





## CONTRACT

(fee-for-goods or services contract with an individual, business, non-profit, or governmental entity of another state)

<b>Begin Date</b> November 1, 2024	<b>End Date</b> December 31, 2028	<b>Agency Tracking #</b> 31786-00169	<b>Edison Record ID</b> 84876		
<b>Contractor Legal Entity Name</b> Merative US L.P.			<b>Edison Vendor ID</b> 0000263554		
<b>Goods or Services Caption</b> (one line only) Decision Support System for the State's Public Sector Plans					
<b>Contractor</b> <input checked="" type="checkbox"/> Contractor		<b>CFDA #</b>			
<b>Funding —</b>					
<b>FY</b>	<b>State</b>	<b>Federal</b>	<b>Interdepartmental</b>	<b>Other</b>	<b>TOTAL Contract Amount</b>
2025			\$120,000		\$120,000
2026			\$710,000		\$710,000
2027			\$760,000		\$760,000
2028			\$790,000		\$790,000
2029			\$420,000		\$420,000
<b>TOTAL:</b>			<b>\$2,800,000</b>		<b>\$2,800,000</b>
<b>Contractor Ownership Characteristics:</b> <input type="checkbox"/> Minority Business Enterprise (MBE): African American, Asian American, Hispanic American, Native American <input type="checkbox"/> Woman Business Enterprise (WBE) <input type="checkbox"/> Tennessee Service-Disabled Veteran Enterprise (SDVBE) <input type="checkbox"/> Tennessee Small Business Enterprise (SBE): \$10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees. <input type="checkbox"/> Other:					
<b>Selection Method &amp; Process Summary</b> (mark the correct response to confirm the associated summary)					
<input checked="" type="checkbox"/> Competitive Selection		RFP			
<input type="checkbox"/> Other					
<b>Budget Officer Confirmation:</b> There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.  					
<b>Speed Chart</b> (optional)		<b>Account Code</b> (optional)			

**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
STATE INSURANCE COMMITTEE,  
LOCAL EDUCATION INSURANCE COMMITTEE,  
LOCAL GOVERNMENT INSURANCE COMMITTEE  
AND  
Merative US L.P.**

This Contract, by and between the State of Tennessee, State Insurance Committee, Local Education Committee, and Local Government Insurance Committee ("State") and Merative US L.P. ("Contractor"), is for the provision of a Health Care Information Decision Support System (DSS), 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 Limited Partnership  
Contractor Place of Incorporation or Organization: Delaware  
Contractor Edison Registration ID #0000263554

**A. SCOPE:**

- A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.
- A.2. Definitions. For purposes of this Contract, definitions shall be as follows and as set forth in the Contract.
- a. Affiliate: A business organization or entity that, directly or indirectly, is owned or controlled by the Contractor, or owns or controls the Contractor, or is under common ownership or control with the Contractor.
  - b. At-Risk Performance Payment: Contractor's payment based on KPI performance listed on the SLA Scorecard set forth in Contract Attachment D. The payment is calculated based on the SLA Scorecard quarterly score and percentage of the administrative fees at risk.
  - c. Benefits Administration ("BA"): The division of the Tennessee Department of Finance & Administration that administers the Plans.
  - d. Broad Network: Most inclusive provider network containing the largest number of contracted providers and hospital facilities.
  - e. Business Days: Traditional workdays, including Monday, Tuesday, Wednesday, Thursday, and Friday. State Government Holidays are excluded.
  - f. Claims Data: Current and historical health care codes and information regarding Member services including medical, behavioral health, pharmacy, population health, biometrics, and EAP which result in payment of services to providers and contractors.
  - g. Coinsurance: The percentage of the maximum allowed charge for each medical or pharmaceutical service provided to a Member that is the responsibility of the Member.
  - h. Copayment/Copay: The portion of the maximum allowed charge (flat dollar amount) for each medical or pharmaceutical service provided to a Member that is the responsibility of the Member.

- i. Current Procedural Terminology ("CPT"): Coding system of nomenclature and five-digit codes for reporting of physician services, currently listed is ICD-9/ICD-10 but is subject to updates and amendments by the American Medical Association ("AMA").
- j. Decision Support System ("DSS"): A database and query tool based on health care information and Claims Data which allows for analytics and executive decision making. Also known as an Executive Information System ("EIS").
- k. Dedicated: Assigned to the State and this contract.
- l. Deductible: The amount that must be paid by each Member prior to payment of covered benefits.
- m. Denied Claim: A claim that is not paid for reasons such as eligibility and coverage rules.
- n. Designated: Assigned to support this contract but may support additional clients or contracts.
- o. EAP/BHO: Employee Assistance Program/Behavioral Health Organization.
- p. Edison: The State's enterprise resource planning system, which supports human resources, payroll, insurance, contracting, procurement and other agency functions.
- q. Fully Insured: Total premiums are remitted to the TPA, who pay claims Incurred by and for eligible Members.
- r. Go-Live Date ("Go-Live"): May 1, 2025
- s. Head of Contract: Eligible employee, retiree, surviving dependent, or individual qualified under the Federal Consolidated Omnibus Budget Reconciliation Act ("COBRA") who is enrolled in one of the medical benefit options of the Plans and considered to be the primary policyholder.
- t. Healthcare Common Procedure Coding System ("HCPCS"): The Healthcare Common Procedure Coding System is a set of health care procedure codes based on the AMA's Current Procedural Terminology.
- u. Healthcare Effectiveness Data and Information Set ("HEDIS"): tool used to measure performance on important dimensions of care and service.
- v. International Classification of Diseases ("ICD"): a globally used diagnostic list of codes for epidemiology, health management and clinical purposes.
- w. Incurred Date: Date of actual service.
- x. Incurred Claim: A claim that meets all coverage criteria of the Plans and is reported as of the date of service.
- y. In Writing: Written communication between the Parties, which may be in the form of an official memo, or documents sent via postal mail or email communications.
- z. Information System(s): A combination of computing and telecommunications hardware and software that is used in: (a) the capture, storage, manipulation, movement, control, display, interchange and/or transmission of information, i.e., structured data (which may include digitized audio and video) and documents as well as non-digitized audio and video; and/or (b) the processing of information and non-digitized audio and video for the purposes of enabling and/or facilitating a business process or related transaction.

- aa. Local Education Agency ("LEA"): A local education agency pursuant to Tenn. Code Ann. § 49-3-302.
- bb. Local Government Agency ("LGA"): A local government agency pursuant to Tenn. Code Ann. § 8-27-702.
- cc. Maximum Allowable Charge ("MAC"): The maximum reimbursement rates the health plan will allow as payment for the cost of services such as procedures, professional fees, technical fees, or prescribed medicines. This amount is established by the Contractor.
- dd. Member: Eligible employees and their dependents, retirees and their dependents and/or survivors, and individuals qualified under The Federal Consolidated Omnibus Budget Reconciliation Act ("COBRA") and their dependents, who are enrolled in the health plan options sponsored by the State, Local Education, and Local Government Insurance Committees.
- ee. Narrow Network: A provider network that has fewer contracted providers and hospitals in order to offer best pricing and in some cases highest quality.
- ff. National Provider Identification Number ("NPI"): A 10-position, intelligence-free numeric identifier (10-digit number). The numbers do not carry other information about health care providers, such as the state in which they live or their medical specialty.
- gg. Net Zero: Claim allowed amount reduced by Member Out Of Pocket (Deductible, Copayment, Coinsurance), third party and net payment.
- hh. Operational Readiness Review: A pre- implementation review/audit conducted by the State, and/or its authorized representative, at least thirty (30) days prior to the Go-Live, to ensure the Contractor is ready to deliver all required services.
- ii. Out of Pocket ("OOP"): any amount paid by a Member for services received under the Plan.
- jj. Paid Date: Date of payment.
- kk. Paid Claim: A claim that meets all coverage criteria of the Plans and is reported as of the date paid by the carrier or TPA.
- ll. Pharmacy Benefits Manager ("PBM"): State's contractor which provides pharmacy benefit management services.
- mm. Plan Documents: The legal publications including certificates of coverage that define eligibility, enrollment, benefits and administrative rules of the Plans.
- nn. Plan Year: January 1 through December 31 of the same calendar year.
- oo. PEPM: Per Head of Contract per month, regardless of whether the Head of Contract is an employee.
- pp. PEPY: Per Head of Contract per month, regardless of whether the Head of Contract is an employee.
- qq. PMPM: Per Member per month. For purposes of this definition, Member shall include any enrollee in the Plans.
- rr. PMPY: Per Member per year. For purposes of this definition, Member shall include any enrollee in the Plans.

- ss. Preferred Provider Organization (“PPO”): A type of health plan that contracts with medical providers, such as hospitals and doctors, to create a network of participating providers, while also offering access to Out-of-Network Providers at an additional cost.
  - tt. Protected Health Information (“PHI”): As defined in the HIPAA Privacy Rule, 45 CFR § 160.103.
  - uu. Public Key Infrastructure (“PKI”): The framework and services that provide for the generation, production, distribution, control, accounting, and destruction of public key certificates. Components include the personnel, policies, processes, server platforms, software, and workstations used for the purpose of administering certificates and public-private key pairs, including the ability to issue, maintain, recover, and revoke public key certificates.
  - vv. Self-Insured: State retains total premiums paid and pays claims Incurred for eligible Members.
  - ww. Service Level Agreement (“SLA”) Scorecard: Performance management scorecard that contains Contractor’s KPIs and desired outcomes in Contract Attachment D. The At-Risk Performance Payments will be based on the Contractor’s ability to meet the listed KPIs.
  - xx. Social Determinants: data elements such as salary, race, and veteran status used for analytics.
  - yy. State Group Insurance Program (“Plans”): Refers to all benefit options sponsored by the State, Local Government, and Local Education Insurance Committees (e.g., health plan options, life insurance, other voluntary benefits). The Plan is available to eligible employees and dependents of participating State (Central State and Higher Education), Local Government, and Local Education agencies.
  - zz. State, Local Government, and Local Education Insurance Committees: Policy making bodies for the State, Local Government, and Local Education agencies under the Plans established under Tenn. Code Ann. § 8-27-101, 8-27-207, and 8-27-301 respectively.
  - aaa. State Government Holidays: Days on which official holidays and commemorations as defined in Tenn. Code Ann. § [15-1-101](#) *et seq.* are observed.
  - bbb. Third-Party Administrator (“TPA”): The State’s collective term for contractors who provide data to the DSS, including medical, pharmacy, behavior health, population health, dental, vision and other contractors.
- A.3. The Contractor shall design, implement, maintain, and operate a DSS for the Plans adhering to all service requirements detailed herein as well as all associated services and deliverables as required.
- a. Management Responsibility. Contractor’s services may include advice and recommendations; but all decisions in connection with the implementation of such advice and recommendations shall be the responsibility of, and made by, the State. The Contractor will not perform management functions or make management decisions for the State.
- A.4. Enrollment and Eligibility Data
- a. To ensure that the State’s enrollment records remain accurate and complete, the Contractor shall, unless otherwise directed by the State, retrieve, via secure medium monthly enrollment files from the State, in the Edison enrollment file (currently a .CSV file

format). Files will include full population records for all Members, Social Determinants and several fields customized by the State.

- b. The Contractor shall accept from the State monthly enrollment and eligibility data in one format.
- c. The Contractor shall accept from the incumbent contractor, and load to the DSS, six (6) working/rolling years of eligibility and enrollment data as well as historical data. In addition, for each month the Contractor shall accept, and load eligibility and enrollment data provided by the State in the electronic format used by the State. When the Contractor requires the exchange of PHI with the State, the State requires the use of second level authentication using the State's standard software product which supports Public Key Infrastructure. The Contractor shall design a solution and submit to the State In Writing how their design meets these requirements using industry standard, software that can transmit files in a secure fashion. The initial implementation phase of this solution and the final production solution will differ in the method of authentication. The requirement for this solution is that all files that are transmitted will be encrypted, and the method of transmission will also be encrypted. Decryption of the files that are downloaded from this solution will not be decrypted until they are securely stored with in the Contractor's environment. Additionally, federal standards require encryption of all electronic protected health data at rest as well as during transmission. The State uses public key encryption with Advanced Encryption Standard to encrypt PHI. If the State plans to adopt a different or additional encryption standard or tool in the future, the State will notify the Contractor and the Contractor shall comply. The Contractor shall establish and maintain the security of all confidential state data according to all applicable state and federal standards within thirty (30) days of the State's use of the new or additional encryption standard or tool.
- c. Upon request by the State, not to exceed four (4) times annually, the Contractor shall submit to the State, in a secure manner, its full file of all Members, by which the State may conduct a data match against the Edison database. The purpose of this data match will be to determine the extent to which the Contractor is maintaining its database of Members. The State will communicate results of this match to the Contractor, including any Contractor requirements, and associated timeframes, for resolving the discrepancies identified by the data match.

A.5. Claims, Population Health, HR and Voluntary Benefit Data

- a. The Contractor shall work with the State, wellness contractor(s), voluntary benefit contractor(s) and TPAs to provide the necessary data based on Claims Data monthly. In addition to Claims Data, the data shall include lab results, other information derived from wellness exams, and the State's contractors no later than the 15<sup>th</sup> of the following month.
- b. During the Term, the Contractor shall accept and load six (6) years of applicable historical Claims Data to the database from any possible previous DSS contractor and accept and load for each month Claims Data in the Contractor's format from each of the State's TPAs. The Contractor shall load the monthly claims, population health, and EAP/BHO data within fifteen (15) Business Days of receipt. Contractor shall accept, monthly, up to a maximum of thirty (30) individual Claims Data format conversions from the State's TPAs.

A.6. Historical Data

- a. The Contractor shall import a total six (6) years of historical data from the State's incumbent contractor through a methodology satisfactory to the State and at no additional cost to the State during implementation to be completed no later than May 1, 2025.

Historical data shall include the historical Claims Data from the Plans, enrollment, and eligibility, EAP/BHO, dental, Medicare supplement, vision, disability (LTD/STD), biometric and population health data beyond the most recent six (6) years to be loaded per Contract Section A.4.c. Any historical data requested should be available to the State within 10 (ten) Business Days.

- b. The Contractor shall maintain all historical data received during the Term and provide a methodology satisfactory to the State for the archiving and retrieval of historical data at no cost to the State.
- c. The Contractor shall provide the most recent five (5) years of history for the appropriate plans in the database, maintaining at least sixty (60) months of Paid Claims Data and sixty (60) months of Incurred Claims (rolling time periods) data through the DSS on-line access twenty-four (24) hours per day, seven (7) days a week.

#### A.7. Ownership of Data

- a. The State owns all the data submitted or produced under this Contract. The Contractor shall use the data only to accomplish the nature and scope of this Contract. The Contractor is expressly prohibited from sharing or publishing State information and reports or releasing such information to external entities, Affiliates, parent company, or subsidiaries without the prior written consent of the State. If a need arises by the Contractor to use the data provided under this contract outside the scope of the Contract, a written request detailing the nature and scope of the data to be used shall be submitted to the State and the Contractor will receive written approval by the State before such data can be used.
- b. At the end of the Term, the Contractor shall send an electronic copy of all Confidential State Data from the State TPA and other BA contractors during the Term to the State's new contractor. Such data shall be sent at least sixty (60) days before the Contract Term ends, with an update sent no later than thirty (30) days following Contract Term end date.

#### A.8. User Access & Availability

- a. The Contractor shall provide on-line, web-based computer-to-computer access to the DSS services via a microcomputer platform for use on the personal computer ("PC") of the designated BA staff as well as specific users with the State's actuarial contractor. Access must be made through an encrypted virtual private network ("VPN") tunnel. The web-based access shall be provided to a minimum of ten (10) simultaneous, on-line State designated users. The State may have as many designated users as necessary. These users would have the full drill down query and analysis capabilities of the DSS, with the ability to generate user-developed reports.
- b. The Contractor shall provide security clearances so that certain staff within BA's program integrity group has individual Member level access while other users on the DSS only have de-identified Member information available.
- c. The Contractor shall provide on-line computer-to-computer executive management reporting and analysis on PC for a minimum of ten (10) simultaneous users. The reporting and analysis tools shall include, at a minimum, prepackaged reports, query capabilities, online analytical processing, and scenario planning tools.
- d. The Contractor shall assure that the DSS will be available to State users ninety-nine percent (99%) of the time between the hours of 6:00 a.m. and 7:00 p.m. Central Time Monday through Saturday (including State Government Holidays) calculated on a thirty

(30) day basis. The State will allow the Contractor to exclude the time spent performing regular maintenance and database updates.

- e. The Contractor shall ensure that internal systems within its control that support its data exchanges with the State and the State's contractors are available and operational according to the specifications in Contract Section A.11 and schedule associated with each exchange.

#### A.9. Upgrades or Enhancements

- a. Prior to implementing any major modification to or replacement of the Contractor's core Information Systems functionality and/or associated operating environment, the Contractor shall notify the State In Writing of the change or modification within a reasonable amount of time (commensurate with the nature and effect of the change or modification) if the change or modification: (a) would affect the Contractor's ability to perform one or more of its obligations under this Contract; (b) would be visible to State DSS users, (c) might have the effect of putting the Contractor in noncompliance with the provisions or substantive intent of the Plans and/or this Contract; or (d) would materially reduce the benefits or services provided to the State. If so, directed by the State, the Contractor shall discuss the proposed change with the State/its designee prior to implementing the change. Subsequent to this discussion, the State may require the Contractor to demonstrate the readiness of the impacted information systems prior to the proposed date of the actual modification or replacement.

#### A.10. Quality Assurance Program for TPAs

- a. The Contractor shall maintain a data quality assurance program to identify and assist in correcting current and future problems with the data submitted by the TPA and the State. Standard Contractor-provided data quality reports as well as various custom data quality thresholds applicable to the State should be provided to the State within ten (10) Business Days after each monthly database update (see Contract Attachment C.5). These custom data quality threshold reports will allow the State to determine the data quality for each of the CTPA and the basis of these measures will be used in the State's contracts with the CTPA. In the course of doing business, it may be necessary for the State to change the types of data quality upon which it measures its TPAs as these contracts come up for renewal. The State will work with the Contractor to develop the fields or metrics best suited for measurement of data quality.
- b. Upon receipt of monthly transmissions from TPAs to the Contractor, the Contractor shall run data variance reports and compare data received against 12-18 months of historical data by fund, plan, etc. to catch any possible data omissions or errors in the TPAs' data. If the Contractor detects an error with the transmission file or missing data, the State must be notified prior (at minimum two (2) Business Days) to data load.
- c. The Contractor shall prepare and disseminate to the appropriate State personnel a data quality spreadsheet which details various data quality measures for each of the CTPA on a quarterly basis. The Contractor shall submit this document to the State no later than thirty (30) days after the database updates each quarter's worth of data; refer to RFP Appendix 7.5 (Data Quality Spreadsheet).

#### A.11. Contractor Quality Assurance Program

- a. The Contractor shall establish, use, document, and otherwise maintain professionally and technically sound quality assurance standards for the DSS with prior approval of the State.

- b. The Contractor shall be able to provide audit trails to identify the parties and origination of errors for corrections when identified.
- c. Check/data for reasonableness and accuracy by trend and variance analysis.
- d. The Contractor shall correct any errors at no additional cost to the State; and within twenty (20) Business Days from either State or Contractor's identification of the error.
- e. The Contractor shall distribute no less than annually a DSS satisfaction survey tool to all State personnel with access to the DSS. This survey will allow the State to rate satisfaction levels with the DSS and also voice concerns about any system issues. The Contractor shall send the State a report outlining the results of the survey and actions taken to address the State's concerns. See RFP Appendix 7.8 (System Satisfaction Survey Report) and Contract Attachment C.7.

#### A.12. DSS Specifications

The Contractor is required, during the Term, to provide the following capabilities and functionality through the DSS consistent with the data provided by the State and the TPAs. The Contractor shall design, develop, and operate a single customized, fully integrated DSS. The system must deliver application functionality and associated services through a network (including cloud capabilities) to the State. The DSS should be completely operational and ready for State use at least one (1) month prior to the Go-Live. The DSS is required to:

- a. DSS User Availability
  - (1) Allow on-line access to a minimum of five (5) complete calendar years of Paid Claims Data and sixty (60) months of complete Incurred Claims Data.
  - (2) Allow users full independent drill down query and analysis capabilities of the DSS, with the ability to generate user-developed reports as well as use Contractor's pre-developed or pre-packaged reports for use as is or as templates for alteration.
  - (3) Allow straightforward exporting and importing of data in multiple format types.
  - (4) Allow sub-setting of data on various levels to provide flexibility in analysis and reporting and also include custom subsets that allow for drill-down to state-specific levels of detail outside the Contractor's prepackage software.
  - (5) Allow data matches against other databases, including but not limited to State databases.
  - (6) Allow the inclusion of custom or State-specific fields and/or categories up to 250 (two hundred fifty) at no additional charge to the State.
  - (7) Allow statistical analysis such as sum, frequency distribution, mean, mode, variance, standard deviation, co-efficient of variation, minimum and maximum values, percentile rankings, and other statistical values.
  - (8) Allow ad hoc reporting capability with graphic presentation ability (i.e., the ability to take report results and create custom bar, column, pie and other charts).
  - (9) Allow the ability to maintain, track, and connect enrollment and claims associated with participants in chronic condition programs, population health programs or other specific programs to medical, pharmacy and mental health data.
  - (10) Allow rapid data investigation, transformation, linking, aggregation, and unstructured ad-hoc queries.
  - (11) Allow data to be reported on both an Incurred and Paid basis.
  - (12) Allow for denied claims to be loaded into DSS for CAA compliance.
- b. DSS Ability to Transform and Align Data
  - (1) Connect all claims related to a hospital admission.

- (2) Connect all claims related to inpatient and outpatient episodes of care consistent with the Contractor's definition of episodes of care.
- (3) Connect all eligible dependents with contract holder.
- (4) Connect eligibility data to Claims Data.
- (5) Connect medical Claims Data to pharmacy Claims Data by individual, family, and sub-groups.
- (6) Provide cross-links to all participant and provider demographic and geographic indicators.
- (7) Provide cross-links to all claims related to Ambulatory Surgical Centers ("ASC"), and outpatient hospital surgical settings reimbursed on an ASC basis.
- (8) Provide breakout of all outpatient prescription drug data by name and code using National Drug Code ("NDC") therapeutic groups, therapeutic classes, Generic Product Identifier ("GPI"), and GPI subgroups (both number value and name), as well as whether a drug is classified as a generic, brand, etc.
- (9) Connect medical, pharmacy, EAP/BHO, population health, biometric, and chronic condition management data by Member.
- (10) Connect utilization by various lots of data such as actives, retirees, COBRA participants, plan type, plan group, etc. (defined by classes such as actives versus retirees/COBRA/Medicare eligible, etc.) and all other divisions of contract types (define employee coverage across eligibility variables), and Plans and agencies.
- (11) Provide claims information at the Member level and plan level, along with enrollment information, population health data, biometrics, and carve-out programs including pharmacy, behavioral health, population health, biometrics, substance use, and chronic condition management.
- (12) Connect Major Diagnostic Categories ("MDC") to inpatient cases and outpatient services.
- (13) Connect Diagnostic Related Groups ("DRG") to inpatient cases. Contractor shall provide information on the methodology used to group DRGs utilized during the Term.
  - i. The Contractor shall inform the State In Writing at least ninety (90) days prior to a DRG grouping change.
  - ii. In the event of any anticipated DRG grouper software change, the Contractor's written notification should also provide justification for the switch as well as the benefits of the switch/new software to the State.
- (14) Connect ICD-9 and/or ICD-10 codes based on the *State Physicians' Current Procedural Terminology*, at minimum 2021 Edition, or corrected, amended, or replacement of CPT, to inpatient and outpatient physician and hospital cases and outpatient medical services. CPT is copyrighted by the AMA and all notices of proprietary rights, including trademark and copyright in CPT must appear on all permitted back-up or archival copies made by the user; any printout or other output from the Electronic Media that contains any portion of CPT (other than that which would constitute fair use, internal reports and claim forms for specific patients and external reports distributed outside of your entity containing less than twenty (20) CPT codes and/or descriptions) will display the following:
  - i. CPT (latest available at <https://commerce.ama-assn.org/store/ui>) American Medical Association. All Rights Reserved.
  - ii. The year specified in the copyright notices must conform to future CPT updates.
- (15) Connect provider directory with specific identifiers such as the NPI, allowing for consistent reporting and provider identification across health plans (no provider "home grown" codes or provider identities allowed). Should include but not be limited to provider first and last name or facility name, address, city, state, zip, telephone number, hospital name, hospital identification number, hospital system (if applicable), address, city, state, zip, telephone number, etc.
- (16) Connect all information back to Data Source (TPA name, PBM name, etc.).
- (17) Connect Claims Data received to TPA and TPA independently of eligibility data.

- (18) Connect all codes based on content of any “National Correct Coding Policy” included is with the Centers for Medicare and Medicaid Services (“CMS”). Update all changes as released.
- c. DSS ability to compare, contrast, and evaluate all Plans’ participants as a book of business by (including but not limited to):
- (1) Contractor's Name or Data Source (e.g., CIGNA, BCBSTN, CAREMARK, OPTUM, etc.).
  - (2) Business Purpose (e.g., Medical, PBM, BHO/EAP, Population Health, etc.).
  - (3) Network (e.g., Narrow or Broad).
  - (4) High Cost and Low-Cost Provider (e.g., Provider and Network Type)
  - (5) Funding Type (e.g., Fund 51000 -State Retired, Fund 52000 -Local Ed Retired, Fund 53000 -Local Gov Retired, Fund 55000 - State Active & COBRA, Fund 56000 - Local Ed Active & COBRA, Fund 56000 - Local Ed Active & COBRA, Fund 59000 - Retired Med Sup).
  - (6) Division (State, Local Education, Local Government, Higher Education, Tennessee Plan (Medicare Supplement)).
  - (7) Member's home zip code(s)
  - (8) Employee status (e.g., Active, Retired, and COBRA).
  - (9) Member Coverage Type (e.g., Employee, Employee+Child(ren), Employee+Spouse, Employee+Spouse+Child(ren)).
  - (10) Plan Type (current plans are Premier PPO, Standard PPO, Limited PPO, CDHP/HSA) with unlimited ability to add more plan options in the future as needed due to plan changes.
  - (11) Plan Year (e.g., Plan Year 2021, Plan Year 2022).
  - (12) Budget Code – listing of all budget codes (current or past) with employees eligible for State sponsored Medical, EAP/BHO, population health, pharmacy, dental, vision, Medicare supplemental, and disability (STD/LTD) plans. Populate with both number value and name, respectively.
  - (13) Agency Code - State will provide agency codes and names for all State, Local Education and Local Government agencies participating in the Plans.
  - (14) Department ID – Listing provided by the State for all State, Local Education and Local Government agencies.
  - (15) Establish ID that is unique to each plan individual and would remain the same for this plan Member as long as they are enrolled in the Plans, regardless of employee status, health plan in which they are enrolled or agency/group for which they work.
  - (16) Establish ID that is unique to the subscriber (e.g., Contract holder, employee) and their associated dependents and would remain the same for this subscriber and their associated dependents as long as they are enrolled in the Plans, regardless of employee status, health plan in which they are enrolled or agency/group for which they work.
  - (17) Show the cost and use performance of specified physicians and hospitals. The DSS should allow for the adjustment of case-mix in providing accurate comparisons among providers.
  - (18) Differentiate the use of in-network and out-of-network services by Members.
  - (19) The specific negotiated payment discount arrangements (e.g., charge submitted, discount, amount allowed, Member share, plan pay out).
  - (20) All financial discount arrangement loaded directly from TPA data load files:
    - a. Charge Submitted (Med, Rx, and Med & RX)
    - b. Amount Allowed (Med, Rx, and Med & RX)
    - c. Copay (Med, Rx, and Med & RX)
    - d. Coinsurance (Med, Rx, and Med & RX)
    - e. Deductions (Med, RX, and Med& RX)
    - f. Out of Pocket (Med, Rx, and Med & RX)
    - g. Net Pay (Med, Rx, and Med & RX)
  - (21) Show the specific provider networks within multi-network programs.

- (22) For chronic condition management programs, be able to identify program participants and review their specific claims cost and utilization pre and post chronic condition management program enrollment.
- (23) Include cost utilization by disease, demographic, or other clinical designations.
- (24) Provide paid-date and incurred-date basis.
- (25) Provide information regarding drug claims including, front end deductibles, ingredient costs, dispensing fees, co-payments, coinsurance, and discounts off average wholesale price (AWP).
- (26) Break ambulatory facility services into ASC/ Ambulatory Payment Classification ("APC"), and/or Ambulatory Patient Group ("APG") codes/payment groups.
- (27) Create regional and national norms and have the capability for automatic (online) case-mix, age-sex and severity adjustments to ensure accuracy of analysis.
- (28) Enable use of benchmarking against comparable standards. Benchmarking data should be inclusive of Contractor's book of business further categorized by geographic region (North, South, etc.), industry levels, plan types, and service industry (e.g. state governments).
- (29) County (e.g., Shelby, Davidson, Hamilton).

d. DSS Ability for interactive data selection:

- (1) Allow user to define any portion of the database for use in reporting or modeling so that any database field can be used to define a subset, by removing or adding claims with specific values for a field.
- (2) Allow addition of claims or cases of individual/families present in a subset so that full courses or patterns of care may be analyzed.
- (3) Allow user to create a national or regional norm from a subset, save it, and use it for internal normative comparisons of employee locations, classifications, geographic areas, or other portions of the database. It shall also include the option to review definitions for all norms available on-line, including database norms and user created norms.

e. DSS/EIS Ability for interactive modeling capabilities-shall be able to perform the following functions:

- (1) Future Benefits Modeling - Have the capability to model future benefits changes such as Plan design, premiums, Deductible/Copay, addition/deletion of coverage, etc. to project potential financial effects of changes to the insurance program. The user must be able to specify factors for inflation, use pattern changes, population changes, fourth quarter carry over, retention rates, etc. The model should rely on actual claims experience and eligibility data.
- (2) Risk Adjustment Modeling - Have the capability to project different premium levels for Risk Adjustment. Be able to calculate the impact of Risk Adjustment selection on plan rates either via Diagnostic Care Group (DCG) or other similar nationally recognized methodology.
- (3) Physician and Hospital Network Model - Have the capability to profile the cost and use performance of specified physicians or hospitals. This model should automatically adjust for case-mix, providing accurate comparisons among providers. A quality measure should be based on the Centers for Medicare and Medicaid Services ("CMS") mortality statistics.

f. DSS/EIS The Contractor shall be able to provide reporting capability for monitoring and analytical and executive reporting which is graphically presented and easily exported for the following areas:

- (1) Third party claims administrators and/or insurers.
- (2) Providers such as physicians, hospitals, other health care providers, and provider networks.

- (3) Cost containment programs: drugs, variable deductibles, outpatient, and physician benefits.
- (4) Population Health program benefits to the health plan.
- (5) PBM.
- (6) Quality measures such as HEDIS reporting across a broad range of adult and children related variables.
- (7) Chronic condition management programs.
- (8) Fraud, waste, and abuse.
- (9) Duplicate claims.
- (10) Paid Claims.
- (11) Incurred Claims.

A.13. Custom/Ad-Hoc and Standard Reporting Specifications

- a. DSS must provide a mechanism for creating user-designed reports.
- b. DSS must contain a custom reporting module to enable the State to create custom ad hoc report formats and select fields to be included in the reports with the following minimum options:
  - (1) Tabulate the values of various fields of information against other fields (for example, tabulation of submitted charges, discounts provided, allowed amounts, Deductibles, Copayments, Coinsurance, payments, and average charge per case by age group of the patient) and tabulate values of one field by multiple ranges or another field (e.g., tabulation of total payments by location and by dependent status).
  - (2) Ability to use eligibility and claims cost data to provide PMPM, PMPY, PEPM, and PEPY measurements for various topics (e.g., net payment, allowed amount, net cost drugs, net cost inpatient hospital, net cost professional care).
  - (3) Provide functionality to perform ad hoc reporting and on-line ad hoc queries from a PC when accessing the proposed database. The system must provide query and report development functions.
  - (4) Combine the above options with data sub-setting to provide ad hoc reporting flexibility.
  - (5) Ability to save and store user-defined subsets to a library or other source for use at a future time.
  - (6) Automatic online capability to calculate case-mix, age-sex and severity adjustments to ensure accuracy of analysis.
  - (7) Ad Hoc reporting exports should have all related Claims Data shown as connected (financial, diagnosis, or procedural data points) on one line.
- c. The Contractor shall provide a wide range of pre-defined reports such as clinical based reports, financial reports, incurred but not reported claims triangle reports, potential fraud, waste and abuse, cost containment opportunities and various cost and utilization reports to include both current and historical data.
- d. Capability to produce ad-hoc cost trend reports on inpatient and outpatient hospital, professional, or surgical charges/payments, in total, per case, per Member (per capita), or per employee. Must have trend reporting in components of total payments such as Deductibles, Copayments, and cost-of-benefit.
- e. Capability to produce ad-hoc reports on submitted charges, discounts provided, disallowed amounts, Deductibles, Copayments, Coinsurance, total, etc., at both allowed amount and net amount levels.
- f. Capability to generate ad-hoc trending reports based on currently loaded incurred and/or paid data to allow for estimates for future periods.

- g. Capability to produce ad-hoc utilization trend reports on admissions or services, average length of stay, days of care, numbers, and settings (inpatient/outpatient/physician office) of surgical cases.
- h. The Contractor shall provide an executive dashboard which can be customized for the State.
- i. Capability to generate TPA evaluation reports on cost-of-benefits savings, pricing reductions, and claims lag with normative comparisons.
- j. Capability to provide ad-hoc clinical evaluation reports with normative comparisons to:
  - (1) Show Inpatient use and cost by Major Diagnostic Category (MDC) and Diagnosis Related Group (DRG).
  - (2) Show outpatient use and cost by MDC, treatment group, service type and provider type.
  - (3) Provide physician use and cost by ICD-9 and/or ICD-10.
  - (4) Generate ambulatory surgery reports to compare cost effectiveness of inpatient, outpatient, and physician office surgeries.
  - (5) Produce outpatient hospital and ambulatory surgical facility reports by APC, APG, and/or ASC codes. (Contractor must clarify which of these classification systems are supported during implementation).
  - (6) Provide the capability to link all pharmaceutical, medical, chronic condition management, case management, behavioral health, population health and biometric data at the Member level.
  - (7) Generate provider reports on cost, use, and quality performance of physicians, hospitals, and ancillary services on an inpatient or outpatient basis, ranked by selected criteria.
  - (8) Produce location evaluation reports for cost and use statistics by employee location (e.g., plan, department, agency, geographic location,).
- k. Provide individual/family evaluation reports on:
  - (1) Cost and utilization for high-cost Members and contracts and distributions of costs and services by Member and by contract.
  - (2) Identification of high-cost contract or Members by unique contract ID number or unique Member ID number.
  - (3) Provide quality of care evaluation reports to include:
    - i. Data on outliers, readmissions, complications of treatment, tracer conditions, nosocomial infections, and deaths, by provider, in total, or per case.
    - ii. Agency for Healthcare Research and Quality ("AHRQ") or related nationally recognized indicators.
    - iii. HEDIS or similar nationally recognized quality measurement standards.
- l. Financial management reports on the breakdown of Member and plan payments by Plan, month, source of payment, and by service type. The reports must also show monthly and quarterly trends over time based on the date the claims were paid as well as ability to produce claims triangles in order to determine Incurred and Paid Claims.
- m. Financial management reports providing year to year analysis on cost drivers (i.e., volume and price) by plan on an incurred and paid basis.
- n. Produce referral information with the ability to examine in-plan and out-of-plan referral patterns by:
  - (1) Type of referral.
  - (2) Specialty of servicing physician (primary and secondary specialties).

- (3) Primary care physician's area of practice (such as Internal Med, Peds, Family Practice, etc.).
  - (4) Primary care physician's region of practice (such as zip code, county, etc.).
- o. Generate utilization and trend reports on drug data by brand, generic substitutes, and generics and be able to link this to medical claims as necessary.
- p. Provide pharmacy industry reference data (e.g., Redbook, First Databank, Medi-Span) to support analysis by therapeutic group and class, comparisons to various published prices (average wholesale price, national average drug acquisition cost, etc.) by drug name and NDC code, assessment of generic equivalents, etc. State shall have the ability to look up drug names by actual drug name or product name within the database and be able to report on these as such.
- q. Provide reports addressing the quality of data provided by the TPAs and the PBM indicating comparisons to industry norms.
- r. At the State's request, provide examples of standard reports and a description of each report along with a reconciliation matrix of how reports relate to one another for user reference.
- s. Allow for denied claims information by TPA.

A.14. Consulting and Analytical Support

- a. Provide consulting and analytical/technical support needed to accomplish all the various objectives and components expressed in the Contract at no additional cost to the State.
- b. The State may, at its sole discretion In Writing to the Contractor, request additional consulting and analytical support for the DSS, but which are beyond that required in this Contract, **PROVIDED THAT** all such additional consulting requested and performed pursuant to this Contract Section, without a formal amendment of this contract, shall be remunerated in accordance with and further limited by Contract Section C.3.d.
- c. After receipt of a written request from the State for consulting, the Contractor shall respond to such request with a written proposal for providing the additional service immediately but in no event more than five (5) Business Days later. The proposal shall define (i) the expected schedule for additional service performance, (ii) the maximum number and type of person hours required for the additional consulting, and (iii) the maximum cost for performing the additional consulting. The maximum cost to the State for the additional service performance shall be determined by multiplying the maximum number of person hours required by the hourly rate detailed for additional consulting and analytical support in Contract Section C.3.d.
- d. If approved by the State In Writing, the proposal provided by the Contractor shall be incorporated as a part of this Contract. The Contractor shall not perform any additional consulting service until the State has signed the Contractor's proposal.
- e. Subsequent to State approval, the Contractor shall provide the additional consulting services required. The State will be the sole judge of acceptable completion of all additional Specialized Consulting and, upon such determination, shall provide approval In Writing and thereby make such service eligible for remuneration by the State.
- f. For each additional consulting and analytical support proposal requested and approved by the State, the State shall be liable to the Contractor only for the cost of the actual person hours worked to perform the additional service, not to exceed the maximum cost for the additional service detailed by the approved proposal for said service. In no

instance shall the State be liable to the Contractor for the cost of any person hours worked in excess of the maximum person hours or any amount exceeding the maximum cost as detailed by the approved proposal for said service.

A.15. Staffing Requirements

- a. The Contractor warrants and represents that all persons assigned to this Contract shall be fully qualified to perform the work required herein.
- b. The Contractor shall identify the executive and professional personnel who will be assigned to this project and state their duties and responsibilities. Resumes shall be provided that include, for each individual identified, the relevant experience in the area of the project they will undertake. Resumes of technical consulting and analytical personnel should include experience in the development language and environment of the systems proposed.
- c. The Contractor shall designate a senior account representative/account manager, junior account representative, and senior data analyst to be responsible for day-to-day inquiries and technical support for the State. These identified personnel must be accessible by both email and phone to State personnel, Business Days between the hours of 8:00 a.m. – 4:30 p.m. CST. The Contractor shall also ensure that any State-initiated contact not immediately answered be responded to within twenty-four (24) hours of the initial contact attempt. The response shall be in the form of a personal email, not auto generated, or phone call from any of the three (3) Contractor personnel listed above.
- d. The Contractor shall ensure that its personnel engaged in this Contract receive initial and ongoing training regarding all applicable requirements of this Contract and the Plans, receive comprehensive orientations and training regarding their functions, are knowledgeable about the Contractor's operations relating to the Plans, and are knowledgeable about their functions and how those functions relate to the requirements of this Contract.
- e. The Contractor shall have an ongoing assigned, full-time account team, as specified in the Contractor's Proposal in response to RFP #31786-00169 and approved by the State, which can provide daily operational support as well as strategic planning and analysis. All members of the account team shall have previous experience administering DSS/EIS for large employers. The account team shall be available for consultation with the State during the hours of 8:00 a.m. to 4:30 p.m. CT, Business Days, as required to fulfill the scope of services of this Contract. The senior account representative/account manager shall also be available via cell phone and email after Business Day hours, including weekends.
- f. The Contractor shall designate a full-time account manager as a member of the account team. The account manager shall have a minimum of three (3) years of experience with decision support systems. He or she shall have the responsibility and authority to manage the entire range of services specified in this Contract and shall respond promptly to changes in procedures, or general administrative problems identified by the State. At a minimum, the account manager shall meet with the State once a month and more often if required by the State. At its discretion, the State may allow the Contractor to participate in such meetings by teleconference or virtually.
- g. The State shall have the right to approve or disapprove the Contractor's key personnel assigned to this Contract, approve, or disapprove any proposed changes in key staff or to require the removal or assignment of any key Contractor employee or subcontractor personnel found unacceptable by the State at any time during the Term, without exception.

- h. Key personnel commitments made in the Contractor's proposal shall not be changed unless prior approved by the State In Writing. The Contractor shall notify the State at least thirty (30) Business Days in advance, or as soon as the information is available, of proposed changes and shall submit justification (including proposed substitutions) in sufficient detail regarding education and experience equal to previous staff to the State to evaluate the impact on the Contract.
- i. If any key position becomes vacant, the Contractor shall provide a replacement with commensurate experience and required professional credentials within sixty (60) days of the vacancy unless the State grants an exception to this requirement In Writing.
- j. The Contractor shall survey the DSS users annually in January to determine the State's satisfaction with the account team and report the results of the survey to the State (Contract Attachment C.1.).
- k. Status updates for continued compliance to be held through the Term. Monthly meetings will be by phone or virtually to address updates to the State, account management team, and any deliverables. At the State's discretion, quarterly meetings will be in person at the State or virtually to discuss planning and DSS updates, upgrades and changes.
- l. The Contractor shall provide the required Specialized Consulting and analytical support in accordance with the following professional designations and descriptions:
  - (1) **Account Client Services Director** – manages the relationship between the State and Contractor and is responsible for the quality of that relationship. The client services director also leads the team that supports the State's use and application of the DSS to identify opportunities to better manage the cost and quality of the healthcare services provided to the State's plan participants. The account client services director is responsible for ensuring that the State is entirely satisfied with the services, products, and solutions provided to the State.
  - (2) **Client Services Manager** – is responsible for the day-to-day activities related to the ongoing support for the State relationship. The client services manager provides leadership on consulting engagements and collaborates with team members to ensure effective integration with consulting and service delivery capabilities. The client services manager also monitors and manages DSS user satisfaction and recommends appropriate strategies, tactics and operational initiatives to continuously enhance customer satisfaction.
  - (3) **Analytic Manager** –provides expertise for both clinical and statistical data analysis using the DSS and actively participates in the identification of business needs, as well as the design of the database and reports to support those business needs. The analytic manager develops an analytic agenda to support the State's strategic objectives, scoping and pricing analytic projects to manage project delivery time and ensure deliverables of the highest quality. In addition, the analytic manager translates analytic work to proactively assist the State and answer related questions.
  - (4) **Data Manager** – responsible for communicating data requirements and making certain data is submitted and formatted in a manner that will meet the State's analytic needs. In addition, the data manager coordinates routine updates with the Contractor's production team and the State. The data manager also communicates any database changes that occur with version upgrades and helps the State plan for any extract changes made to address new reporting needs.
  - (5) **Data Analyst/Programmer** – provides analytic support and expertise for both clinical and statistical data analysis using DSS. The data analyst/programmer actively participates in the identification of business needs, as well as the design of the database and reports to support those business needs. The data analyst/programmer can either support the State's users in use of DSS or

perform the analytic work themselves, depending on the State's needs and the sophistication of their users.

A.16. Initial Training

- a. The Contractor shall provide complete initial DSS training, at the State's offices, at the Contractor's offices, or virtually based on the State's preference, by a qualified trainer with at least two (2) years of experience in training in the DSS to be utilized by the State. The cost of said training shall be borne by the Contractor, including, if applicable, a reimbursement of any travel expenses and a waiver of any required registration fees. Training shall be for twelve (12) designated State employees and cost of training and waiver of any required registration fees for up to two (2) actuarial contracted representatives, or contracted representatives. Initial training schedule shall provide for the completion of training at least one (1) calendar month prior to Go-Live and shall include the following:
  - (1) Course outline including objectives, scope, and subject material to be taught.
  - (2) Hands-on detailed applications training with emphasis on user generated reporting.
  - (3) Use of DSS and distribution of individual user manuals and related documentation for each user.
  - (4) Course material to include manuals and texts necessary for training which shall be retained by each attendee.
  - (5) Hands-on detailed applications training with emphasis on executive level, user generated reporting, system access, and standard reports, graphing, and trending capabilities available in the EIS portion of DSS.

A.17. Ongoing Training

- a. As requested by the State but no more than annually, the Contractor shall provide training, to at least four (4) current State users, for the purpose of enhancing their knowledge of the systems applications and functionality. The cost of this training shall be borne by the Contractor, including a reimbursement of any State travel expenses and a waiver of any required registration fees.
- b. As requested by the State, but no more than annually, the Contractor shall provide at no cost to the State, training to at least two (2) new State users on the DSS system, to account for State turnover and/or additional new staff.
- c. The Contractor shall make provisions for annual registration for attendance by two (2) State DSS users to attend any Contractor conference training designed to enhance the knowledge and analytical skills of DSS users. The Contractor will waive, or reimburse the State for, any registration fees incurred by the State's staff to attend these conferences.
- d. The Contractor shall provide the State with any training necessary for updates or changes in the DSS at no additional charge.

A.18. Project Implementation

- a. The Contractor is responsible for implementing the DSS during the implementation period commencing with the Effective Date and through all identified dates in Contract Section A.19.

- b. The Contractor's programs, services and systems, shall be fully operational on the applicable dates specified in Contract Section A.19. (See also Contract Attachment C.3.) All of programs, services and systems in this Contract shall be operational by Go-Live.
- c. The Contractor shall implement the Information Systems and other processes required to perform all services described herein.
- d. The Contractor shall have a designated full-time implementation team to service this account. All of the Contractor's implementation team members shall have participated, as team members, in the implementation of a DSS for at least one (1) other large employer (i.e., an employer plan with at least 30,000 members). The Contractor's implementation team shall include a full-time, assigned project manager ready to begin work immediately following the Effective Date until thirty (30) days after Go-Live. The team shall also include an account manager Dedicated to this Contract, who will be the main contact with the State for all of the day-to-day matters relating to the implementation and ongoing operations of this Contract. Also, the Contractor shall assign a project coordinator (i) to serve as backup to the account manager and (ii) to coordinate activities among the Contractor and the State's existing contractors and all the internal and external participating and affected entities. All implementation team members that the Contractor referenced in its proposal response to RFP #31786-00169, Attachment 6.2, Section C.25 shall be available as needed during the implementation as well as thirty (30) days after Go-Live.
- e. All key Contractor project staff shall attend a project kick-off meeting either virtually or at the State of Tennessee offices in Nashville, TN within the first twenty-one (21) days after the Effective Date. It is at the State's discretion as to whether the project kick-off meeting will be virtual or in person.
- f. At least seventy-five (75) days prior to Go-Live, the Contractor shall complete testing of the transmission, receipt, and loading of the eligibility/enrollment files from the State. No later than one (1) month prior to Go-Live, the Contractor shall certify In Writing to the State that the Contractor understands and can fully accept and utilize the eligibility/enrollment files as provided by the State specified in Contract Section A.19.
- g. At least forty-five (45) days prior to Go-Live, the Contractor shall complete testing of the transmission, receipt, and loading of the data files from the State's TPAs. No later than one (1) month prior to Go-Live, the Contractor shall certify In Writing to the State that the Contractor understands and can fully accept and utilize the data files as provided by the State's TPAs. (See Contract Attachment B.4.)
- h. The Contractor shall provide a project implementation document to the State no later than thirty (30) days after the Contract Effective Date. The Contractor shall maintain the plan and ensure that it is updated at least daily. The plan shall be in a Microsoft Excel or Microsoft Project-formatted file and shall be made available to State DSS users as it is updated or upon the State's request.
- i. The project implementation plan shall comprehensively detail all aspects of implementation, which includes all tasks with deliverable dates necessary to satisfactorily implement all pieces of the DSS as specified in Contract Section A.19.4 The plan shall also include a description of the members on the implementation team and their roles with respect to each item/task/function. The plan shall include a detailed timeline description of all work to be performed both by the Contractor and the State. The implementation plan shall also provide specific details on the following:
  - (1) Identification, timing, and assignment of significant responsibilities and tasks.
  - (2) Names and titles of key implementation Contractor staff.
  - (3) Identification and timing of the State's responsibilities.
  - (4) Data requirements (indicate type and format of data required).

- (5) Identification and timing for the testing, acceptance, and certification of exchange of data between the Contractor and Edison and other relevant information
  - (6) Schedule of meetings, both onsite and virtually, with the State; and
  - (7) Transition requirements with the incumbent DSS Contractor.
- j. The Contractor's implementation plan shall require approval In Writing by the State by the date specified in Contract Section A.19.4.
  - k. The Contractor shall provide for a comprehensive Operational Readiness Review by the State, and/or its authorized representative, at least thirty (30) days prior to Go-Live as specified in Contract Section A.19.5. The review by the State, and/or its authorized representative, may include, but not be limited to, an onsite review of the Contractor's operational readiness for all services required in this Contract (e.g., reporting requirements, EIS, training, data integration, acceptance of the state's enrollment file, and quality assurance report templates). The review may also include desk reviews of documentation that includes but is not limited to:
    - (1) Policy and Procedures Manual(s);
    - (2) Information Systems documentation and business logic the Contractor plans or determines as the internal method for storing data; and
    - (3) The ability to provide and explain the processes of any and all deliverables required under this Contract.
  - l. At its discretion, the State or its authorized representative may conduct an additional, pre-implementation review/audit of the Contractor's progress towards fulfilling the requirements of this Contract at the cost of the Contractor. Such review by the State, and/or its authorized representative, may include both onsite, virtual, and desk reviews, including but not limited to staff interviews, DSS demonstrations, DSS testing, and document review.
  - m. During any pre-scheduled State onsite visit as part of readiness review or an implementation review/audit, the Contractor shall provide onsite workspace and access to a telephone, fax, printer, copy machine, computer, and Internet connection. The Contractor's staff members shall be available to the State officials to answer questions during these visits.
  - n. In a format determined by the State, the Contractor shall conduct status meetings with the State concerning project development, project implementation and Contractor performance at least once a week during implementation and for the two (2) weeks prior to and the first month following Go-Live, unless otherwise approved by the State In Writing.
  - o. No later than forty-five (45) days post-implementation, the Contractor shall provide the State with an implementation performance assessment survey, to be completed by the State and results provided to the Contractor. This assessment will be used to document the State's satisfaction with the implementation process and identify any necessary corrective action(s). (See Contract Attachment C.4.)

**A.19. Due Dates for Project Deliverables/Milestones**

Unless otherwise specified In Writing by the State, the Contractor shall adhere to the following schedule for the deliverables and milestones for which it is responsible under this Contract:

<b>Deliverables/Milestones:</b>	<b>Contract Reference(s):</b>	<b>Deliverable Due Dates &amp; Milestone Target Dates:</b>
<b>Implementation</b>		

	<b>Deliverables/Milestones:</b>	<b>Contract Reference(s):</b>	<b>Deliverable Due Dates &amp; Milestone Target Dates:</b>
1.	Programs, service, and information systems are fully operational	A.12.	April 30, 2025
2.	Go-live	A.12.	May 1, 2025
3.	Kick-off meeting for all key Contractor staff	A.18.e	Within the first 21 days after the Effective Date
4.	Implementation plan	A.18.j	30 days after the Effective Date (on or before)
5.	State readiness review	A.18.k	April 1, 2025 (on or before)
6.	Weekly Status Meetings	A.18.n	Effective, through January 31, 2025.
7.	Implementation Performance Assessment	A.18.o	June 30, 2025 (on or before)
<b>Quality Assurance Program</b>			
8.	Data Quality Spreadsheet	A.10.c., A.20.c., Attachment C	Monthly and Quarterly after Go-Live.
9.	System Satisfaction Survey tool	A.11.e and Attachment C	No less than annually
<b>Coordination and Collaboration</b>			
10.	Monthly Operational Meetings	A.15.f and k	Monthly after Go-Live
11.	Quarterly meetings with the State	A.15. k.	Quarterly after Go-Live
<b>Staffing</b>			
12.	Account Team Satisfaction Survey	A.15.j	Annually in January
13.	Account Team Satisfaction Survey Report	A.15.j and Attachment C.1	Annually
<b>Information Systems</b>			
14.	BC-DR Test Results	E.d.1	April 1, 2025
15.	Business Continuity/Disaster Recovery (BC-DR) Results Report	E. 9.d(2) and Attachment C.2	April 1, 2025, and then annually in January beginning in 2026
16.	Duplicate set of data records	E.9.d(2)	Daily, and maintain for sixty (60) days from date of creation.
<b>Data Integration &amp; Technical Requirements</b>			
17.	Completion of eligibility file testing	A.18.f	March 1, 2025 (on or before)
18.	Eligibility file acceptance (Written verification that Contractor can fully accept and utilize the eligibility/enrollment files as provided by the State)	A.18.f	May 1, 2025 (on or before)
19.	State enrollment data match	A.4.d	Up to four (4) times annually, as requested by the State
20.	Completion of testing files from other contractors	A.18.g	March 28, 2025 (on or before)

	<b>Deliverables/Milestones:</b>	<b>Contract Reference(s):</b>	<b>Deliverable Due Dates &amp; Milestone Target Dates:</b>
<b>21.</b>	Interface with other contractors/file acceptance to also include incumbent.	A.18.g	April 1, 2025
<b>22.</b>	Transmission of data and records to the New Contractor or receipt of data records from the incumbent.	A.7.c	Within 60 days' notice of contract termination or end of the Term
<b>Reporting &amp; Systems Access</b>			
<b>23.</b>	Reports specified in Contract Attachment C	A.3 to A.20 and Contract Attachment C	As specified in Contract Attachment C
<b>24.</b>	EIS & Reporting system access	A.12.	April 1, 2025 (on or before)
<b>25.</b>	State staff systems training	A.16.	April 1, 2025 (on or before)
<b>26.</b>	Maintenance & Operation Plan	A.20 and Contract Attachment C	April 18, 2025 (on or before), & upon any plan revisions

A.20. Project Management Plan for Maintenance & Operations

- a. The Contractor is responsible for providing the State with a detailed maintenance and operations ("M&O") plan report (See Contract Attachment C.3). M&O commences on the date of full DSS functionality, no later than May 1, 2025.
- b. On the date of the implementation kick-off meeting, M&O shall include a project organizational chart depicting the interrelationships and responsibilities between the Contractor's staff and its subcontractors including reporting relationships.
- c. M&O plan will address the following requirements:
  - (1) The Contractor will have the qualified staff as listed in Contract Section A.15.
  - (2) Contractor staff will be readily available by phone during BA's normal operating hours to assist users in the use of the DSS, including all features, functions, and capabilities at no additional cost to the State. These staff shall be qualified to assist in (1) providing practical training, (2) solving particular problems, and (3) assist in running reports requiring additional functionality.
  - (3) The Contractor staff will be readily available to assist the users in operating the DSS to study and research particular issues or problems. This would include walking the user through given steps to complete the task and suggesting alternative solutions.
  - (4) The Contractor staff will assist the users in understanding the meaning of underlying health care data and information conveyed by the DSS and in understanding the practical uses of such data and information.
  - (5) The staff will assist users by suggesting new and alternative approaches in the use of the DSS system and health care data.
  - (6) The Contractor staff will assist users in utilizing the DSS to view or present the data and information in alternative ways. Consulting and analytical support are an integral and critical component of the services being requested from the contractor.
  - (7) The Contractor shall provide the necessary staff to address routine inquiries, prepare reports, and work with the State's staff on a continuing basis to assist staff in fully utilizing the DSS capabilities.

- (8) The Contractor is expected to routinely review State's data and provide detail reports and advice/suggestions regarding areas where additional analysis may be warranted, reduction of costs may be identified.
- (9) The Contractor will review Claims Data trends as appropriate.
- (10) The Contractor will provide the State with a monthly status report no later than fifteen (15) days after the close of each month as well as a quarterly status report no later than fifteen (15) days after the end of a quarter.
- (11) The Contractor will hold an annual meeting with the State to review results, trends, opportunities.
- (12) The Contractor will notify the State In Writing in advance of any and all changes including, but not limited to, staffing, system, operational or process changes affecting the DSS.

A.21. Audit Authority

- a. Upon thirty (30) days' notice In Writing and the establishment of applicable third-party confidentiality agreement(s), if any, reasonably required by the Contractor, the State and/or its representative shall have the right to examine and audit the Contractor services and pricing to ensure compliance with all applicable requirements. For the purpose of this requirement, the term, "Contractor," shall include its parent organization, Affiliates, subsidiaries, and subcontractors.
- b. The State has sole authority to determine who to choose for any kind of audit related to the services contained in the Contract. This includes, but does not limit the selection to, state employees, state employees from the Comptroller's audit staff, and BA's consulting firm.
- c. If the State contracts with a private entity (non-state employees) to conduct an audit of the Contractor, the State will require the auditing entity to negotiate a reasonable confidentiality agreement with the Contractor. The Contractor shall not attempt to limit the State's audit rights in any way or timeframe; the State in its sole authority and with execution of any confidentiality document shall be allowed to audit the Contractor on any contracted service, data processing, customer service, or any other provision of this Contract by whomever the State in its sole authority deems appropriate.
- d. In no instance shall the Contractor advise the State that one set of auditors is appropriate while another set is not. In addition, the State may audit or re-audit any time period in accordance with the timeframe for audits listed in Contract Section D.11. Previous audits of a set of data, time periods, or any other sort of audit does not negate the State's right to re-audit the same information again later. There shall be no audit blackout periods at any point during a year and any charges or fees in any form for any audits that the State chooses to exercise.
- e. The Contractor shall provide access, at any time during the Term and for five (5) years after final contract payment (longer if required by law), to the State and/or its representative to examine and audit Contractor services, payments, and pricing pursuant to this Contract. The State reserves the right to request that documentation be provided for review at the representative's location, the State's location, or at the Contractor's corporate site.
- f. The Contractor shall, at its own cost, provide the State and/or its representative with prompt and complete access to any data, data extracts, documents, access to systems, and other information necessary to ensure Contractor compliance with all requirements of this Contract.
- g. The Contractor shall provide reasonable cooperation with requests for information, which includes but is not limited to the timing of the audit, deliverables, data/information requests and the Contractor's response time to the State's questions during and after

the process. The Contractor shall provide written responses to all 'findings' received during the audit process to assist in clarification and suggested resolutions. The Contractor shall also provide a formal audit response within thirty (30) days of the audit conclusion, or at a later date if mutually determined with the State to be more reasonable based on the number and type of findings.

- h. The Contractor shall fund the following audits which shall be conducted by a qualified organization or representative chosen by the State and the scope of the audit shall be defined by the State:
  - 1) A pre-implementation audit to review, at a minimum, whether the Contractor's DSS is configured according to the State's specifications.
  - 2) An operational audit focusing on, at a minimum, staffing and quality assurance programs; and
  - 3) Any follow-up audits if significant deficiencies, as determined by the State, are noted.
- i. The State shall not be responsible for time or any costs incurred by the Contractor in association with an audit including, but not limited to, the costs associated with providing data, reports, documentation, systems access, or space.
- j. If the outcome of the audit results in an amount due to the State, the Contractor shall pay the amount due within (30) thirty days of final audit report notification from the State. Any amount due the State which is not paid within (30) thirty days of the final audit report will be deducted from the total amount due from the fees due to the Contractor pursuant to C.3 and C.7 until the full amount due is paid. If the Contractor disagrees with a finding resulting in a payment to the State, the State will review the Contractor's comments, but if the State retains the original audit findings the Contractor will be responsible for any payment to the State

A.22. 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.23. 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 November 1, 2024 ("Effective Date") and extend to December 31, 2028 ("Term"). 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 two million eight hundred thousand dollars (\$2,800,000) ("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 implementation fee shall include all existing data uploads from the State and the State's contractors. The Contractor shall be compensated a one-time implementation fee as shown on the table below:

Service Description	Amount
<b>Implementation Fee</b> (One-time fee and shall be paid once implementation is complete and accepted by the State.)	\$0.00

- c. For the duration of the Contract, following the implementation, the Contractor shall be compensated for said units, milestones, or increments of service based on the following payment rates:

Service Description	General Fee				
	CY 2024	CY 2025	CY 2026	CY 2027	CY 2028
General Fee <sup>1</sup>	0.13	0.13	0.14	0.14	0.15

- d. **Professional Service Fees.** The Contractor shall be compensated for the additional consulting and analytical support as requested and performed pursuant to Contract Section A.14.c based upon the following payment rates.

Service Description <sup>2</sup>	CY 2024	CY 2025	CY 2026	CY 2027	CY 2028
Account Client Services Director	\$310.00/per hour	\$313.10/per hour	\$316.23/per hour	\$319.39/per hour	\$322.59/per hour
Client Services Manager	\$250.00/per hour	\$257.50/per hour	\$265.23/per hour	\$273.18/per hour	\$281.38/per hour
Analytic Manager	\$250.00/per hour	\$257.50/per hour	\$265.23/per hour	\$273.18/per hour	\$281.38/per hour
Data Manager	\$175.00/per hour	\$180.25/per hour	\$185.66/per hour	\$191.23/per hour	\$196.96/per hour
Data Analyst / Programmer	\$140.00/per hour	\$144.20/per hour	\$148.53/per hour	\$152.98/per hour	\$157.57/per hour

- C.4. **Travel Compensation.** The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.

- C.5. **At-Risk Performance Payments and SLA Scorecard.**

- a. The Parties shall conduct an assessment (Contract Attachment D), beginning after the Go-Live date, on a quarterly basis during the Term.
- b. Based on the SLA Scorecard, Contractor shall send the State an At-Risk Performance Payment (if applicable) quarterly (every three months) during the Term in accordance with Contract Attachment C. This payment is due within forty-five (45) calendar days of the quarterly SLA Scorecard assessment.

- C.6. **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:

Crissa Randolph  
Tennessee Department of Finance & Administration  
Benefits Administration Division  
William R. Snodgrass Tennessee Tower  
312 Rosa L. Parks Avenue, Suite 1900  
Nashville, Tennessee 37243

- a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):
  - (1) Invoice number (assigned by the Contractor).
  - (2) Invoice date.
  - (3) Contract number (assigned by the State).
  - (4) Customer account name: Finance and Administration, Division of Benefits Administration.

- (5) Customer account number (assigned by the Contractor to the above-referenced Customer).
- (6) Contractor name.
- (7) Contractor Tennessee Edison registration ID number.
- (8) Contractor contact for invoice questions (name, phone, or email);
- (9) Contractor remittance address.
- (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable.
- (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced.
- (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced.
- (13) Amount due for each compensable unit of good or service; and
- (14) Total amount due for the invoice period.

b. Contractor's invoices shall:

- (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C.
- (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed.
- (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
- (4) Include shipping or delivery charges only as authorized in this Contract.

c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section.

C.7. 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.8. 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.9. 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.10. 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:

Heather Pease, Director of Procurements and Contracts  
Tennessee Department of Finance & Administration  
Division of Benefits Administration  
312 Rosa L. Parks Avenue, Suite 1900  
Nashville, TN 37243  
[heather.pease@tn.gov](mailto:heather.pease@tn.gov)  
Phone: 615-917-4165  
Fax: 615-253-8553

The Contractor:

Merative US LP  
Attn: Eric Poston, Account Executive  
100 Phoenix Drive  
Ann Arbor, MI 48108  
Email: [eric.poston@merative.com](mailto:eric.poston@merative.com)  
Phone: 859-619-8532

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, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall provide written notice to Contractor specifying the Breach Condition. If within thirty (30) days of notice, the Contractor has not cured the Breach Condition, the State may 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 of this Contract by the Contractor 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 A, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the

State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.

- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
  - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
  - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
  - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted, and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the

State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.

- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.
- D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other prompt 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.
  - e. The Contractor shall not sell Plans Member information or use Member information unless it is aggregated blinded data, which is not identifiable on a Member basis.
  - f. The Contractor shall not use Plans Member identified or non-aggregated information for advertising, marketing, promotion or any activity intended to influence sales or market share of any product or service except when permitted by the State, such as advertisements of the Program for enrollment purposes.
  - g. The Contractor shall have full financial responsibility for any penalties, fines, or other payments imposed or required as a result of the Contractor's non-compliance with or violation of HIPAA or HITECH requirements, and the Contractor shall indemnify the State with respect to any such penalties, fines, or payments, including the cost of credit protection. At the request of the State, the Contractor shall offer credit protection for those times in which a Member's PHI is accidentally or inappropriately disclosed.
- D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired Member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the Member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired Member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.
- D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
  - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
  - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
  - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded, disqualified, or presently fall under any of the prohibitions of sections a-d.

- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers, or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.
- D.25. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 407.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:

- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments.
  - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes:
    - i. Contract Attachment A Attestation Re Personnel Used in Contract Performance;
    - ii. Contract Attachment B Performance Guarantees and Liquidated Damages.
    - iii. Contract Attachment C Reporting Requirements;
    - iv. Contract Attachment D SLA Scorecard; and
    - v. Contract Attachment E HIPAA Business Associate Agreement
  - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract.
  - d. the State solicitation, as may be amended, requesting responses in competition for this Contract.
  - e. any technical specifications provided to proposers during the procurement process to award this Contract.
  - f. the Contractor's response seeking this Contract; and  
any Contractor rules or policies contained in insurance policy filings by the Contractor with State regulators.
- D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101 et seq., addressing contracting with persons as defined at T.C.A. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.
- D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible or self insured retention ("SIR") over fifty thousand dollars (\$50,000) must be approved by the State. The deductible or SIR and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

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

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

The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

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

a. Commercial General Liability ("CGL") Insurance

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

b. Workers' Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:

- i. Workers' compensation in an amount not less than one million dollars (\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit by disease, and one million dollars (\$1,000,000) per employee for bodily injury by disease.
  - 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
    - i. The Contractor employs fewer than five (5) employees;
    - ii. The Contractor is a sole proprietor;
    - iii. The Contractor is in the construction business or trades with no employees;
    - iv. The Contractor is in the coal mining industry with no employees;
    - v. The Contractor is a state or local government; or
    - vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.
- c. Automobile Liability Insurance
  - 1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).
  - 2) The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars (\$1,000,000) per occurrence or combined single limit.
- d. Professional Liability Insurance
  - 1) 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:
    - vii. 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;
    - viii. 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
    - ix. 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.
  - 2) 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

- 3) 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.

e. Technology (Errors & Omissions, which includes network security) Insurance

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

f. Crime Insurance

- 1) The Contractor shall maintain crime insurance, which shall be written on a "loss sustained form" or "loss discovered form" providing coverage for third party fidelity, including cyber theft and extortion. The policy must allow for reporting of circumstances or incidents that may give rise to future claims, include an extended reporting period of no less than two (2) years with respect to events which occurred but were not reported during the term of the policy, and not contain a condition requiring an arrest or conviction.
- 2) Any crime insurance policy shall have a limit not less than one million dollars (\$1,000,000) per claim and one million dollars (\$1,000,000) in the aggregate. Any crime insurance policy shall contain a Social Engineering Fraud Endorsement with a limit of not less than two hundred and fifty thousand dollars (\$250,000). This insurance may be written on a claims-made basis, but in the event that coverage is cancelled or non-renewed, the Contractor shall purchase an extended reporting or "tail coverage" of at least two (2) years after the Term.

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

D.34 Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

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

- D.35. Boycott of Israel. The Contractor certifies that it is not currently engaged in, and covenants that it will not, for the duration of the Contract, engage in a Boycott of Israel, as that term is defined in Public Chapter No. 775.

**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. 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 #31786-00169 (RFP Attachment 6.2 Section B.15) and resulting in this Contract.

The Contractor shall assist the State in monitoring the Contractor's performance of this commitment by providing, as requested, a 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.3. Software License Warranty. Contractor grants a license to the State to use all software provided under this Contract in the course of the State's business and purposes.
- E.4. Software Support and Maintenance Warranty. Contractor shall provide to the State all software upgrades, modifications, bug fixes, or other improvements in its software that it makes generally available to its customers.
- E.5. 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.6. Additional lines, items, or options. At its sole discretion, the State may make written requests to the Contractor to add lines, items, or options that are needed and within the Scope but were not included in the original Contract. Such lines, items, or options will be added to the Contract through a Memorandum of Understanding ("MOU"), not an amendment.
- a. After the Contractor receives a written request to add lines, items, or options, the Contractor shall have ten (10) Business Days to respond with a written proposal. The Contractor's written proposal shall include:
    - (1) The effect, if any, of adding the lines, items, or options on the other goods or services required under the Contract;
    - (2) Any pricing related to the new lines, items, or options;
    - (3) The expected effective date for the availability of the new lines, items, or options; and
    - (4) Any additional information requested by the State.
  - b. The State may negotiate the terms of the Contractor's proposal by requesting revisions to the proposal.
  - c. To indicate acceptance of a proposal, the State will sign it. The signed proposal shall constitute a MOU between the Parties, and the lines, items, or options shall be incorporated into the Contract as if set forth verbatim.
  - d. Only after a MOU has been executed shall the Contractor perform or deliver the new lines, items, or options.

**E.7. Liquidated Damages.** If the Contractor fails to perform in accordance with any term or provision of this contract, only provides partial performance of any term or provision of the Contract, violates any warranty, or any act prohibited or restricted by the Contract occurs, ("Liquidated Damages Event"), the State may assess damages on Contractor ("Liquidated Damages"). The State shall notify the Contractor of amounts to be assessed as Liquidated Damages. The Parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for Contractor's failure to fulfill its obligations regarding the Liquidated Damages Event as these amounts are likely to be uncertain and not easily proven. Contractor has carefully reviewed the Liquidated Damages contained in Attachment B and agrees that these amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of a Liquidated Damages Event, and are a reasonable estimate of the damages that would occur from a Liquidated Damages Event. The Parties agree that the Liquidated Damages represent solely the damages and injuries sustained by the State in losing the benefit of the bargain with Contractor and do not include any injury or damage sustained by a third party. The Contractor agrees that the Liquidated Damages are in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or any other sections of this Contract.

The State is not obligated to assess Liquidated Damages before availing itself of any other remedy. The State may choose to discontinue Liquidated Damages and avail itself of any other remedy available under this Contract or at law or equity.

**E.8. 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. In accordance with the timeframe for audits listed in Contract Section D.11 and in consultation with the State, 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 seventy-two (72) hours after the Unauthorized Disclosure has come to the attention of Contractor's privacy office. Contractor shall take all necessary measures to halt any further Unauthorized Disclosures. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals whose PII was affected by the Unauthorized Disclosure. The Contractor shall bear

the cost of notification to all individuals affected by the Unauthorized Disclosure, including individual letters and public notice. The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to this State under this Contract or otherwise available at law. The obligations set forth in this Section shall survive the termination of this Contract.

E.9. 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 contiguous 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 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.
- (4) 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. The Contractor shall maintain a duplicate set of all records relating to this Contract in electronic medium, usable by the State and the Contractor for the purpose of Disaster recovery. Such duplicate records are to be stored at a secure fire, flood, and theft-protected facility located away from the storage location of the originals. The Contractor shall update duplicate records, at a minimum, on a daily basis and shall retain said records for a period of sixty (60) days from the date of creation.
- (5) In accordance with the timeframe for audits listed in Contract Section D.11 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.
- (6) Contractor must enter into a Business Associate Agreement (BAA) with the State.

b. Minimum Requirements

- (1) The Contractor and all data centers used by the Contractor to host State data, including those of all Subcontractors, must comply with the State's Enterprise

Information Security Policies as amended periodically. The State's Enterprise Information Security Policies document is found at the following URL:  
<https://www.tn.gov/finance/strategic-technology-solutions/strategic-technology-solutions/sts-security-policies.html>.

- (2) The Contractor agrees to maintain the Application so that it will run on a current, manufacturer-supported Operating System. "Operating System" shall mean the software that supports a computer's basic functions, such as scheduling tasks, executing applications, and controlling peripherals.
- (3) If the Application requires middleware or database software, Contractor shall maintain middleware and database software versions that are at all times fully compatible with current versions of the Operating System and Application to ensure that security vulnerabilities are not introduced.

c. Comptroller Audit Requirements

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

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

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

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

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

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

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

- i. Recovery Point Objective ("RPO"). The RPO is defined as the maximum targeted period in which data might be lost from an IT service due to a major incident: one (1) hour.
- ii. Recovery Time Objective ("RTO"). The RTO is defined as the targeted duration of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity: seventy-two (72) hours.

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

- e. The Contractor and any Subcontractor used by the Contractor to host State data, including data center contractors, shall 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") 2 Type II audit. The State shall approve the SOC audit control objectives shall include all five trust services principles. The Contractor shall provide the State with the Contractor's and Subcontractor's annual audit report within 30 days from when the CPA firm provides the audit report to the Contractor or Subcontractor in addition to periodic bridge reports as requested by the State, see Contract Attachment C, #6. 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 and 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 audits as they are included in the Maximum Liability of this Contract.

- E.10. Intellectual Property Indemnity. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all

legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.

- E. 11. Extraneous Terms and Conditions. Contractor shall fill all orders submitted by the State under this Contract. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this Contract shall contain any terms or conditions other than as set forth in the Contract. Any such extraneous terms and conditions shall be void, invalid and unenforceable against the State. Any refusal by Contractor to supply any goods or services under this Contract conditioned upon the State submitting to any extraneous terms and conditions shall be a material breach of the Contract and constitute an act of bad faith by Contractor.
- E.12. Survival. The terms, provisions, representations, and warranties contained in this Contract which by their sense and context are intended to survive the performance and termination of this Contract, shall so survive the completion of performance and termination of this Contract.

IN WITNESS WHEREOF,

MERATIVE US LP:

*Eric Poston*

Eric Poston (Oct 16, 2024 08:33 EDT)

10/16/2024

CONTRACTOR SIGNATURE

DATE

Eric Poston

Account Executive

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

STATE OF TENNESSEE,  
STATE INSURANCE COMMITTEE,  
LOCAL EDUCATION INSURANCE COMMITTEE,

LOCAL GOVERNMENT INSURANCE COMMITTEE:

*James E. Bryson*

10/14/2024

James E. Bryson, Commissioner of Finance & Administration

DATE

**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
EDISON VENDOR IDENTIFICATION NUMBER:	

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.

*Eric Poston*

[Eric Poston \(Oct 16, 2024 08:33 EDT\)](#)

---

**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.

**Eric Poston**

**Account Executive**

---

**PRINTED NAME AND TITLE OF SIGNATORY**

**10/16/2024**

---

**DATE OF ATTESTATION**

## LIQUIDATED DAMAGES FOR PERFORMANCE GUARANTEES

To effectively manage contractual performance, the State has established Liquidated Damages associated with the Contractor's obligations with respect to the Contract. The Contractor is expected to perform according to a certain level of standards. If these standards are not met, the State is entitled to impose liquidated damage assessments. Damages are included in this Attachment.

The Parties agree that the Liquidated Damages represent solely the anticipated damages and injuries sustained by the State in losing the benefit of the bargain with Contractor and do not include any injury or damage sustained by a third party.

**Payment of Liquidated Damages:** It is agreed by the State and the Contractor that any liquidated damages assessed by the State shall be due and payable to the State within forty-five (45) calendar days after Contractor receipt of the Invoice containing an assessment of Liquidated Damages. If payment is not made by the due date, the Liquidated Damages amount may be withheld from future payments by the State without further notice.

1. Implementation Plan	
Guarantee	The Contractor shall provide a project implementation plan that meets the requirements of Contract Section A.18.h. to the State no later than thirty (30) days after the contract start date.
Justification	The implementation plan is a critical portion of the implementation of a new contract and needed before starting implementation to ensure all aspects of implementation are enacted accurately and timely. This assessment calculates the potential impact of missed or inaccurate implementation milestones.
Assessment	One thousand dollars (\$1,000) for each day beyond the deadline that the plan is not provided to the State not to exceed to thirty thousand dollars (\$30,000).
Measurement	Measured, reported, assessed and paid no later than three (3) months after Go-Live as defined in Contract Section A.2.r.
2. Operational Readiness	
Guarantee	The Contractor shall resolve all findings identified by the State and/or its authorized representative during its Operational Readiness Review, as required in Contract Section A.18.k, prior to Go-Live as defined in Contract Section A.2.r.
Justification	Operational readiness review requires the Contractor and the State to investigate and navigate any potential issues, deadlines, and milestones leading up to Go-Live as defined in Contract Section A.2.r. and operations.
Assessment	Five thousand dollars (\$5,000) per finding if the standard determined during implementation is not met, not to exceed fifty-thousand-dollar (\$50,000).
Measurement	Measured, reported, assessed, and paid no later than three (3) months after Go-Live as defined in Contract Section A.2.r.
3. Initial Data Loading	
Guarantee	All data required for implementation as described in Contract Section A.4., shall be loaded correctly, utilizing the mutually accepted and validated format
Justification	The initial data load must accurately load ten (10) years of Claims Data. The five (5) most current years must be readily accessible upon Go-Live as defined in Contract Section A.2.r.
Assessment	Five thousand dollars (\$5,000) if the standard determined during implementation is not met, not to exceed twenty-five thousand dollars (\$25,000); five thousand dollars (\$5,000) per Business Day thereafter, not to exceed ten (10) Business Days and fifty thousand dollars (\$50,000).

Measurement	Measured, reported, assessed, and paid no later than two (2) months after Go-Live as defined in Contract Section A.2.r.
<b>4. Program Go Live</b>	
Guarantee	The DSS should be completely operational and ready for State use at least one (1) month prior to Go-Live, as defined in Contract Section A.2.r., in Contract Section A.19.2.
Justification	Program Go-Live, as defined in Contract Section A.2.r., is an imperative performance guarantee listed in the Contract. If there is a delay in this, the State is unable to provide quality assurance of vendor accountability as well as to not interrupt the State required reporting.
Assessment	Twenty-five thousand dollars (\$25,000) for each Business Day beyond Go-Live, as defined in Contract Section A.2.r., that services are not fully operational, not to exceed two-hundred fifty thousand (\$250,000).
Measurement	Measured, reported, reconciled and assessed no later than three (3) months after Go-Live as defined in Contract Section A.2.r.
<b>5. Data Availability to State</b>	
Guarantee	All data shall be available for State use of DSS no later than thirty (30) days from the receipt of the Contractor monthly updates, as described in Contract Section A.5.
Justification	Data availability ensures that the State has sufficient time to complete analytics on data information. BA relies on this data for vendor accountability and accuracy. This assessment and amount consider the State's reporting schedule, internal plan and financial inquiries, resolution of potential data issues, as well as audit and legislative inquiries.
Assessment	One thousand dollars (\$1,000) per Business Day, not to exceed five thousand dollars (\$5,000).
Measurement	Measured based on a monthly audit of data receipt. Measured, reported, and assessed monthly; monthly assessments paid quarterly.
<b>6. Critical Functionality Recovery</b>	
Guarantee	The Contractor's critical functionality, needed to provide services under this contract, shall be restored within seventy-two (72) hours of failure or disaster occurrence, as described in Contract Section E.9 and Contract Attachment C.2.
Justification	Access to data is critical to plan design, audit reporting and general accountability assessments for benefit coverage for the Members.
Assessment	Ten thousand dollars (\$10,000) for each day following the seventy-two (72) hour period that functionality is not restored. Not to exceed Fifty thousand dollars (\$50,000) annually.
Measurement	Measured, reported, assessed and paid annually.
<b>7. Key Position Vacancy Replacement</b>	
Guarantee	In the event any key Contractor position related to this contract becomes vacant, the Contractor shall provide a replacement with commensurate experience within sixty (60) days of the vacancy, per Contract Section A.15.i.
Justification	Any vacancy within the State's contractor team hinders the State's ability to utilize the DSS.
Assessment	One thousand dollars (\$1,000) per day after the sixty-first (61st) day of vacancy not to exceed to ninety-thousand dollars (\$90,000).
Measurement	Measured, reported, and assessed monthly; monthly assessments paid quarterly.
<b>8. Privacy and Security of Member Information Impacting 1 to 499 Members</b>	

Guarantee	In accordance with Contract Section E.8., the Contractor shall not release, intentionally or unintentionally, Members' personal information, enrollment information, or claims information to unauthorized parties.
Justification	The guarantee and assessment estimate the impact on the State including the unpredictability of the timing of a breach; specifics of the breach's scope; length of time of investigation completion; number of Member calls to the BA service center; and level of legislative inquiries.
Assessment	<p>Five Thousand Seven Hundred dollars (\$5,700) per incident basis.</p> <p>This assessment is based on the previous experience BA has had in responding to similar incidents impacting less than five hundred (500) Members which includes the following predicted costs to BA:</p> <ol style="list-style-type: none"> <li>1. Compliance Officer time including investigating the breach, monitoring the privacy hotline and email address estimated at seventy-five (75) hours;</li> <li>2. Director of Financial Management and Program Integrity time and work estimated at seven and half (7.5) hours;</li> <li>3. Program Director associated with this contract time and work estimated at fifteen (15) hours;</li> <li>4. Executive Director's time and work estimated at one (1) hour;</li> <li>5. Department attorney time including legal review estimated at one (1) hour; and</li> <li>6. Service Center staff time and work answering Member questions/concerns estimated at fifteen (15) hours.</li> </ol>
Measurement	Measured, reported, assessed, and paid after each occurrence.
<b>9. Privacy and Security of Member Information Impacting 500 or more Members</b>	
Guarantee	In accordance with Contract Section E.8., the Contractor shall not release, intentionally or unintentionally, Members' personal information, enrollment information, or claims information to unauthorized parties.
Justification	The guarantee and assessment estimate the impact on the State including the unpredictability of the timing of a breach; specifics of the breach's scope; length of time of investigation completion; number of Member calls to the BA service center; and level of legislative inquiries.
Assessment	<p>Twenty-One Thousand Two Hundred dollars (\$21,200) per incident basis. This assessment is based on the previous experience BA has had in responding to similar incidents impacting five hundred (500) or more Members which includes the following predicted costs to BA:</p> <ol style="list-style-type: none"> <li>1. Compliance Officer time including investigating the breach, monitoring the privacy hotline and email address estimated at one hundred thirty two (132) hours;</li> <li>2. Director of Financial Management and Program Integrity time and work estimated at thirty (30) hours;</li> <li>3. Program Director associated with this Contract time and work estimated at forty-five (45) hours;</li> <li>4. Executive Director's time and work estimated at eighteen (18) hours;</li> <li>5. Department attorney time including legal review estimated at thirty (30) hours;</li> <li>6. Service Center staff time and work answering Member questions/concerns estimated at one hundred (100) hours;</li> <li>7. Public Information Officer ("PIO")'s time and work estimated at forty-five (45) hours; and</li> <li>8. Communications Director's time and work estimated at thirty (30) hours.</li> </ol>
Measurement	Assessed, reported, reconciled, and paid after each occurrence.

## REPORTING REQUIREMENTS

As required by this Contract, the Contractor shall submit reports to the State. Reports shall be submitted electronically, in the format specified by the State, and shall be of the type and at the frequency indicated below. Reports submitted in a format other than the approved template will be deemed late until resubmitted in the proper format. The State reserves the right to modify reporting requirements as deemed necessary to monitor the Plans. The State will provide the Contractor with at least sixty (60) days' notice prior to implementation of a report modification.

Unless prior approved In Writing by the State, each report shall be specific to the Plans (not the Contractor's book of business). Unless otherwise directed by the State, the Contractor shall submit reports as follows:

1. Monthly reports shall be submitted by the 15<sup>th</sup> of the following month;
2. Quarterly reports shall be submitted by the 20<sup>th</sup> of the following month;
3. Annual reports shall be submitted within ninety (90) days after the end of the calendar year.

Note: Any report due on a holiday or weekend will then be due on the following Business Day.

Reports shall include, at a minimum:

1. **Account Team Satisfaction Survey Report** submitted annually using the template prior approved In Writing by the State. The report shall, at a minimum, summarize the methodology and results and identify improvement activities (Contract Section A.15.j.).
2. **BC-DR Results Report** submitted annually using the template prior approved In Writing by the State (Contract Section E.9.d.2.).
3. **Maintenance and Operations Plan Report**, submitted at DSS implementation, and updated at the State's request if maintenance or operations are subject to change – any revisions must include an updated/revised project organizational chart depicting the interrelationships and responsibilities between the Contractor's staff and its subcontractors including reporting relationships (Contract Section A.20.a.).
4. **Corrective Action Plan**, submitted within ten (10) Business Days of the conclusion of any testing, only if necessary. The corrective action plan must describe how any system function failure will be resolved (Contract Sections A.18.0, E.9.c, and E.9.e.).
5. **Data Quality Spreadsheet**, submitted within ten (10) days after the database updates each month, and within (30) days after the quarterly database update, detailing quality measures for each of the State's TPA (Contract Section A.10.a.).
6. **Strength of Controls Report**, submitted annually in accordance with Service Organization Controls ("SOC") 2 Type II certified. Any bridge reports at the request by the State are due periodically and the deadline for submission to be determined by the State. (Contract Section E.9.e).
7. **System Satisfaction Survey Report** submitted no less than annually using the template prior approved In Writing by the State. The report shall, at a minimum, summarize the methodology and results and address any Contractor actions taken to address the State's system concerns (Contract Section A.11.e.).
8. **Ad Hoc/Other Reports**, as specified in this Contract and using templates prior approved In Writing by the State.

**Service Level Agreement Scorecard**

Below is the SLA Scorecard and associated KPIs used to measure the Contractor's performance against the desired outcomes. KPIs shall be evaluated, scored, and reconciled via the SLA Scorecard with relevant documentation. Contractor must submit the SLA Scorecard at the frequency listed (e.g. quarterly, annually) documenting the Contractor's outcome for each KPI during that time period. The State will provide the required reporting format during implementation.

Based on the scores, the State will determine, and may assess, any At-Risk Performance Payments. Amounts due will be determined by the achieved score. See Table A below.

It is agreed by the State and the Contractor that any At-Risk Performance Payment assessed by the State shall be due and payable to the State within forty-five (45) calendar days after Contractor receipt of the Invoice containing an assessment of fees at risk. If payment is not made by the due date, the At-Risk Performance Payment amount may be withheld from future payments by the State without further notice.

KPI		Description	Performance Requirement	Rating Scale	Points Awarded Based on Rating
Quarterly					
1.	Customer Service Response	All State initiated contact not receiving an immediate response shall be returned via phone call or personal email (not auto generated), within twenty-four (24) hours of Business Days from the initial State contact attempt. Contract Section A.15.e.	Within 24 hours	100% Within 24 hours or less	5
				98%-99.9% Within 24 hours	3
				97%-97.9% Within 24 hours	1
				Less than 96.9% Within 24 hours	0
2.	Monthly Data Load	One hundred percent (100%) of subsequent data (monthly claims & population health data) required for operations, as described in Contract Section A.5.b shall be loaded within fifteen (15) Business Days or receipt of usable data from the claims administrators and population health contractors.	Within 15 days	98% or greater	6
				96.0-97.9%	4
				94.0-95.9%	2
				Less than 94%	0
3.	System User Availability	DSS shall be available to State users ninety-nine percent (99%) of the time between 6:00 a.m. and 7:00 p.m. CT Monday through Saturday, as described in Contract Section A.8.d.	99%	99% or greater	6
				97.0-98.9%	4
				95.0-96.9%	2
				Less than 95%	0

KPI		Description	Performance Requirement	Rating Scale	Points Awarded Based on Rating
4.	Reporting	The Contractor shall distribute to the State all reports required in Contract Sections A.4. through A.18. and Contract Attachment C within the time frame specified in the Contract.	99%	99% or greater	6
				97.0-98.9%	4
				95.0-96.9%	2
				Less than 95%	0
Total Quarterly Points Available					23
Total Quarterly Points Achieved					# TBD
Quarterly Score (Total Quarterly Points Achieved / Total Quarterly Points Available)					% TBD
At-Risk Performance Payment Due					\$TBD
Annual					
5.	Account Management Satisfaction	Achieve a ninety percent (90%) satisfaction or better (defined as “top two-box” satisfaction/ approval using an approved standard 5 pt. survey tool) on a survey completed by the State assessing account management performance including but not limited to timely response to questions and resolution of issues, as described in Contract Section A.11. e.	90%	90% or greater	10
				88%-89.9%	6
				86%-87.9%	2
				Less than 86%	0
Total Annual Points Available					10
Total Annual Points Achieved					# TBD
Annual Score (Total Annual Points Achieved / Total Annual Points Available)					% TBD
At-Risk Performance Payment Due					\$TBD
Payment due = At Risk Performance Payment *20% (weighted to account for annual versus quarterly measurement)					

Table A	
Score	At Risk Performance Payment
>=95%	\$0
90.1-94.9%	\$10,000
85-90%	\$20,000
80-84.9%	\$30,000
75-79.9%	\$40,000
74.9% or below	\$50,000

The following per-incident KPIs below are only measured and assessed if the event listed occurs. The Contractor is not responsible for assessing these during the quarterly review meetings as the State will make this determination per incident. At the State's request, the Contractor is responsible for providing the State any supporting document and information for these KPIs.

KPI		Description	Performance Requirement	At Risk Performance Payment
6.	<b>Timely Notification</b>	Contractor shall notify the State, within two (2) Business Days of identification, about any situation that appears to negatively impact the administration or delivery of the program, plan, or benefits.	If Contractor fails to notify the State within three (2) Business Days	\$10,000 per incident
7.	<b>Unauthorized Usage of Information</b>	Unless prior approved In Writing by the State, and in compliance with state and federal law, the Contractor shall not use information gained through this Contract, including but not limited to utilization and pricing information, in marketing or expanding non-State business relationships or for any pecuniary gain.	If Contractor uses data without prior approval	\$50,000 per incident
8.	<b>Historical Data Availability to State</b>	At the request of the State one hundred percent (100%) of historical data (greater than five (5) years) shall be available for State use of DSS no later than ten (10) Business Days from the receipt of the initial request, as described in Contract Section A.6.	Within ten (10) Business Days	\$5,000

## HIPAA BUSINESS ASSOCIATE AGREEMENT COMPLIANCE WITH PRIVACY AND SECURITY RULES

THIS BUSINESS ASSOCIATE AGREEMENT (hereinafter "Agreement") is between **The State of Tennessee, Finance and Administration, Division of Benefits Administration** (hereinafter "Covered Entity") and Merative US L.P. (hereinafter "Business Associate"). Covered Entity and Business Associate may be referred to herein individually as "Party" or collectively as "Parties."

### BACKGROUND

Parties acknowledge 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.

Business Associate provides services to Covered Entity pursuant to one or more contractual relationships detailed below and hereinafter referred to as "Service Contracts."

### LIST OF AGREEMENTS AFFECTED BY THIS BUSINESS ASSOCIATE AGREEMENT:

**Contract Name:**

**Execution Date:**

DSS

November 1, 2024

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, 164.103, 164.304, 164.402, 164.501, and 164.504.

- g.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
- g.2 "Business Associate" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.
- g.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 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. § 164.304.
- 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, in accordance with 164.502(e)(1)(ii), ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of business associate agree to the same restrictions and conditions that apply to the 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 (up to 48 hours) 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 Potential 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 manner 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, in accordance with 164.502(e)(1)(ii), ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of business associate agree to the same restrictions and conditions that apply to the 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. 45 CFR 164.314(a)(2)(C) requires that business associate shall report to the covered entity any security incident of which it becomes aware, including breaches of unsecured protected health information as required by 164.410. Business Associate shall promptly (up to 48 hours) report any Security Incident of which it becomes aware to Covered Entity. Provided however, that such reports are not required for attempted, unsuccessful Security Incidents, including trivial and routine incidents such as port scans, attempts to log-in with an invalid password or user name, denial of service attacks that do not result in a server being taken off-line, malware, and pings or other similar types of events.

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 2.7.1 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  
Benefits Administration  
HIPAA Privacy & Security Officer  
312 Rosa L. Parks Avenue  
1900 W.R.S. Tennessee Towers  
Nashville, TN 37243-1102  
Phone: (615) 770-6949  
Facsimile: (615) 253-8556

With a copy to:

State of Tennessee  
Benefits Administration  
Contracting and Procurement Director  
312 Rosa L. Parks Avenue  
1900 W.R.S. Tennessee Towers  
Nashville, TN 37243-1102  
Phone: (615) 532-4598  
Facsimile: (615) 253-8556

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

Eric Poston, Merative  
[eric.poston@merative.com](mailto:eric.poston@merative.com)  
Phone: 859-619-8532

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 45 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 Agreement 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**

6.1 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. Upon termination of this Agreement for any reason, business associate, with respect to protected health information received from covered entity, or created, maintained, or received by business associate on behalf of covered entity, shall:
  - 7.3.2.1 Retain only that protected health information which is necessary for business associate to continue its proper management and administration or to carry out its legal responsibilities;
  - 7.3.2.2 Return to covered entity [or, if agreed to by covered entity, destroy] the remaining protected health information that the business associate still maintains in any form;
  - 7.3.2.3 Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as business associate retains the protected health information;
  - 7.3.2.4 Not use or disclose the protected health information retained by business associate other than for the purposes for which such protected health information was retained and subject to the same conditions set out at [Insert section number related to paragraphs (e) and (f) above under "Permitted Uses and Disclosures By Business Associate"] which applied prior to termination; and

- 7.3.2.5 Return to covered entity [or, if agreed to by covered entity, destroy] the protected health information retained by business associate when it is no longer needed by business associate for its proper management and administration or to carry out its legal responsibilities.

## 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 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.

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

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

8.5 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 Finance and Administration  
Benefits Administration  
ATTN: Chanda Rainey  
HIPAA Privacy & Security Officer  
312 Rosa L. Parks Avenue  
1900 W.R.S. Tennessee Towers  
Nashville, TN 37243-1102  
Phone: (615) 770-6949  
Facsimile: (615) 253-8556  
E-Mail: [benefits.privacy@tn.gov](mailto:benefits.privacy@tn.gov)

BUSINESS ASSOCIATE:  
Eric Poston, Merative US LP  
[eric.poston@merative.com](mailto:eric.poston@merative.com)  
Phone: 859-619-8532

With a copy to:  
ATTN: Heather Pease  
Procurements & Contracting Director  
At the address listed above  
Phone: (615) 917-4165  
Facsimile: (615) 253-8556  
E-Mail: [heather.pease@tn.gov](mailto:heather.pease@tn.gov)

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the date of hand delivery; as of the date specified for overnight courier service delivery; as of three (3)

Business Days after the date of mailing; or on the day the facsimile transmission is received mechanically by the facsimile machine at the receiving location and receipt is verbally confirmed by the sender.

8.6 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

8.7 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.

8.8 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.

8.9 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.

8.10 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,

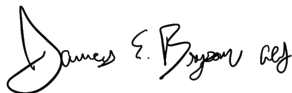


Eric Poston (Oct 16, 2024 08:33 EDT)

10/16/2024

Merative US L.P.

Date:



10/14/2024

James E. Bryson, Commissioner of Finance & Administration

Date: