) sign and date the completed reference questionnaire;</td>
</tr>
</tbody>
</table>
### Section B— General Qualifications & Experience Items

| Item Ref. | (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.  

**NOTES:**
- The State will not accept late references or references submitted by any means other than that which is described above, and each reference questionnaire submitted must be completed as required.  
- 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 sealed reference envelopes included in the Technical Response package, the State reserves the right to confirm and clarify information detailed in the completed reference questionnaires, and may consider clarification responses in the evaluation of references.  
- The State is under no obligation to clarify any reference information.  

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

- (a) is presently debarred, suspended, proposed for debarment, or voluntarily excluded from covered transactions by any federal or state department or agency;  
- (b) has within the past three (3) years, been convicted of, or had a civil judgment rendered against the contracting party from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;  
- (c) is presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed above; and  
- (d) has within a three (3) year period preceding the contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

*(maximum possible score = 20)*

State Use – Evaluator Identification:
### TECHNICAL RESPONSE & EVALUATION GUIDE

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

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

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.

<table>
<thead>
<tr>
<th>Response Page # (Respondent completes)</th>
<th>Item Ref.</th>
<th>Section C—Technical Qualifications, Experience &amp; Approach Items</th>
<th>Item Score</th>
<th>Evaluation Factor</th>
<th>Raw Weighted Score</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>C.1.</td>
<td>Provide a narrative that illustrates the Respondent’s understanding of the State’s requirements and project schedule.</td>
<td>20</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>C.2.</td>
<td>Provide a narrative that illustrates how the Respondent will complete the scope of services, accomplish required objectives, and meet the State’s project schedule.</td>
<td>40</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>C.3.</td>
<td>Provide a narrative that illustrates how the Respondent will manage the project, ensure completion of the scope of services, and accomplish required objectives within the State’s project schedule.</td>
<td>40</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The Solicitation Coordinator will use this sum and the formula below to calculate the section score. All calculations will use and result in numbers rounded to two (2) places to the right of the decimal point.

**Total Raw Weighted Score:**

\[
\text{Total Raw Weighted Score} = \frac{\text{sum of Raw Weighted Scores above}}{X \ 40}
\]

= **SCORE**: 

**State Use — Evaluator Identification:**

**State Use — Solicitation Coordinator Signature, Printed Name & Date:**
COST PROPOSAL & SCORING GUIDE

NOTICE: THIS COST PROPOSAL MUST BE COMPLETED EXACTLY AS REQUIRED

COST PROPOSAL SCHEDULE—The Cost Proposal, detailed below, shall indicate the proposed price for providing goods or services as defined in the Scope of Services of the RFP Attachment 6.6., Pro Forma Contract, for the entire contract period. The Cost Proposal shall remain valid for at least 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 compensable unit 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 any goods or services from the Contractor in any specific dollar amounts or to request any goods or services 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 this RFP. If the individual signing this Cost Proposal is not the President or Chief Executive Officer, the Respondent must attach evidence to the Cost Proposal showing the individual’s authority to legally bind the Respondent.

<table>
<thead>
<tr>
<th>Cost Item Description</th>
<th>Proposed Cost</th>
<th>State Use ONLY</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Sum</td>
<td>Evaluation Cost (sum x factor)</td>
</tr>
<tr>
<td></td>
<td>Evaluation Factor</td>
<td></td>
</tr>
<tr>
<td>Drug Testing</td>
<td></td>
<td>5900</td>
</tr>
<tr>
<td>$ / per screen</td>
<td>5900</td>
<td></td>
</tr>
<tr>
<td>Alcohol Testing</td>
<td></td>
<td>25</td>
</tr>
<tr>
<td>$ / per EBT</td>
<td>25</td>
<td></td>
</tr>
<tr>
<td>Alternative Testing Method</td>
<td></td>
<td>25</td>
</tr>
<tr>
<td>$ / per test</td>
<td>25</td>
<td></td>
</tr>
</tbody>
</table>

TOTAL EVALUATION COST AMOUNT (sum of evaluation costs above):

RESPONDENT SIGNATURE:

PRINTED NAME & TITLE:

DATE:

RESPONDENT LEGAL ENTITY NAME:

<table>
<thead>
<tr>
<th>Cost Item Description</th>
<th>Proposed Cost</th>
<th>State Use ONLY</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td>Drug Testing</td>
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<td>$ / per screen</td>
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</tr>
<tr>
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<td>Alternative Testing Method</td>
<td></td>
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</tr>
<tr>
<td>$ / per test</td>
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<td></td>
</tr>
<tr>
<td>Cost Item Description</td>
<td>Proposed Cost</td>
<td>State Use ONLY</td>
</tr>
<tr>
<td>-----------------------</td>
<td>---------------</td>
<td>----------------</td>
</tr>
</tbody>
</table>

The Solicitation Coordinator will use this sum and the formula below to calculate the Cost Proposal Score. Numbers rounded to two (2) places to the right of the decimal point will be standard for calculations.

\[
\text{lowest evaluation cost amount from all proposals} \times 40 \\
\text{evaluation cost amount being evaluated} \\
\text{(maximum possible score)} = \text{SCORE:}
\]

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

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

The Respondent will be solely responsible for obtaining completed reference questionnaires as required (refer to RFP Attachment 6.2., Technical Response & Evaluation Guide, Section B, Item B.17.), and for enclosing the sealed reference envelopes within the Respondent’s Technical Response.
RFP # 33901-00001 REFERENCE QUESTIONNAIRE

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

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

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

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

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

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

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

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

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

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

1 2 3 4 5

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

(5) If the goods or services that the reference subject provided to your company or organization are completed, were the goods or services provided in compliance with the terms of the contract, on time, and within budget? If not, please explain.

(6) If the reference subject is still providing goods or services to your company or organization, are these goods or services being provided in compliance with the terms of the contract, on time, and within budget? If not, please explain.

(7) How satisfied are you with the reference subject's ability to perform based on your expectations and according to the contractual arrangements?

(8) In what areas of goods or service delivery does/did the reference subject excel?

(9) In what areas of goods or service delivery does/did the reference subject fall short?

(10) What is the level of your satisfaction with the reference subject's project management structures, processes, and personnel?

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

1  2  3  4  5

least satisfied most satisfied

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

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

1 2 3 4 5
least satisfied most satisfied

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

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

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

1 2 3 4 5
least satisfied most satisfied

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

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

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

DATE:
________________________________________
# SCORE SUMMARY MATRIX

<table>
<thead>
<tr>
<th>GENERAL QUALIFICATIONS &amp; EXPERIENCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>(maximum: 20)</td>
</tr>
<tr>
<td>EVALUATOR NAME</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>EVALUATOR NAME</th>
</tr>
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<table>
<thead>
<tr>
<th>REPEAT AS NECESSARY</th>
</tr>
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</table>

<table>
<thead>
<tr>
<th>TECHNICAL QUALIFICATIONS, EXPERIENCE &amp; APPROACH</th>
</tr>
</thead>
<tbody>
<tr>
<td>(maximum: 40)</td>
</tr>
<tr>
<td>EVALUATOR NAME</td>
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<thead>
<tr>
<th>EVALUATOR NAME</th>
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<tr>
<th>REPEAT AS NECESSARY</th>
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<tr>
<th>COST PROPOSAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>(maximum: 40)</td>
</tr>
<tr>
<td>SCORE:</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>SCORE:</th>
</tr>
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</table>

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

Sollicitation Coordinator Signature, Printed Name & Date:
RFP ATTACHMENT 6.6.

RFP # 33901-00001 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,
STATE AGENCY NAME
AND
CONTRACTOR NAME

This Contract, by and between the State of Tennessee, State Agency Name (“State”) and Contractor Legal Entity Name (“Contractor”), is for the provision of Scope of Goods or Services Caption, as further defined in the “SCOPE.” State and Contractor may be referred to individually as a “Party” or collectively as the “Parties” to this Contract.

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

Contractor Place of Incorporation or Organization: Location
Contractor Edison Registration ID # Number

A. SCOPE:

A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.

A.2. Contract Purpose and Definitions:

a. This contract is for the administration of a comprehensive employee drug and alcohol testing program and related services for the Tennessee Department of Mental Health and Substance Abuse Services (TDMHSAS.)

b. The following words or phrases used- in this Scope of Services are defined as follows:

(1) “Alcohol Confirmation Test” means a subsequent test using an Evidential Breath Test (EBT) following a screening test with a result of .02 or greater, that provides quantitative data about the alcohol concentration.

(2) “Alcohol Screening Test” means an analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath or saliva specimen.

(3) Chain of Custody” is the methodology of tracking specified materials or substances disposition for all such materials or for the purpose of maintaining control and accountability from initial collection to final substances, and providing for accountability at each stage in the handling, testing, and storing of specimen and reporting test results.

(4) “Collection Site” is a place where an individual covered by this Contract goes to give a urine specimen for testing. Any such site must meet the minimum requirements specified herein.

(5) "Commissioner" is the Commissioner of the TDMHSAS.

(6) "Confirmation Test” is a second analytical procedure to identify the presence of a specific drug or its metabolites in a specimen, which test must be different in scientific principle from that of the Initial test procedure and must be capable of providing requisite specificity, sensitivity and quantitative accuracy.
(7) "Employee" for purposes of this Contract, is any state employee, contract employee, or volunteer working for TDMHSAS.

(8) "Employee Assistance Program (EAP)" is an established program capable of providing expert assessment of employee personal concerns; confidential and timely identification services regarding employee drug abuse; referrals of employees for appropriate diagnosis, treatment, and assistance; and follow-up services for employees who participate in the program or require monitoring after returning to work.

(9) "Initial Drug Test" is the first drug-screening test to determine the presence or absence of drugs or their metabolites in a specimen(s).

(10) "Job Applicant" is a person who has applied for a position within the TDMHSAS and has been offered employment conditioned upon successfully passing a drug test.

(11) "Medical Review Officer (MRO)" is a licensed physician who: 1) has knowledge of substance abuse disorders, laboratory testing procedures and, chain of custody collection procedures; 2) possesses medical training to interpret and evaluate positive test results in relation to the individual's medical history or other relevant biomedical information; and 3) is responsible for receiving laboratory results generated by the Department's drug testing program and verifying positive and confirmed test results.

(12) "Safety Sensitive Job" is one in which any job duty or responsibility where a single mistake or momentary lapse of attention can create an immediate risk of serious harm to the employee, other employees, service recipients, or the public.

(13) "Split Specimen" is the procedure by which each urine specimen is divided into two and put into a primary specimen container and a secondary, or "split" specimen container. Only the primary specimen is opened and used for the initial screening and confirmation test. The split specimen container remains sealed and is stored at the testing laboratory.

A.3. Description of Services:

a. Supplies. The Contractor shall provide all necessary collection, identification and testing supplies and materials for the TDMHSAS employee drug and alcohol testing program, including but not limited to, containers, chain of custody forms, report forms, and evidence tape.

b. Collection Sites. The Contractor shall provide collection sites, subject to the prior written approval of the State, for the TDMHSAS employee drug and alcohol program as follows:

(1) At a minimum, the Contractor shall provide at least one(1) collection site for urine specimen collection and Evidential Breath Testing in close proximity, within 15 miles, to each of the department's worksites; and

(2) At a minimum, collection sites shall be available from 6:00 a.m.
Eastern Time to 6:00 p.m. Eastern Time, seven (7) days per week (to include holidays) for scheduled drug or alcohol testing with twenty-four (24) hour on call availability as required.

c. **Collection Procedures:**

   (1) The Contractor shall provide the employee or job applicant with a form to provide any information that he/she considers relevant to the test, including the identification of currently or recently used prescription or nonprescription medication or other information. The information provided shall be treated as confidential and reviewed only by a medical review officer in interpreting any positive confirmed results.

   (2) Collection procedures; security of the collection site; chain of custody procedures; privacy of the individual; collection control, integrity, identity, and retention of the specimen; and transportation of the specimen to the laboratory shall be in accordance with the guidelines of the United States Department of Health and Human Services (DHHS), Substance Abuse and Mental Health Services Administration (SAMHSA), Division of Workplace Programs [hereinafter SAMHSA], using the split specimen method. The guidelines and procedures can be found at the SAMHSA website of http://www.samhsa.gov or more specifically at https://www.samhsa.gov/workplace/drug-testing.

d. **Alternative Testing Method.** There may be extenuating medical conditions (e.g., dehydration, kidney problems, medications, etc.) that preclude the giving of a urine sample. In such cases, the Contractor shall provide alternative drug testing for staff who have a documented medical condition that prohibits them from supplying a sample in the standard manner. Approval of the TDMHSAS Commissioner or designee is required for this alternative testing.

e. **Transportation of Specimens.** The Contractor shall provide for the transportation of specimens from the collection sites to any SAMHSA certified laboratory. Transportation of the specimen to the laboratory shall be in accordance with the SAMHSA or United States Department of Transportation regulations. The Contractor shall ensure that bodily fluid specimens are delivered to the testing laboratory within forty-eight (48) hours of time of collection. The guidelines and procedures can be found at the SAMHSA website at https://www.samhsa.gov/workplace/drug-testing.

f. **Testing.** The Contractor shall provide drug and alcohol testing in accordance with the following requirements:

   (1) The Contractor shall conduct employee drug and alcohol tests in the following categories:

      i. Pre-employment or change of job drug testing of any employee hired, promoted, transferred, demoted, or otherwise placed in a safety sensitive job;

      ii. The drug testing of any employee returning to a safety sensitive job after an extended absence of six (6) months or longer;

      iii. Random drug testing of any employee working in a safety sensitive job;

      iv. Return work drug testing which must be passed before any
employee who failed a TDMHSAS drug test may return to work;

v. Follow-up drug testing for employees who return to work after failing a TDMHSAS drug test; and

vi. Reasonable suspicion-based drug and alcohol testing.

(2) The Contractor shall provide, at minimum, an eight (8) drug panel screen on urine samples by using an immunoassay in a laboratory meeting the requirements and testing thresholds as defined in the Rules of the Tennessee Department of Labor and Workforce Development Drug Free Workplace Program. The guidelines and procedures can be found at the TDLWFD website at https://www.tn.gov/workforce/injuries-at-work/employers/employers/drug-free-workplace-program.html.

(3) The Contractor shall provide a confirmatory test on all positive drug screens by using the Gas Chromatography/Mass Spectrometry (GC/MS) method in a laboratory.

(4) Rejected specimens or those otherwise unfit for testing shall not be covered by this Contract.

(5) The Contractor shall provide alcohol testing in accordance with 49 CFR Part 40 using Evidential Breath Testing. The following threshold Level shall be used: Confirmatory Test Cutoff Concentration .02g/210 liters breath.

g. **Selection of Employees for Random Testing.** The State shall provide to the Contractor a list of all TDMHSAS employees subject to random drug testing, which are those employees in safety sensitive jobs as determined by the State in accordance with TDMHSAS’ Employee Drug Testing Policy. The data file shall contain the first and last name of all current TDMHSAS employees subject to random testing, the employee’s worksite, and a unique identifying number in a fixed-width or delimited file format. The Contractor shall randomly select employees subject to random drug testing from that data file and administer the random drug testing program. The Contractor shall provide to the Human Resources Office at the facility or Central Office, in the same format, a listing by location of those employees randomly selected for testing. The Contractor shall also provide, in the same format, a listing by location of test results including the test results data. When requested by the State, the Contractor must provide documentation of the validity of their random selection software.

h. **Medical Review Officer Services.** The Contractor shall provide the services of a qualified Medical Review Officer (MRO) as defined in Section A.2.b.(11), as follows:

(1) The MRO must be certified and demonstrate a proven record of experience in providing MRO services. The Contractor must provide to the State copies of certifications the MRO has obtained, as well as the number and scope of similar services provided, if any.

(2) The MRO shall be responsible for performing all reviewing, notification and reporting requirements services provided, if any.
i. **Reporting, Records Retention, and Specimen Retention:**

(1) The Contractor shall work with the State to electronically report all testing scheduled and completed, as well as all positive results or adulterated drug screens, using a secure, encrypted method. The method of reporting shall be approved by the State’s Strategic Technology Solutions (STS) Office.

(2) The Contractor shall provide all reporting in accordance with SAMHSA regulations and any additional reports that may be requested by the State. Quarterly reports must include all tests that are "not specified" in one of the six (6) primary "reason to test" categories described in Section A.3.f.(1).

(3) The Contractor shall provide records related to the collection process (for example, collection logbooks; documents relating to the random selection process) on request to TDMHSAS.

(4) The Contractor shall maintain all dated records and notifications, identified by individual. This process shall include maintaining required records concerning the collection process and test results for at least five (5) years for a positive test and at least one (1) year for a negative test. The Contractor shall assure that all positive urine specimens are retained by the drug testing laboratory for a minimum of one (1) year. The Contractor shall retain positive specimens for a minimum of one (1) year or during the pending of any related litigation, whichever is longer, by following current SAMHSA methods. The Contractor shall be advised by TDMHSAS of any pending litigation. The Contractor shall retain negative specimens, if appropriate, in accordance with current SAMHSA guidelines.

j. **Confidentiality.** Contractor shall ensure that strict confidentiality of test results is maintained. All tests acquired by the Contractor shall become property of TDMHSAS. Any test results or material prepared shall not be released without prior express written consent of the State except for exceptions as stated in the SAMHSA regulations.

k. **Expert Testimony Services.** The Contractor shall provide expert testimony, in the form of written records and personal appearances concerning results, methodology and opinions, on an as needed basis for adjudicatory proceedings related to controlled substances testing.

l. **Training:**

(1) The Contractor shall electronically report, using a secure, encrypted electronic mail (e-mail) system; and within the first year of the Contract, moving to the use of DIRECT technology provided by one of the DirectTrust accredited Health Information Service Providers (HISPs), all testing scheduled and completed. In addition, all positive results or adulterated drug screens shall be electronically reported, using a secure, encrypted e-mail system; and within the first year of the Contract, moving to the use of DIRECT technology provided by one of the DirectTrust accredited Health Information Service Providers (HISPs), to the Human Resources (HR) Office at Central Office who then contacts the HR Director of each affected facility. A current, non-deprecated, version of Transport Layer Security (TLS) must be used to meet the encryption requirement.

(2) The Contractor shall provide a lesson plan and materials for a two (2)-hour workplace substance abuse recognition training program for use by
TDMHSAS in training supervisory staff. It shall include, but not be limited to, the following additional topics:

i. TDMHSAS Policy and Procedural Review;

ii. Review of Testing Procedures; and

iii. Referral to an EAP and Rehabilitation Process.

A.4. 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.5. 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:

This Contract shall be effective on July 1, 2019 ("Effective Date") and ending on June 30, 2024. The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Written Dollar Amount ($Number) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract.
regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.

a. The Contractor’s compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.

b. The Contractor shall be compensated based upon the following payment methodology:

<table>
<thead>
<tr>
<th>Service Description</th>
<th>July 1, 2019 to June 30, 2020</th>
<th>July 1, 2020 to June 30, 2021</th>
<th>July 1, 2021 to June 30, 2022</th>
<th>July 1, 2022 to June 30, 2023</th>
<th>July 1, 2023 to June 30, 2024</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drug Testing</td>
<td>$ per screen</td>
<td>$ per screen</td>
<td>$ per screen</td>
<td>$ per screen</td>
<td>$ per screen</td>
</tr>
<tr>
<td>Alcohol Testing</td>
<td>$ per EBT</td>
<td>$ per EBT</td>
<td>$ per EBT</td>
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</tr>
<tr>
<td>Alternative Testing Method</td>
<td>$ per test</td>
<td>$ per test</td>
<td>$ per test</td>
<td>$ per test</td>
<td>$ per test</td>
</tr>
</tbody>
</table>

c. The Contractor shall not be compensated for travel time to the primary location of service provision.

d. The Contractor shall not be compensated for the handling of rejected specimens or those otherwise unfit for testing.

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:

(1) Central Office
Tennessee Department of Mental Health and Substance Abuse Services
ATTN: Fiscal Services
Andrew Jackson Building, 6th Floor
500 Deaderick Street
Nashville, TN 37243

(2) Tennessee Department of Mental Health and Substance Abuse Services
Moccasin Bend Mental Health Institute
ATTN: Fiscal Services
100 Mocassin Bend Road
Chattanooga, TN 37405

(3) Tennessee Department of Mental Health and Substance Abuse Services
Western Mental Health Institute
ATTN: Fiscal Services
11100 Old Highway 64 West
Bolivar, TN 38008
(4) Tennessee Department of Mental Health and Substance Abuse Services  
Memphis Mental Health Institute  
ATTN: Fiscal Services  
951 Court Avenue  
Memphis, TN 38013

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 Mental Health and Substance Abuse Services  
(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:

Shannon Hardin, Assistant Director of Human Resources  
Tennessee Department of Mental Health and Substance Abuse Services  
Andrew Jackson Building, 6th Floor  
500 Deaderick Street  
Nashville, TN 37243  
[Shannon.Hardin@tn.gov](mailto:Shannon.Hardin@tn.gov)  
Telephone #: (615) 532-6657  
Fax #: (615) 741-4567

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.

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 One, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.

b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.

c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.

d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.

e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.

D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.

D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.

D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or
provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.

D.15. **Independent Contractor.** The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.

D.16 **Patient Protection and Affordable Care Act.** The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from Contractor’s failure to fulfill its PPACA responsibilities for itself or its employees.

D.17. **Limitation of State’s Liability.** The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State’s total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.

D.18. **Limitation of Contractor’s Liability.** In accordance with Tenn. Code Ann. § 12-3-701, the Contractor’s liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.

D.19. **Hold Harmless.** The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys’ 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

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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 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 One, Attachment Two and Attachment Three.
c. any clarifications of or addenda to the Contractor’s proposal seeking this Contract;
d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
e. any technical specifications provided to proposers during the procurement process to award this Contract; and
f. the Contractor’s response seeking this Contract.

D.31. **Iran Divestment Act.** The requirements of Tenn. Code Ann. § 12-12-101, et seq., addressing contracting with persons as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.

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

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

Contractor shall provide the State a certificate of insurance (“COI”) evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard
ACORD form preferred). The COI must list each insurer’s National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) business days prior to the Effective Date and again thirty (30) calendar days before renewal or replacement of coverage. Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor’s policy. At any time, the State may require Contractor to provide a valid COI. The parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor’s letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses. The State reserves the right to require complete, certified 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
   i. 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
   i. For Contractors statutorily required to carry workers’ compensation and employer liability insurance, the Contractor shall maintain:
i. Workers’ compensation in an amount not less than one million dollars ($1,000,000) including employer liability of one million dollars ($1,000,000) per accident for bodily injury by accident, one million dollars ($1,000,000) policy limit by disease, and one million dollars ($1,000,000) per employee for bodily injury by disease.

2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:

i. The Contractor employs fewer than five (5) employees;

ii. The Contractor is a sole proprietor;

iii. The Contractor is in the construction business or trades with no employees;

iv. The Contractor is in the coal mining industry with no employees;

v. The Contractor is a state or local government; or


c. Automobile Liability Insurance

1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).

2) The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars ($1,000,000) per occurrence or combined single limit.

d. Professional Liability Insurance

i. Professional liability insurance shall be written on an occurrence basis or on a claims-made basis. If this coverage is written on a claims-made basis, then:

1. The retroactive date must be shown, and must be on or before the earlier of the Effective Date of the Contract or the beginning of Contract work or provision of goods and services;

2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) full years from the date of the final Contract payment; and

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date on or prior to the Contract Effective Date, the Contractor must purchase “extended reporting” or “tail coverage” for a minimum of five (5) full years from the date of the final Contract payment.

ii. Any professional liability insurance policy shall have a limit not less than one million dollars ($1,000,000) per claim and two million dollars ($2,000,000) in the aggregate; and
iii. If the Contract involves the provision of services by medical professionals, a policy limit not less than three million ($3,000,000) per claim and three million dollars ($3,000,000) in the aggregate for medical malpractice insurance.

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.

E. **SPECIAL TERMS AND CONDITIONS:**

E.1. **Conflicting Terms and Conditions.** Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.

E.2. **Confidentiality of Records.** Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as “Confidential Information.” Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

The obligations set forth in this Section shall survive the termination of this Contract.

E.3. **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.4. **Contractor Commitment to Diversity.** The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's Response to RFP 33901-00001 (Attachment 6.2) 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.5. **Contractor Hosted Services Confidential Data, Audit, and Other Requirements**

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

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

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

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

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

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

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

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

b. Minimum Requirements

(1) The Contractor and all data centers used by the Contractor to host State data, including those of all Subcontractors, must comply with the State’s Enterprise Information Security Policies as amended periodically. The State’s Enterprise Information Security Policies document is found at the following URL:
(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.

E.6. 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 twenty-four (24) hours after the Unauthorized Disclosure has come to the attention of the Contractor. Contractor shall take all necessary measures to halt any further Unauthorized Disclosures. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals whose PII was affected by the Unauthorized Disclosure. The Contractor shall bear the cost of notification to all individuals affected by the Unauthorized Disclosure, including individual letters and public notice. The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to this State under this Contract or otherwise available at law.

IN WITNESS WHEREOF,

CONTRACTOR LEGAL ENTITY NAME:

CONTRACTOR SIGNATURE DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES:

MARIE WILLIAMS, COMMISSIONER DATE
## ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

<table>
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<th>SUBJECT CONTRACT NUMBER:</th>
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<td>EDISON VENDOR IDENTIFICATION NUMBER:</td>
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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.

**PRINTED NAME AND TITLE OF SIGNATORY**

**DATE OF ATTESTATION**
DEPARTMENT OF MENTAL HEALTH
AND SUBSTANCE ABUSE SERVICES

POLICIES AND PROCEDURES

Subject:
Employee Drug and/or Alcohol Testing Policy

1. **Purpose:**

The purpose of this policy is to establish guidelines in relation to employee or workplace drug and/or alcohol testing in order to promote a safe and humane environment for employees, service recipients, and the public. This policy is intended to identify employees with a drug problem, to discourage the illegal use of drugs and to encourage anyone illegally using drugs to seek treatment or help.

2. **Definitions:**

2.1 **Alcohol Testing** – The analysis of breath which determines the presence and level or absence of alcohol.

2.2 **Controlled Substance** – Any drug, substance, or immediate precursor in Schedules I through VII of Tenn. Code Ann. §§ 39-17-403 through 39-17-416.

2.3 **Detectable Limits** – With respect to alcohol, an alcohol concentration of 0.02 or higher, and with respect to controlled substances, a concentration in excess of the limits established by federal law.

2.4 **Dilute Specimen** – A urine specimen with creatinine and specific gravity values that are lower than expected for human urine. A dilute specimen does not provide adequate sensitivity to determine an accurate drug test result.

2.5 **DMHSAS Drug and/or Alcohol Test** – A drug and/or alcohol test administered by the Tennessee Department of Mental Health and Substance Abuse Services (DMHSAS) or by a contractor hired to administer these tests for the DMHSAS.

2.6 **Employee** – Any state employee, contract employee, or volunteer working for the DMHSAS or at a DMHSAS facility.
2.7 **Excluded Individual** – Any individual who does not or will not perform in a safety sensitive job function and is therefore excluded from the list of testable employees.

2.8 **Illegal Use of Drugs** – Use of a prohibited substance (see 2.14).

2.9 **Included Individual** – Any individual who is or will be performing a safety sensitive job function and is therefore included in the list of testable employees.

2.10 **Individual** – Any state employee, contract employee, volunteer, or applicant for any such position.

2.11 **List of Testable Classifications** – A list of job classifications which are subject to drug and/or alcohol testing due to the job functions being safety sensitive.

2.12 **List of Testable Employees** – The list of employees subject to drug and/or alcohol testing due to their job functions being safety sensitive.

2.13 **Medical Review Officer (MRO)** – A licensed physician who has knowledge of illegal drug use, substance abuse disorders, laboratory testing procedures, and chain of custody collection procedures who verifies positive, confirmed test results and who has the necessary medical training to interpret and evaluate an individual’s positive test in relation to that person’s medical history and any other relevant biomedical information. The MRO is responsible for receiving laboratory results generated by the drug-testing program.

2.14 **Prohibited Substance** – Any drug which is illegal under state or federal criminal law or any metabolite thereof or any drug which is a controlled substance under state or federal law or any metabolites thereof when not used in accordance with the laws regulating the controlled substance.

2.15 **Provisional or Conditional Offer of Employment** – An offer of employment contingent upon meeting all hiring requirements.

2.16 **Reasonable Suspicion-Based Drug and/or Alcohol Testing** – A belief based on specific, contemporaneous, objective, articulable facts and the reasonable inferences that may be drawn from those facts, or knowledge sufficient under the circumstances, to cause an ordinary, prudent, and cautious person to believe that an employee used, or is using alcohol or illegal drugs.

2.17 **Safety Sensitive Employee** – Anyone working for the DMHSAS in a job with safety sensitive job functions, including, but not necessarily limited to, state employees, contract employees, and volunteers.
2.18 **Safety Sensitive Job Function** – Any job duty or responsibility where a single mistake or momentary lapse of attention can create an immediate risk of serious harm to the employee, other employees, service recipients, or the public.

2.19 **Substance Abuse Professional (SAP)** – A person that, through various examinations, determines whether an employee has violated any drug and alcohol regulations or not, and further prescribes necessary treatment, follow-up testing, related education, and rehabilitation programs. An SAP’s function is to protect public safety by evaluating employees and recommending appropriate corrective measures.

2.20 **Supervisor** – Any employee with direct report staff.

2.21 **Unannounced Drug Test** – Any DMHSAS drug test conducted without notice to include random and follow-up drug tests.

3. **Policy:**

3.1 It is the policy of the DMHSAS to maintain a workplace that is free from the use of prohibited substances and/or improper use of alcohol, and the effects thereof.

3.2 It is prohibited for any employee in, or applicant applying for employment for a position in a safety sensitive job function to have prohibited substances that were taken illegally present in their body while on duty, while on state property, or during the appointment process.

3.3 This policy applies to anyone seeking employment with or already employed with the DMHSAS in a position with a safety sensitive function. This may include state employees, contract employees, and volunteers.

3.4 The employees of the DMHSAS have an obligation to work free of impaired judgment or impaired physical ability so as to avoid injury to themselves, other employees, service recipients, or the public. Further, the employees of the DMHSAS have an obligation to maintain credibility and the trust of other employees, service recipients, and the public.

3.5 The DMHSAS authorizes the following workplace drug and/or alcohol testing:

3.5.1 Reasonable suspicion-based drug and/or alcohol testing;

3.5.2 The pre-employment or change of job drug testing of any employee hired, promoted, transferred, demoted, or otherwise assigned a safety sensitive job function;

3.5.3 The drug testing of any employee returning to a safety sensitive job
function after an extended absence of six (6) months or longer;

3.5.4 Random drug testing of any employee working in a safety sensitive job function;

3.5.5 Return to duty drug testing which must be passed before any employee who failed a DMHSAS drug test may return to duty; and

3.5.6 Follow-up drug testing for employees who return to duty after failing a DMHSAS drug test.

3.6 In furtherance of this policy, the DMHSAS shall test for the following:

3.6.1 Any drug which is illegal under state or federal criminal law or any metabolite thereof;

3.6.2 Any drug which is a controlled substance under state or federal law or any metabolites thereof when not used in accordance with the laws regulating the controlled substance; and

3.6.3 Alcohol, when reasonable suspicion indicates that an employee is using or has used alcohol on the job, or is under the influence of alcohol on the job.

3.7 Any individual found in violation of this policy shall be subject to disciplinary action and other consequences in accordance with this policy.

3.8 No disciplinary action will be taken against any employee solely upon the employee’s voluntarily seeking treatment or help of any kind for problems related to the illegal use of prohibited substances.

3.9 The Chief Officer of a Regional Mental Health Institute (RMHI) or the Deputy Commissioner acting on behalf of the Central Office may, in consultation with the DMHSAS Human Resources Director, make exceptions to this policy on a case-by-case basis. These exceptions may include, but are not limited to, exceptions to the disciplinary actions or other consequences of a positive test described herein. The rationale for any such exception shall be documented. The Chief Officer, Deputy Commissioner, and DMHSAS Human Resources Director shall not delegate decisions regarding exceptions to this policy.

3.10 The Chief Officer of the RMHI or the Deputy Commissioner acting on behalf of the Central Office may temporarily suspend the requirements of this policy during emergency situations (such as inclement weather, disasters, etc.) when necessary in order to assure adequate staff availability to provide patient care.

4. **Persons to be Tested:**
4.1 Any individual who is or will be performing a safety sensitive job function, as defined in this policy, shall be subject to drug and/or alcohol testing.

4.2 The DMHSAS shall determine whether individual job classifications are subject to drug and/or alcohol testing as follows:

4.2.1 The DMHSAS shall determine whether each job classification normally requires the performance of safety sensitive job functions and, thus, whether a job classification is subject to drug and/or alcohol testing.

4.2.2 The DMHSAS shall create a list of job classifications that are subject to drug and/or alcohol testing.

4.2.3 This list shall be reviewed and updated no less than once per year and shall be made available to all employees.

4.3 Each RMHI and the Central Office shall maintain and update, no less than quarterly, a list of all employees working in safety sensitive job functions and thus subject to drug and/or alcohol testing under this policy (i.e., a list of testable employees). These lists shall be made as follows:

4.3.1 The list of job classifications that are subject to drug and/or alcohol testing prepared by DMHSAS shall be used as the starting point or base for the creation of any list of testable employees.

4.3.2 Any employee not performing a safety sensitive job function shall be excluded from any list of testable employees regardless of their job classification.

4.3.3 Any employee performing a safety sensitive job function shall be included on any list of testable employees regardless of their job classification. Any such employee shall be individually notified in writing of their inclusion on the list of testable employees.

4.3.4 Any of these exclusions or inclusions to the list of testable employees shall be justified in writing and approved by the Chief Officer of the RMHI or the Deputy Commissioner acting on behalf of the Central Office.

4.4 Each RMHI and the Central Office shall determine whether an individual is required to pass a pre-employment or change of job drug test before the individual is hired, promoted, transferred, demoted, or otherwise assigned a safety sensitive job function. This determination shall be made as follows:

4.4.1 The list of job classifications that are subject to drug and/or alcohol testing prepared by the DMHSAS shall be used as the starting point or base for
determining if an individual is required to pass a pre-employment or change of job drug test.

4.4.2 If the individual will not be performing any safety sensitive job functions, he or she shall not be required to pass a pre-employment or change of job drug test regardless of the anticipated job classification.

4.4.3 If the individual will be performing safety sensitive job functions, he or she shall be required to pass a pre-employment or change of job drug test regardless of the anticipated job classification.

4.4.3.1 Except that any current DMHSAS employee moving from one safety sensitive job function to another shall not be subject to change of job drug testing.

4.4.4 Any deviation from the list of testable job classifications made when deciding whether to conduct pre-employment or change of job drug testing shall be approved in writing by the Chief Officer of the RMHI or the Deputy Commissioner acting on behalf of the Central Office.

4.4.5 Any individual subject to pre-employment or change of job drug testing shall be informed of the same prior to completion of the appointment or transfer process.

4.5 In addition to testing under this policy, employees whose job functions require a commercial driver license (CDL) shall be tested in accordance with federal law and regulation.

5. **Types of Testing**: Any individual who is or will be performing a safety sensitive job function shall be subject to the following types of drug and/or alcohol testing under this policy.

5.1 **Pre-employment Drug Testing** — Individuals seeking employment in a position with a safety sensitive job function shall be given a drug test within one (1) business day after a provisional offer of employment has been made and the drug test results must be provided before employment has commenced.

5.2 **Change of Job Drug Testing** — Current employees of the DMHSAS who are to be promoted, transferred, demoted, or otherwise assigned a safety sensitive job function must take a drug test before being allowed to work; except that it is not necessary for any such employee to be drug tested if the employee is moving from one safety sensitive assignment to another.

5.3 **Extended Absence Drug Testing** — If an employee working in a position with a safety sensitive job function has been on leave or otherwise not performing
his/her duties for a period of six (6) months or longer, then the employee shall take a drug test prior to returning to work in a safety sensitive job.

5.4 Random Drug Testing – Employees in positions with safety sensitive job functions are subject to random, unannounced drug tests conducted on a quarterly basis. The percentage of employees to be tested on a quarterly basis shall be determined by the DMHSAS.

5.5 Return to Duty Drug Testing – Any employee who tests positive on a DMHSAS drug test must provide a directly observed negative drug test (i.e., pass a drug test) before returning to duty pursuant to the following:

5.5.1 The DMHSAS shall administer one (1) return to duty drug test at no cost to the employee.

5.5.2 It is the responsibility of the employee to obtain any additional return to duty drug tests, and any such drug test must:

5.5.2.1 Be paid for by the employee;

5.5.2.2 Test for the same prohibited substances as tested for in the verified positive drug test; and

5.5.2.3 Be conducted by either the DMHSAS employee drug testing laboratory or a comparable certified laboratory, whichever the employee chooses.

5.5.3 In addition, any employee who has a verified positive drug test for the use of controlled substances or a verified positive breath alcohol test must complete a Substance Abuse Professional (SAP) evaluation, referral and education/treatment process prior to again performing any safety sensitive duties. This requirement may be fulfilled through the Employee Assistance Program (E.A.P.). Any employee who is absent from work due to the testing and procedures outlined in this policy will be required to use his/her own accumulated annual or sick leave.

5.5.4 In no case will testing positive on a return to duty drug test be considered a positive test for the purpose of disciplining an employee under this policy.

5.6 Follow-up Drug Test – After the employee has provided a directly observed negative drug test and returned to work, that employee shall be required to submit to four (4) directly observed and unannounced DMHSAS drug tests within twelve (12) months from the date of the initial verified positive drug test. If an employee fails a follow-up test, it shall constitute a second verified positive drug test subject to discipline under this policy.
5.7 Recollection Due to a Dilute Specimen – In the case of a negative test based on a dilute specimen with a creatinine concentration of the specimen equal to or greater than 2 mg/dL, but less than or equal to 5 mg/dL, a recollection under direct observation will be required immediately. If the creatinine concentration of the dilute specimen is greater than 5 mg/dL, the employee will be directed to take another test immediately but the recollections will not be collected under direct observation, unless there is another basis for use of direct observation as determined by the Medical Review Officer (MRO). The result of the recollected test will become the test result of record and not that of a prior test. If the result of the recollected test is also negative and dilute, no additional tests will be conducted because the result was dilute. If the employee declines to take a test that they have been directed to take under this section, such refusal shall be treated the same as a positive test and shall be subject to the same disciplinary action.

5.8 Reasonable Suspicion-Based Drug and Alcohol Testing – Employees shall be required to submit to drug and/or alcohol testing as a condition of continued employment to ascertain prohibited drug and/or alcohol use in any case in which an individualized reasonable suspicion exists that the employee uses and/or is abusing prescription, illegal drugs, or is using alcohol on the job. This may be based on the following reasons:

5.8.1 Observable phenomena, such as direct observation of drug and/or alcohol use or possession, or the physical symptoms of being under the influence of a drug of alcohol;

5.8.2 A pattern of abnormal conduct or erratic behavior while at work or a significant deterioration in work performance;

5.8.3 Newly discovered information from reliable and credible sources indicating that the employee may have tampered with previous drug and/or alcohol test.

5.9 Determinations of reasonable suspicion may be made only by supervisors who have received approved training for this purpose. Such determinations shall detail, in writing, the basis of the determination that testing is warranted, and shall include all circumstances which led to that determination. The conduct of a drug and/or alcohol test based on such determination may be performed only upon the approval of a RMHI Chief Officer or Administrative Officer of the Day, the Commissioner or his/her designee(s), or the Central Office Human Resources Director.

5.10 A copy of the documentation describing the circumstances for the reasonable suspicion shall be given to the employee upon request and the original
documentation shall be kept confidential in pursuant to Tenn. Code Ann. § 50-9-109, and retained by the Human Resource Office for at least one (1) year.

5.11 An employee subjected to a reasonable suspicion-based drug and/or alcohol test shall be escorted to a testing site by an employee identified and approved by a RMHl Chief Officer of Administrative Officer of the Day, the Commissioner or his/her designe(s) or the Central Office Human Resources Director upon notification to the organization contracted by the Department to conduct its drug and/or alcohol testing program.

6. **Consequences of a Positive Test:** The consequences of testing positive for a prohibited substance and/or alcohol on a drug and/or alcohol test administered in accordance with this policy or for otherwise violating this policy are as follows:

6.1 The following are considered positive tests in violation of this policy:

6.1.1 Positive Test – A verified positive result on a DMHSAS drug and/or alcohol test;

6.1.2 Refusal to Test – Failure to submit to a DMHSAS drug and/or alcohol test or failure to report as ordered to a collection site for testing;

6.1.3 Failure to Provide Adequate Sample – Failure to provide an adequate sample for testing, unless medical reasons for not doing so are confirmed by the MRO. Once the individual arrives at the collection site for testing, he/she is allowed three (3) hours to provide an adequate test sample. If the individual fails to provide an adequate test sample within (3) hours, then the test is deemed positive, unless medical reasons for not doing so are confirmed by the MRO.

6.1.3.1 If an employee cannot provide an adequate sample within the allotted time, he or she may be rescheduled for an alternate method of sample collection in the following order: hair, nail, bodily fluid;

6.1.4 Tampering – Any attempt to manipulate in any manner the results of a drug and/or alcohol test.

6.2 Removal from Safety Sensitive Job Functions – Any employee who tests positive on a DMHSAS drug and/or alcohol test shall be immediately removed from all safety sensitive job functions pending disciplinary or other action under this policy.

6.3 Discipline – Any employee who has a positive test shall be disciplined as follows:
6.3.1 First Offense – Suspension for ten (10) workdays without pay;

6.3.2 Second Offense within Twenty-Four (24) Months – Termination. Any employee who has a positive test on a second unannounced drug test within twenty-four (24) months of having had a previous positive test shall be terminated.

6.4 Pre-Employment Drug Tests – Applicants for employment who test positive on a pre-employment drug test shall not be considered a valid candidate for employment. In such an event, the Human Resources Office at the Central Office or at the RMHI must be consulted for guidance. Individuals who test positive on a pre-employment drug test may reapply for employment no less than six months following the positive pre-employment drug test result.

6.5 Change of Job Drug Tests – If an employee is required to take a drug test in order to be promoted, transferred, demoted, or otherwise assigned a safety sensitive job function and tests positive on that drug test, then the employee shall be disciplined in accordance with this policy and shall not be considered a valid candidate for the safety sensitive job. In such an event, the Human Resources Office at the Central Office or at the RMHI must be consulted for guidance.

6.6 Return to Duty Drug Tests – Any employee who fails to supply a negative drug test within forty-five (45) calendar days after an initial positive DMHSAS drug test shall be terminated. The forty-five (45) calendar days shall begin on the date that the initial sample is collected from the employee.

6.7 Contract Employees – Any individual whose services are utilized through a contract agency and who tests positive shall be released from duty immediately and the contract agency will be notified. The individual’s services will not be utilized by the DMHSAS in the future.

7. Testing Procedure:

7.1 Costs of Testing – The DMHSAS shall pay for the costs associated with the implementation of this policy except as otherwise expressly stated in this policy.

7.2 Reporting for Testing – The individual to be tested shall be given a written notice to report to a collection site for testing. The individual must report as ordered with a photographic proof of identification.

7.3 Determination of Positive Test:

7.3.1 The DMHSAS employee drug testing contract shall include provisions for the services of a physician designated as the Medical Review Officer (MRO). Under no circumstances shall a physician employed by or
contracted with by DMHSAS function as the MRO for review of DMHSAS employee drug testing results.

7.3.2 Prior to transmission of the results to the Human Resources Office, a physician designated as the MRO shall review positive results for possible alternate medical explanations. The MRO will conduct medical interviews with the individual and will review the individual's medical history, and/or other relevant biomedical factors. This review shall also include a review of the chain of custody to ensure it is complete and sufficient on its face.

7.3.3 Prior to making a final decision to verify a positive test result, the MRO shall give the individual an opportunity to discuss the test result. The MRO shall contact the individual directly, on a confidential basis, to determine whether the individual wishes to discuss the test result. If, after making reasonable efforts and documenting them, the MRO is unable to reach the individual directly, the Human Resources Office shall direct the individual to contact the MRO.

7.3.4 The MRO may verify a test as positive without having communicated with the individual about the test in the following circumstances:

7.3.4.1 The individual expressly declines the opportunity to discuss the test with the MRO;

7.3.4.2 Neither the MRO nor the Human Resources Office, after making reasonable efforts, has been able to contact the individual within three (3) business days of the MRO's receipt of the test results;

7.3.4.3 The Human Resources Office has successfully contacted the individual and instructed him or her to contact the MRO by the end of the next business day, but the individual fails to do so.

7.3.5 The Chief Officer of the RMHI or the Deputy Commissioner acting on behalf of the Central Office may instruct the MRO to reopen the verification and allow the individual to present information concerning a legitimate explanation for the verified positive test upon presentation of information documenting that serious illness, injury, or other significant circumstances prevented the individual from contacting the MRO or from being contacted by the MRO or Human Resources Office.

7.3.6 An individual who receives a verified positive test result may contest or explain the result by contacting the MRO within five (5) business days after receiving notification of the test result. If the individual's
7.4

If the MRO concludes that there is a legitimate explanation, the MRO may declare the test to be negative.

7.3.7 The MRO must review all medical records made available by the tested individual when a verified positive test could have resulted from legally prescribed medication. Evidence to justify a positive result may include:

7.3.7.1 The individual possesses a valid prescription from a licensed practitioner for the detected substance;

7.3.7.2 The individual presents a valid reason for the positive analysis as determined by the MRO.

7.3.8 If the MRO determines there is no justification for the positive result, the result will then be considered a verified positive test result.

7.3.9 If the MRO determines there is no justification for the positive result, the result will then be considered a verified positive test result.

7.4 Split-Sample Testing – Split-samples shall be obtained for all DMHSAS drug tests. If the first sample results in a positive test, the tested individual may have the second sample tested. The second sample shall be tested as follows:

7.4.1 An individual may request split-sample testing at one of the following times, but not both:

7.4.1.1 Upon receiving notification of an initial positive result as described in 7.3, an individual may request that the second sample be tested. Any such request must be made within five (5) business days of this notification.

7.4.1.2 Upon receiving notification that the MRO has reported a positive test result to the Chief Officer of the RMHI or the Deputy Commissioner acting on behalf of the Central Office, an individual may request that the second sample be tested. Any such request must be made within five (5) business days of this notification. There shall be no right to have the second sample tested after the expiration of this period of time.

7.4.2 The second sample shall be tested by either the DMHSAS employee drug testing laboratory or a comparably certified laboratory.

7.4.3 All costs associated with testing the second sample must be paid by the requesting individual before testing is ordered.
7.4.4 If the second sample returns a negative drug test result, the cost for testing the second sample will be reimbursed to the individual and any consequences suffered from the initial positive result will be reversed.

7.4.5 No action required by this policy as the result of a verified positive test shall be delayed pending the testing of a second sample.

8. **Notifications:**

8.1 All RMHIs and the Central Office shall post, in appropriate and conspicuous locations, signs stating: “DMHSAS drug tests employees with safety sensitive job functions.”

8.2 All vacancy announcements, advertisements, preferred service requisition letters, or other solicitations for applicants for safety sensitive jobs shall include the statement that “pre-employment drug testing is required.”

8.3 After a conditional offer of employment, but prior to testing, job applicants shall be given a copy of this policy.

8.4 Training on this policy shall be included as a part of new employee orientation. All employees must sign an acknowledgment that they have received a copy of this policy.

8.5 Prior to the implementation of any revisions to this policy employees shall be given a copy of the revised policy and be required to sign an acknowledgement of receipt.

8.6 The drug and/or alcohol testing of any individual under this policy is not conditioned on their having first received a copy of this policy or any other notice thereof. An individual’s failure to be aware of this policy, for whatever reason, will not relieve them of the obligation to be tested in accordance with this policy nor will it change the consequences resulting from a positive drug and/or alcohol test.

9. **Confidentiality:**

9.1 The records and results created as a result of this policy shall be maintained under strict confidence and separately from personnel and other records regarding such employee.

9.2 The records of negative drug and/or alcohol test results will be kept for one (1) year. The records of verified positive drug and/or alcohol test results will be kept for five (5) years.
Approved:

[Signature]
Commissioner

18/7/16
Date
HIPAA BUSINESS ASSOCIATE AGREEMENT
COMPLIANCE WITH PRIVACY AND SECURITY RULES

THIS BUSINESS ASSOCIATE AGREEMENT (hereinafter “Agreement”) is between The State of Tennessee, Department of Mental Health and Substance Abuse Services (hereinafter “Covered Entity”) and BUSINESS ASSOCIATE NAME (hereinafter “Business Associate”). Covered Entity and Business Associate may be referred to herein individually as “Party” or collectively as “Parties.”

BACKGROUND

Parties acknowledges that they are subject to the Privacy and Security Rules (45 CFR 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 as amended by Public Law 111-5, Division A, Title XIII (the HITECH Act), in certain aspects of its operations.

In the course of executing Service Contracts, Business Associate may come into contact with, use, or disclose Protected Health Information (“PHI”). Said Service Contract(s) 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 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 and, therefore, make this Agreement.

DEFINITIONS

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 CFR §§ 160.103, 164.304, 164.501 and 164.504.

1.1 “Breach of the Security of the [Business Associate’s Information] System” shall have the meaning set out in its definition at T.C.A. § 47-18-2107

1.2 “Business Associate” shall have the meaning set out in its definition at 45 C.F.R. § 160.103.

1.3 “Covered Entity” shall have the meaning set out in its definition at 45 C.F.R. § 160.103.

1.4 “Designated Record Set” shall have the meaning set out in its definition at 45 C.F.R. § 164.501.

1.5 “Electronic Protected Health Care Information” shall have the meaning set out in its definition at 45 C.F.R. § 160.103.

1.6 “Genetic Information” shall have the meaning set out in its definition at 45 C.F.R. § 160.103.

1.7 “Health Care Operations” shall have the meaning set out in its definition at 45 C.F.R. § 164.501.

1.8 “Individual” shall have the same meaning as the term “individual” in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

1.9 “Information Holder” shall have the meaning set out in its definition at T.C.A. § 47-18-2107

1.10 “Marketing” shall have the meaning set out in its definition at 45 C.F.R. § 164.501.

1.11 “Personal information” shall have the meaning set out in its definition at T.C.A. § 47-18-2107
1.12 “Privacy Official” shall have the meaning as set out in its definition at 45 C.F.R. § 164.530(a)(1).

1.13 “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, subparts A, and E.

1.14 “Protected Health Information” shall have the same meaning as the term “protected health information” in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

1.15 “Required by Law” shall have the meaning set forth in 45 CFR § 164.512.

1.16 “Security Incident” shall have the meaning set out in its definition at 45 C.F.R. § 160.304.

1.17 “Security Rule” shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Parts 160 and 164, Subparts A and C.

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

2.1 Business Associate is authorized to use PHI for the purposes of carrying out its duties under the Services Contract. In the course of carrying out these duties, including but not limited to carrying out the Covered Entity’s duties under HIPAA, 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 Contracts, or as Required By Law. Business Associate is subject to requirements of the Privacy Rule as required by Public Law 111-5, Section 13404 [designated as 42 U.S.C. 17934] In case of any conflict between this Agreement and the Service Contracts, this Agreement shall govern.

2.2 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 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 Associate shall use appropriate administrative, physical, and technical safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement, Services Contract(s), 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. The Business Associate shall maintain appropriate documentation of its compliance with the Privacy Rule, including, but not limited to, its policies, procedures, records of training and sanctions of members of its Workforce.

2.4 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 information, to agree, by written contract with Business Associate, to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
2.5 Business Associate shall 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.

2.6 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. Business Associate shall report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement. Business Associate will also provide additional information reasonably requested by the Covered Entity related to the breach.

2.7 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.

2.7.1 Business Associate shall provide to Covered Entity notice of a Provisional or Actual Breach of Unsecured PHI immediately upon becoming aware of the Breach.

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

2.7.3 Covered Entity shall make the final determination whether the Breach requires notification and whether the notification shall be made by Covered Entity or Business Associate.

2.8 If Business Associate receives PHI from Covered Entity in a Designated Record Set, Business Associate shall provide access, at the request of Covered Entity, to PHI in a Designated Record Set to Covered Entity, in order to meet the requirements under 45 CFR § 164.524, provided that Business Associate shall have at least 30 business days from Covered Entity notice to provide access to, or deliver such information.

2.9 If Business Associate receives PHI from Covered Entity in a Designated Record Set, then Business Associate shall make any amendments to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to the 45 CFR § 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity, provided that Business Associate shall have at least 30 business days from Covered Entity notice to make an amendment.

2.10 Business Associate shall make its internal practices, books, and records including policies and 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 Secretary of the United States Department of Health in Human Services or the Secretary’s designee, in a time and manner designated by the Secretary, for purposes of determining Covered Entity’s or Business Associate’s compliance with the Privacy Rule.

2.11 Business Associate shall document disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosure of PHI in accordance with 45 CFR § 164.528.

2.12 Business Associate shall provide Covered Entity or an Individual, 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 and accounting of disclosures of PHI in accordance with 45 CFR § 164.528, provided that Business Associate shall have at least 30 business days from Covered Entity notice to provide access to, or deliver such information which shall include, at minimum, (a) date of the disclosure; (b) name of the third party to whom the PHI was disclosed and, if known, the address of the third party; (c) brief description of the disclosed information; and (d) brief explanation of the purpose and basis for such disclosure. Business
Associate shall provide an accounting of disclosures directly to an individual when required by section 13405(c) of Public Law 111-5 [designated as 42 U.S.C. 17935(c)].

2.13 Business Associate agrees it must 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.

2.13.1 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.

2.13.2 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.

2.13.3 Business Associate acknowledges that if Business Associate is also a covered entity, as defined by the Privacy Rule, Business Associate is required, independent of Business Associate's obligations under this Memorandum, to comply with the Privacy Rule's minimum necessary requirements when making any request for PHI from Covered Entity.

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

2.15 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 and notify the Covered Entity of such action. If Business Associate receives a request for PHI 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 notify Covered Entity of such request and forward the request to Covered Entity. Business Associate shall then assist Covered Entity in responding to the request.

2.16 Business Associate shall fully cooperate in good faith with 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 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 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 and Public Law 111-5. 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 to certify its compliance with the Security Rule.

3.3 Business Associate shall ensure that any agent, including a subcontractor, to whom it provides electronic PHI received from 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, to agree, by written contract (or the appropriate equivalent if the agent is a government entity) with Business Associate, to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

3.4 Business Associate shall require its employees, agents, and subcontractors to report to Business Associate within five (5) business days, any Security Incident (as that term is defined in 45 CFR § 164.304) of which it becomes aware. Business Associate shall promptly report any Security Incident of which it becomes aware to Covered Entity.

3.5 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 Secretary of the United States Department of Health in Human Services or the Secretary’s designee, in a time and manner designated by the Secretary, for purposes of determining Covered Entity’s or Business Associate’s compliance with the Security Rule.

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

3.7 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:

State of Tennessee
Department of Mental Health and Substance Abuse Services
Division of General Counsel
Leandra Mitchell, Special Counsel
Email: Leandra.Mitchell@tn.gov
Telephone: 615-532-0992

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

Name, Title
Company
Address
Email
Phone
Fax

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

4. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

4.1 Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in Service Contract(s), provided that such use or disclosure would not violate the Privacy and Security Rule, if done by Covered Entity. Business Associate’s disclosure of PHI shall be subject to the limited data set and minimum necessary requirements of Section 13405(b) of Public Law 111-5, [designated as 42 U.S.C. 13735(b)]
4.2 Except as otherwise limited in this Agreement, Business Associate may use PHI as required for Business Associate’s proper management and administration or to carry out the legal responsibilities of the Business Associate.

4.3 Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or 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 Except as otherwise limited in this Agreement, Business Associate may use PHI to provide data aggregation services to Covered Entity as permitted by 42 CFR § 164.504(e)(2)(i)(B).

4.5 Business Associate may use PHI to report violations of law to appropriate Federal and State Authorities consistent with 45 CFR 164.502(j)(1).

4.6 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 member’s personal or financial information with affiliates, even if such sharing would be permitted by federal or state laws, is prohibited.

4.7 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.

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

5. OBLIGATIONS OF COVERED ENTITY

5.1 Covered Entity shall provide Business Associate with the Notice of Privacy Practices that Covered Entity produces in accordance with 45 CFR § 164.520, as well as any changes to such notice. Covered Entity shall notify Business Associate of any limitations in its notice that affect Business Associate’s use or disclosure of PHI.

5.2 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 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 CFR § 164.522, to the extent that such restriction may affect Business Associate’s use of PHI.

6. PERMISSIBLE REQUESTS BY COVERED ENTITY

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy or Security Rule, if done by Covered Entity.

7. TERM AND TERMINATION
7.1 Term. This Agreement shall be effective as of the date on which it is signed by both parties and shall terminate when all of the PHI provided 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 it is infeasible to return or destroy PHI, Section 7.3. below shall apply.

7.2 Termination for Cause.

7.2.1 This Agreement authorizes and Business Associate acknowledges and agrees Covered Entity shall have the right to immediately terminate this Agreement and Service Contracts in the event Business Associate fails to comply with, or violates a material provision of, requirements of the Privacy and/or Security Rule or this Memorandum.

7.2.2 Upon Covered Entity’s knowledge of a material breach by Business Associate, Covered Entity shall either:

7.2.2.1 Provide a reasonable opportunity for Business Associate to cure the breach or end the violation, or

7.2.2.2 If Business Associate has breached a material term of this Agreement and cure is not possible or if Business Associate does not cure a curable breach or end the violation within a reasonable time as specified by, and at the sole discretion of, Covered Entity, Covered Entity may immediately terminate this Agreement and the Service Agreement.

7.2.2.3 If neither cure nor termination is feasible, Covered Entity shall report the violation to the Secretary of the United States Department of Health in Human Services or the Secretary’s designee.

7.3 Effect of Termination.

7.3.1 Except as provided in Section 7.3.2. below, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of, Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

7.3.2 In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction unfeasible. Upon mutual agreement of the Parties that return or destruction of PHI is unfeasible; Business Associate shall extend the protections of this Memorandum 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.

8. MISCELLANEOUS

8.1 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.

8.2 Indemnity. The Business Associate shall indemnify the Covered Entity and hold it harmless for any claims, losses or other damages arising from or associated with any act or omission of Business Associate under this Agreement. This includes the costs of responding to a breach of the Agreement or the release of PHI contrary to the terms and conditions of this Agreement, the costs of responding to a government enforcement action related to the breach, and any resultant fines, penalties, or damages paid by the Covered Entity.
8.3 Amendment. The Parties agree to take such action as is necessary 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, including any amendments required by the United States Department of Health and Human Services to implement the Health Information Technology for Economic and Clinical Health 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.

8.4 Survival. The respective rights and obligations of Business Associate under Section 7.3. of this Memorandum shall survive the termination of this Agreement.

8.5 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.

8.6 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 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.

COVERED ENTITY:  
State of Tennessee  
Department of Mental Health and Substance Abuse Services  
500 Deaderick Street  
Andrew Jackson Building  
Nashville, TN 37243  
Division of General Counsel  
Leandra Mitchell, Special Counsel  
Email: Leandra.Mitchell@tn.gov  
Telephone: 615-532-0992

BUSINESS ASSOCIATE:  
ENTITY NAME  
NAME AND TITLE  
ADDRESS  
Telephone: NUMBER  
Fax: NUMBER

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.

8.7 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.

8.8 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.

8.9 **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.

8.10 **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 contracts referenced herein.

8.11 **Security Breach.** A violation of HIPAA or the Privacy or Security Rules constitutes a breach of this Business Associate Agreement and a breach of the Service Contract(s) listed on page one of this agreement, and shall be subject to all available remedies for such breach.

IN WITNESS WHEREOF,

COVERED ENTITY LEGAL ENTITY NAME:

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PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES:

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