CONTRACT AMENDMENT COVER SHEET

Agency Tracking #	Edison ID	Contract #	Amendment #
31865-00643	81047		1

Contractor Legal Entity Name	Edison Vendor ID
Myers and Stauffer, LLC	0000156383

Amendment Purpose & Effect(s)

Exercise Renewal Option and Add Funding, Update Attachment C (BAA)

Amendment Changes Contract End Date: ☒ YES ☐ NO **End Date:** November 14, 2027

TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A): $ 524,182.00

Funding —

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2024	$150,516.90	$150,516.90	$0.00	$0.00	$301,033.80
2025	$258,028.98	$258,028.98	$0.00	$0.00	$516,057.96
2026	$258,028.98	$258,028.98	$0.00	$0.00	$516,057.96
2027	$262,091.00	$262,091.00	$0.00	$0.00	$524,182.00
2028	$107,512.08	$107,512.08	$0.00	$0.00	$215,024.16
TOTAL:	**$1,036,177.94**	**$1,036,177.94**	**$0.00**	**$0.00**	**$2,072,355.88**

Budget Officer Confirmation: 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.

Crystal Allen

Digitally signed by: Crystal Allen
DN: CN = Crystal Allen email = crystal.g.allen@tn.gov C = US O = TennCare OU = Fiscal
Date: 2026.06.15 14:18:15 -05'00'

CPO USE

Speed Chart (optional)	Account Code (optional)

AMENDMENT 1
OF CONTRACT 81047

This Amendment is made and entered by and between the State of Tennessee, Department of Finance and Administration, Division of TennCare, hereinafter referred to as the "State" and Myers and Stauffer, LLC., hereinafter referred to as the "Contractor." For good and valuable consideration, the sufficiency of which is hereby acknowledged, it is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

1. **Contract Section B.1 and B.2. are deleted in their entirety and replaced with the following:**

   B.1. This Contract shall be effective on November 15, 2023 ("Effective Date") and extend for a period of Forty-Eight (48) months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

   B.2. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to one (1) renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

2. **Contract Section C.1 is deleted in its entirety and replaced with the following:**

   C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Two Million Seventy-Two Thousand Three Hundred Fifty-Five Dollars and Eighty-Eight Cents ($2,072,355.88) ("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

3. **Contract Attachment C is deleted in its entirety and replaced with the new attachment C attached hereto.**

Required Approvals. The State is not bound by this Amendment until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

Amendment Effective Date. The revisions set forth herein shall be effective once all required approvals are obtained. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

MYERS AND STAUFFER, LLC:

8/14/2026

SIGNATURE **DATE**

T. Allan Hansen, Principal

PRINTED NAME AND TITLE OF SIGNATORY (above)

DEPARTMENT OF FINANCE AND ADMINISTRATION<
DIVISION OF TENNCARE:

Jim Bryson

8/17/2026

JIM BRYSON, COMMISSIONER **DATE**

Division of TennCare

ATTACHMENT C

HIPAA Business Associate Agreement

THIS HIPAA BUSINESS ASSOCIATE AGREEMENT ("Agreement") is between The State of Tennessee, Division of TennCare ("TennCare" or "Covered Entity"), located at 310 Great Circle Road, Nashville, TN 37228 and _____ Myers and Stauffer LC ("Business Associate"), located at 700 W 47th Street; Kansas City Missouri 64112 _____, including all office locations and other business locations at which Business Associate data may be used or maintained. Covered Entity and Business Associate may be referred to herein individually as "Party" or collectively as "Parties."

BACKGROUND

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

LIST OF STATE CONTRACTS AFFECTED BY THIS HIPAA BUSINESS ASSOCIATE AGREEMENT:

_____

_____

In the course of performing services under the State Contract(s), Business Associate may come into contact with, use, or disclose Protected Health Information ("PHI"). Said State Contract(s) is/are hereby incorporated by reference and shall be considered part of this Agreement as if the State Contract(s) was/were fully included herein.

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

In the case of any conflict, discrepancy, or ambiguity, between this Agreement and the State Contract(s), this Agreement shall govern as relating to the conflict, discrepancy, or ambiguity only. Absent any conflict, discrepancy, or ambiguity between this Agreement and the State Contract(s), the State Contract governs.

1. DEFINITIONS

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

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

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

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

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

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE (PRIVACY RULE)

2.1 Compliance with the Privacy Rule. Business Associate shall fully comply with the requirements under the Privacy Rule applicable to "business associates," as that term is defined in the Privacy Rule, and not use or further disclose PHI other than as permitted or required by this Agreement, the State Contract(s), or as required by law.

2.2 HIPAA and HITECH Compliance. HITECH and its implementing regulations impose requirements on business associates with respect to privacy, security, and Breach notification. Business Associate hereby acknowledges and agrees that it is functioning as a Business Associate of Covered Entity as obligated by this Agreement and the State Contract(s). Business Associate further acknowledges that it shall comply with any applicable provisions of HIPAA and HITECH. Business Associate and 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. Even if a provision of HIPAA or HITECH is not specifically set forth in this Agreement, all applicable provisions of HIPAA and HITECH are incorporated into this Agreement in their entirety.

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

2.4 Privacy Safeguards and Policies. Business Associate shall use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by the State Contract(s), this Agreement, or as required by law. This includes the implementation of Administrative, Physical, and Technical Safeguards to appropriately protect Covered Entity's PHI against any reasonably anticipated threats or hazards utilizing the technology commercially available to Business Associate (See also Agreement Section 3.2). Business Associate shall maintain, and provide to TennCare when requested, appropriate documentation of Business Associate's

compliance with the Privacy Rule, except when Business Associate is required by TennCare policies and procedures to provide compliance documents on an established timeframe without request from TennCare. Appropriate documentation of compliance with the Privacy Rule includes, but is not limited to, Business Associate's policies and procedures, records of training, records of breaches, and sanctions of members of its Workforce.

2.5 Privacy Provisions in Business Associate Contracts. Business Associate shall require any agent, including a subcontractor, to whom it provides PHI received from, maintained, created, or received by Business Associate on behalf of Covered Entity, or that carries out any duties for Business Associate involving the use, custody, disclosure, creation of, or access to, PHI or other confidential TennCare information, to enter into a written contract that is substantially similar to this Agreement with respect to all privacy provisions. Said substantially similar written contract shall not include less stringent terms or restrictions than this Agreement with Business Associate with respect to the privacy provisions, except for Agreement Section 4.4.2, which shall only apply to Business Associate notwithstanding the requirements in this Agreement Section 2.5.

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

2.7 Reporting of Violations and Reasonably Suspected Violations in Use and Disclosure of PHI. Business Associate shall require its employees, agents, and subcontractors to promptly report to Business Associate immediately upon becoming aware, or upon reasonable suspicion, of any use or disclosure or reasonably suspected use or disclosure of PHI in violation of, or otherwise not provided by, this Agreement. Business Associate shall make its report to Covered Entity immediately upon becoming aware of any use or disclosure or reasonably suspected use or disclosure of PHI not provided by this Agreement, and in no case shall the Business Associate take longer than twenty-four (24) hours to report the discovery to Covered Entity. Reports shall be submitted as provided for in Agreement Section 3.5.

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

2.8.1 Business Associate shall provide to Covered Entity notice of a Breach of Unsecured PHI or a suspected Breach of Unsecured PHI immediately upon becoming aware or upon reasonable suspicion of the Breach, and in no case later than twenty-four (24) hours after becoming aware or upon reasonable suspicion. Notice shall be submitted as provided for in Agreement Section 3.5.

2.8.2 Business Associate shall cooperate with Covered Entity by timely providing the appropriate and necessary information to Covered Entity, as reasonably anticipated or otherwise requested by Covered Entity.

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

2.9 Access of Individual to PHI. In the event an Individual requests access to PHI and Business Associate's participation is necessary to comply with the request, Business Associate agrees to timely respond as further outlined below.

2.9.1 Requests Submitted to Covered Entity that Require Business Associate's Participation. Covered Entity shall forward to Business Associate in a timely manner any Individual's request for access to or a copy of the Individual's PHI, in any form the Individual chooses if the PHI is readily

producible in that format.

2.9.2 Requests Submitted to Business Associate.

(a) If Business Associate receives PHI from Covered Entity in a Designated Record Set, Business Associate agrees to provide access to PHI in a Designated Record Set to Covered Entity to meet the requirements of 45 C.F.R. § 164.524.

(b) 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 Business Associate, Business Associate will provide the requested copy to the Individual as specified in 2.9.3(a). If Business Associate provides copies of PHI to the Individual, it may charge a reasonable fee for the copies as permitted by applicable regulations. Business Associate is permitted to send to an Individual or Individual's designee unencrypted emails including Electronic PHI if the Individual requests it, provided Business Associate has advised the Individual of the associated risk and the Individual still chooses to receive the message by unencrypted email.

(c) If Business Associate receives a request for PHI not in its possession and in the possession of Covered Entity or receives a request to exercise other Individual rights as set forth in the Privacy Rule, Business Associate shall promptly forward the request to Covered Entity. Business Associate shall then assist Covered Entity, as necessary, in responding to the request timely.

2.9.3 Timeframes for Response.

(a) The Parties understand that if either Party receives a request for access to or copies of PHI from an Individual that the Party may complete with only its own onsite information, the time for providing a response to the Individual shall be no more than thirty (30) days, or a timeframe otherwise in compliance with 45 C.F.R. § 164.524. Business Associate shall also notify Covered Entity upon completion of the request.

(b) If Covered Entity receives a request from an Individual for access to or copies of PHI, and requires information from Business Associate in addition to Covered Entity's onsite information to fulfill the request, Business Associate shall have no more than fifteen (15) days, from the date of Covered Entity's notice, to provide access or deliver such information to Covered Entity so that Covered Entity may timely respond to the Individual within the thirty (30) day requirement of 45 C.F.R. § 164.524.

(c) If the Party responsible for responding to the Individual's request for access to or copies of PHI is unable to complete the response to the request in the required timeframe, the responsible Party shall provide the Individual, or Individual's designee, with a written statement of the reasons for the delay and the date by which the Party will complete its action on the request. The Party may extend the response one (1) time for no more than thirty (30) additional days.

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

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

2.12 Accounting for Disclosures of PHI. In the timeframe and manner designated by Covered Entity, Business Associate agrees to provide to Covered Entity, or an Individual or Individual's designee, information

collected in accordance with this Agreement to enable Covered Entity to respond to a request from an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. Covered Entity shall forward the Individual's request requiring the participation of Business Associate to Business Associate in a timely manner, after which Business Associate shall provide the accounting of disclosures of PHI to Covered Entity as follows:

(a) If Covered Entity directs Business Associate to provide an accounting of disclosures of the Individual's PHI directly to the Individual, Business Associate shall have sixty (60) days from the date of the Individual's request to provide access or deliver such information to the Individual or Individual's designee. Covered Entity shall provide notice to Business Associate in time to allow Business Associate a minimum of thirty (30) days to timely complete the Individual's request.

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

(c) If either Party is unable to complete the response to the request in the timeframes provided in 2.12(a) or 2.12(b), the Party to complete the response shall notify the Individual with a written statement of the reasons for the delay and the date by which the Party will complete its action on the request. The Parties may extend the response to Individual or Individual's designee one (1) time for no more than thirty (30) additional days.

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

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

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

2.13 Minimum Necessary. Business Associate shall use reasonable efforts to limit any use, disclosure, or request for use or disclosure, of PHI to the minimum amount necessary to accomplish the intended purpose of the use, disclosure, or request in accordance with the requirements of the Privacy Rule. Reasonable efforts may include, but are not limited to, application of recognized industry standards on data minimization and retention privacy controls.

2.13.1 Business Associate represents to Covered Entity that all Business Associate's 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 from Business Associate as the minimum necessary for the stated purpose.

2.13.3 Business Associate shall adequately and properly maintain all PHI received from, or created or received on behalf of, Covered Entity. Properly maintaining PHI shall include, but is not limited to, use of reasonable efforts to timely deidentify or destroy PHI Business Associate receives that is irrelevant or unnecessary for the purposes of this Agreement and any State Contract(s).

2.14 Privacy Compliance Review Upon Request. Business Associate agrees to provide its internal practices,

books and records, and policies and procedures, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity, to Covered Entity or the Secretary of the United States Department of Health in Human Services or the Secretary's designee, in a timeframe and manner designated by the requester for purposes of determining Covered Entity's or Business Associate's compliance with the Privacy Rule.

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

3. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE (SECURITY RULE)

3.1 Compliance with Security Rule. Business Associate shall fully comply with the requirements of the Security Rule applicable to "Business Associates", as the term is defined in the Security Rule. In the case of any conflict, ambiguity, or discrepancies in language between this Agreement and the State Contract(s), this Agreement governs as to the applicable conflict, ambiguity, or discrepancies in language. If no conflict, ambiguity, or discrepancy in language exists, the State Contract governs.

3.2 Security Safeguards and Policies. Business Associates shall implement and maintain information security policies that comply with the HIPAA Security Rule. 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 Covered Entity as required by the Security Rule. This includes specifically, but is not limited to, the utilization of technology commercially available to Business Associate to protect Covered Entity's PHI against any reasonably anticipated threats or hazards. 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, entities, programs, or applications, and devices access its computing systems and information storage, and that only authorized transactions are allowed. Business Associate will maintain appropriate documentation of its compliance with the Security Rule.

3.3 Security Provisions in Business Associate Contracts. Business Associate shall ensure that any agent or subcontractor to whom Business Associate provides Electronic PHI received from, maintained, or created for Covered Entity, or that carries out any duties for Business Associate involving the use, custody, disclosure, creation of, or access to PHI supplied by Covered Entity, shall execute a contract with Business Associate (or the appropriate equivalent if the agent is a government entity) that is substantially similar to this Agreement with no less stringent restrictions and conditions as the security provisions are in this Agreement, except for the provision in Section 4.4.2.

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

3.4.1 Business Associate identifies the following key contact person(s) for all matters relating to this Agreement:

Rebecca Matthews
Chief Compliance Officer
RMatthews@MSLC.COM
317-846-9521
800 E. 96th Street, Suite 200
Indianapolis, IN 46240

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

3.5 TennCare Contact for Privacy and Security Incident Notice. Notification for the purposes of Agreement Sections 2.7, 2.8 and 3.4 shall be made in writing immediately upon becoming aware, or upon reasonable suspicion, of the event. Written notice may be submitted via TennCare's privacy incident reporting form if accessible to Business Associate, email, certified mail, or overnight parcel to:

Division of TennCare
Attention: Privacy Office
310 Great Circle Rd.
Nashville, Tennessee 37243
Phone: (866) 797-9469
Email: Privacy.Tenncare@tn.gov

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

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

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

4. USES AND DISCLOSURES BY BUSINESS ASSOCIATE

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

4.2 Business Associate Uses of PHI. Except as otherwise limited in this Agreement, Business Associate may disclose PHI as required for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that the disclosures are required by law and are also permitted by this Agreement and the State Contract(s). Nothing in this Agreement Section 4.2 permits, or should be construed as permitting, the Business Associate to use PHI for Marketing or Commercial Use.

4.3 Third Party Disclosure Confidentiality. If Business Associate discloses any PHI to a third party for a purpose permitted under 4.2, Business Associate agrees that it 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 PHI except as required by law or for the purpose for which it was disclosed; and (b) notify Business Associate of any instances where third party becomes aware that the confidentiality, integrity, and/or availability of the PHI is Breached.

4.4 Prohibited Uses and Disclosures. Nothing in this Agreement shall authorize Business Associate to share, use or disclose PHI via any form or medium for the purposes outlined in Agreement Subsections 4.4.1 through 4

4.4.1 Marketing and Commercial Use. Business Associate shall not share, use, or disclose PHI for the purposes of selling, Marketing, or any Commercial Use, or for any purpose construed by Covered Entity as the selling, Marketing, or Commercial Use of TennCare Enrollee personal or financial information with affiliates or otherwise, even if such sharing would be permitted by federal or state laws.

4.4.2 Offshore Disclosure. Business Associate shall not share, use, or disclose PHI with any third party beyond the boundaries and jurisdiction of the United States without express written authorization from Covered Entity.

4.4.3 Genetic Information for Underwriting Purposes. Business Associate shall not use or disclose PHI that is Genetic Information for underwriting purposes.

4.4.4 Other Uses and Disclosures Strictly Prohibited. Nothing in this Agreement shall permit Business Associate to share PHI with Business Associate's affiliates, contractors, subcontractors, or other third parties, except for the purposes of the State Contract(s) identified in the "LIST OF STATE CONTRACTS AFFECTED BY THIS HIPAA BUSINESS ASSOCIATE AGREEMENT" on page one (1) of this Agreement.

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

4.6 Data Use Agreement - Use and Disclosure of Limited Data Set. Business Associate may use and disclose a Limited Data Set that Business Associate creates for Research, public health activity, or Health Care Operations, provided Business Associate complies with the obligations in Agreement Section 3.2 and this Agreement. Business Associate may not make such use and disclosure of the Limited Data Set after any cancellation, termination, expiration, or other conclusion of this Agreement.

4.7 Limitation on Permitted Uses and Disclosures. Business Associate will limit the uses and disclosures of the Limited Data Set to the following: Research, public health activity, or Health Care Operations, to the extent such activities are related to covered functions. Covered functions for purposes of this Agreement Section 4.7 shall include business planning and development, such as: conducting cost-management and planning-related analysis related to managing and operating Business Associate's functions; formulary development and administration; development and improvement of methods of payment or coverage policies; and customer service, including the provision of data analysis for policy holders, plan sponsors, or other customers to the extent such activities are related to covered functions. The listed covered functions shall only be permitted if PHI is not disclosed, and disclosure is not prohibited pursuant to any other provisions in this Agreement.

5. OBLIGATIONS OF COVERED ENTITY

5.1 Notice of Privacy Practices. Covered Entity shall provide Business Associate with the Covered Entity's notice of Privacy Practices in accordance with 45 C.F.R. § 164.520, as well as any changes to the notice of Privacy Practices. Notice may be provided via publication on TennCare's website.

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

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

5.4 Reciprocity for Requests Received by Business Associate. The Parties agree that Agreement Sections 5.2 through 5.3 are reciprocal, to the extent Business Associate is notified or receives an inquiry from any Individual within Covered Entity's covered population.

6. TERM AND TERMINATION

6.1 Term. This Agreement shall be effective on the date of the last signatory, or on the signature date if all Parties sign on the same day, and shall terminate when all PHI, regardless of form, 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 the Parties mutually agree in writing that it is unfeasible to return or destroy PHI, Agreement Subsection 6.3.5 below applies.

6.2 Termination for Cause. This Agreement authorizes, and Business Associate acknowledges and agrees, Covered Entity shall have the right to terminate this Agreement and any State Contracts in the event Business Associate fails to comply with or violates a material provision of this Agreement and any provision of the Privacy and Security Rules. Nothing in Agreement Section 6.2 limits the State's ability to terminate the State Contract as permissible under the State Contract.

6.2.1 Upon Covered Entity's knowledge of a breach by Business Associate of the terms of this Agreement or any State Contract (s), Covered Entity shall either:

(a) Provide notice of breach and an opportunity for Business Associate to reasonably and promptly cure the breach or end the violation. If Business Associate does not cure the breach or end the violation within the reasonable time following notice, as specified by Covered Entity, Covered Entity shall terminate this BAA; or

(b) Immediately terminate this BAA if Business Associate has breached a material term of this BAA and cure is not possible.

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

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

6.3.2 Agreement Section 6.3 and its Subsections shall not prohibit the retention of a single separate, archived file of the PHI and other confidential TennCare information by Business Associate if the method of such archiving reasonably protects the continued privacy and security of such information and Business Associate obtains written approval at the time of archival from Covered Entity.

Otherwise, neither Business Associate nor its subcontractors and agents shall retain copies of TennCare Confidential Information including enrollee PHI, except as provided herein in Agreement Subsection 6.3.5.

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

6.3.4 Except for Business Associate agreements in effect prior to April 21, 2005, for the renewal or amendment of those same agreements, or for other unavoidable circumstances, the Parties contemplate that PHI and other Confidential Information of Covered Entity shall not be merged or aggregated with data from sources unrelated to that agreement, or Business Associate's other business data, including for purposes of data backup and disaster recovery, until the Parties identify the means of return or destruction of the TennCare data or other Confidential Information of Covered Entity at the conclusion of any State Contract(s), or otherwise make an express alternate agreement consistent with the provisions of Agreement Section 6.3 and its Subsections.

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

7. MISCELLANEOUS

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

7.2 Survival. The respective rights and obligations of Business Associate under applicable confidentiality provisions and Agreement Sections 4 and its Subsections, and 6.3 and its Subsections, shall survive the termination or expiration of this Agreement.

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

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

7.5 Notices and Communications. Except as specified in Agreement Section 3.5, all instructions, notices, consents, demands, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered by electronic mail, hand, by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below, or to such other party, facsimile number, or address as may be hereafter specified by written notice. (For purposes of Agreement Section 7.6, effective notice to "Respective Party" is not dependent on whether the person named below remains employed by such Party). The Parties agree to use their best efforts to immediately notify the other Party of changes in address, telephone number, and fax numbers and to promptly supplement this Agreement as necessary with corrected information.

Notifications relating to Agreement Sections 2.7, 2.8 and 3.4 of this Agreement need only be reported to the Privacy Office pursuant to Agreement Section 3.5.

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

All instructions, notices, consents, demands, or other communications shall be considered effectively given as follows: on the date of hand delivery; on the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing by first class mail postage prepaid; 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; or via electronic submission as approved or as directed by TennCare.

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

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

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

7.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee except to the extent that Tennessee law has been pre-empted by HIPAA and HITECH and without giving effect to principles of conflicts of law.

7.10 Compensation. There shall be no remuneration for performance under this Agreement except as specifically

provided by, in, and through, existing administrative requirements of Tennessee State government and State Contract(s) reference d herein.

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

IN WITNESS WHEREOF, the Parties execute this Agreement to be valid and enforceable from the latest dated signature set out below or on the date of signatures if both Parties sign on the same date:

DIVISION OF TENNCARE

By: _____

Stephen Smith, Director

Date: 8/17/2026

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

BUSINESS ASSOCIATE

By: _____

T. Allan Hansen, Principal

Date: 8/14/2026

CONTRACT

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

Begin Date	End Date	Agency Tracking #	Edison Record ID
November 15, 2023	November 14, 2026	31865-00643	81047

Contractor Legal Entity Name	Edison Vendor ID
Myers and Stauffer, LLC	156383

Goods or Services Caption (one line only)

Services pertaining to the audit of the TennCare Pharmacy Programs' Pharmacy Benefit Manager (PBM)

Contractor	Assistance Listing Number#
☒ Contractor	

Funding —

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2024	$150,516.90	$150,516.90	$0.00	$0.00	$301,033.80
2025	$258,028.98	$258,028.98	$0.00	$0.00	$516,057.96
2026	$258,028.98	$258,028.98	$0.00	$0.00	$516,057.96
2027	$107,024.14	$107,024.14	$0.00	$0.00	$215,024.28
TOTAL:	**$773,995.00**	**$773,995.00**	$0.00	$0.00	**$1,548,174.00**

Contractor Ownership Characteristics:

☐ Minority Business Enterprise (MBE):

☐ African American ☐ Asian American ☐ Hispanic American ☐ Native American

☐ Woman Business Enterprise (WBE)

☐ Tennessee Service Disabled Veteran Enterprise (SDVBE)

☐ Disabled Owned Business (DSBE)

☐ 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.

☐ Government ☐ Non-Minority/Disadvantaged ☒ Other: Limited Liability Company

Selection Method & Process Summary (mark the correct response to confirm the associated summary)

☒ Competitive Selection	CompetitivelyProcured through RFQ 31865-00643
☐ Other	

Budget Officer Confirmation: 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.

Crystal G. Allen

Digitally signed by: Crystal G. Allen
DN: CN = Crystal G. Allen email = Crystal.G.Allen@tn.gov C = US O = TennCare OU = Budget
Date: 2023.10.31 16:56:10 -06'00'

Speed Chart (optional)	Account Code (optional)

CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION,
DIVISION OF TENNCARE
AND
MYERS AND STAUFFER, LLC

This Contract, by and between the State of Tennessee, Department of Finance and Administration, Division of TennCare ("State" or "TennCare") and Myers and Stauffer, LLC ("Contractor"), is for the provision of services pertaining to the audit of the TennCare Pharmacy Programs' Pharmacy Benefit Manager (PBM), as further defined in the Scope of Services "SCOPE below". The State and the Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is a/an Individual, For-Profit Corporation
Contractor Place of Incorporation or Organization: Kansas City, MO
Contractor Edison Registration ID: 0000156383

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. **TennCare Program (TennCare):** The federal Medicaid program, known as "TennCare" in Tennessee, is operated by the State pursuant to a waiver from CMS. Nothing in this Contract shall be deemed to be a delegation to the Contractor of the State's non-delegable duties relating to TennCare, as administered by the single state agency designated by the State and CMS, pursuant to Title XIX of the Social Security Act (42 U.S.C § 1396 *et seq*.) and the Section 1115 research and demonstration waiver granted to the State and any successor programs. TennCare Pharmacy services are managed by a Pharmacy Benefit Manager (PBM) and provided through a pharmacy provider network established and maintained by PBM that supports ambulatory, long term care (LTC), dispensary, 340B, MTM, and specialty services.

b. **CoverRx Program (CoverRx)**: The State's pharmacy assistance program, hereinafter referred to as "CoverRx", provides limited pharmacy assistance through retail or mail order to eligible participants enrolled in the State's Department of Mental Health and Substance Abuse Services Safety Net program and for other eligible adults ages eighteen (18) through sixty-four (64) needing access to prescription drugs for acute care and ongoing disease management. CoverRx is not a prescription drug benefit, an insurance program, nor an entitlement program. It is paid for by State funds, without any federal funds, and has two distinct parts: (1) a Covered Drug List (CDL), and (2) a Drug Discount List. CoverRx Pharmacy services are managed by a Pharmacy Benefit Manager (PBM) and provided through the same ambulatory pharmacy provider network established and maintained by PBM for TennCare.

c. **CoverKids Program (CoverKids):** The federal Social Security Act Title XXI Children's Health Insurance Program (CHIP), known as "CoverKids" in Tennessee, provides health plan services, including certain pharmacy benefits, to eligible children under age nineteen (19), including unborn children who are covered from conception to birth. CoverKids pharmacy services are provided by the PBM utilizing its commercial drug formulary program provided through the same pharmacy provider network as TennCare's. The PBM's manages the program through its national claims processing staff, national rebate programs, and its various commercial enrollee and provider support systems. Such support systems include the PBM's national prior authorization (PA) unit, Help Desk services for both enrollees and providers, and Contractor's internal grievance and appeal resolution system that complies with 42 C.F.R. § 438.401 *et seq*. to handle enrollee appeals.

d. **340B Drug Pricing Program-** Administered by U.S. Health Resources & Services Administration (HRSA), was created in 1992 and requires drug manufacturers to provide outpatient drugs to eligible health care organizations, also known as covered entities, at significantly reduced prices.

e. **340B Ceiling Price**-42 CFR 10.10(b) (https://www.ecfr.gov/current/title-42/chapter-I/subchapter-A/part-10/subpart-B) estimated calculated outpatient drug pricing that is expected to equal to average manufacturer price (AMP) from the preceding calendar quarter for the smallest unit of measure minus the unit rebate amount (URA) and is calculated using six decimal places. Exception is deemed necessary when the ceiling price calculation results in an amount less than $0.01, the ceiling price will be $0.01, and HRSA is expected to publish the 340B ceiling price rounded to two decimal places. The maximum price drug manufacturers can charge for a 340B-purchased drug. 340B Ceiling Price equals:
For Generic Drugs: AMP – URA
For Brand Drugs:
AMP – (AMP – best price) (if lower than AMP – URA)
If AMP increases faster than the rate of inflation, an additional discount is owed:
AMP current – (CPI-U current/CPI-U baseline) × AMP baseline
URAs:
Brand-name drugs ([single source] and [innovator]) = 23.1%
Generic drugs (non-innovator multiple source drugs [N]) = 13%
Hemophilia and pediatric drugs = 17.1%

f. **Actual Acquisition Cost (AAC)-** refer to CMS-2345-FC, Covered Outpatient Drugs Final Rule with Comment, and 42 CFR § 447.502 established acquisition cost (AAC) as the basis by which states should determine their ingredient cost reimbursement so payments are based on a more accurate estimate of the prices available in the marketplace, while still ensuring sufficient beneficiary access. 10-21-21 FA

g. **Average Actual Acquisition Cost (AAAC)-** TennCare's Actual Acquisition Cost is calculated based on a survey of pharmacies in Tennessee to determine the average invoice acquisition cost to acquire drug products marketed or sold by specific manufacturers.

h. **Non-Disclosure Agreement (NDA)**- Agreements between parties that require keeping confidential information confidential.

i. **Artifacts**- Documents such as policies, procedures, screen shots or other evidence

j. **Rebates- Medicaid, Supplemental, and Commercial**-Rebates" means retrospective payments or discounts, including promotional or volume-related refunds, incentives or other credits however characterized, pre-arranged with pharmaceutical companies on certain Prescription Drugs, which are paid to or on behalf of Contractor pursuant to the terms of a Contract with a pharmaceutical company, and are directly attributable to the utilization of certain pharmaceuticals by Enrollees, including Administrative fees and software or data fees paid by pharmaceutical companies to Contractor. "Rebate" includes all rebates, discounts, payments or benefits (however characterized) generated by a Participating Program's claims, or derived from any other payment or benefit for the dispensing of Prescription Drugs or classes or brands of drugs within the Participating Program or arising out of any relationships Contractor has with pharmaceutical companies, including but not limited to rebate sharing, market share allowances, educational allowances, gifts, promotions, or any other form of revenue whatsoever.

The Medicaid Drug Rebate Program is a program created by the Omnibus Budget Reconciliation Act of 1990 (OBRA'90). The program establishes mandatory **federal rebates** that drug manufacturers must pay state Medicaid agencies related to the dispensing of outpatient prescription drugs covered by Medicaid.

k. **Supplemental rebate**- In addition to federal statutory rebates, most states negotiate with manufacturers for supplemental rebates. States often use placement on a preferred drug list (PDL) as leverage to negotiate supplemental rebates.

l. **Commercial rebate-** a form of price concession paid by a pharmaceutical manufacturer to the health plan sponsor or the pharmacy benefit manager working on the plan's behalf.

m. **Unit Rebate Amount (URA)-** CMS computes this amount and state Medicaid programs apply utilization information to it to invoice drug manufacturers for rebates.

n. **Over-The-Counter Drug (OTC)-** a drug that is appropriate for use without the supervision of a healthcare professional such as a physician, and can be purchased by a consumer without a prescription in the U.S.

o. **Professional Dispensing Fee (PDF)-** as defined in 42 C.F.R. §447.502. means the professional fee which:

1) Is incurred at the point of sale or service and pays for costs in excess of the ingredient cost of a covered outpatient drug each time a covered outpatient drug is dispensed;

2) Includes only pharmacy costs associated with ensuring that possession of the appropriate covered outpatient drug is transferred to a Medicaid beneficiary. Pharmacy costs include, but are not limited to, reasonable costs associated with a pharmacist's time in checking the computer for information about an individual's coverage, performing drug utilization review and preferred drug list review activities, measurement or mixing of the covered outpatient drug, filling the container, beneficiary counseling, physically providing the completed prescription to the Medicaid beneficiary, delivery, special packaging, and overhead associated with maintaining the facility and equipment necessary to operate the pharmacy; and

3) Does not include administrative costs incurred by the State in the operation of the covered outpatient drug benefit including systems costs for interfacing with pharmacies.

p. **Specialty Medication-** A medication or a pharmaceutical product which has been prescribed for an eligible TennCare enrollee by an authorized prescriber, is not listed on CMS' National Actual Drug Acquisition Cost list (NADAC), and meets at least two (2) of the following:

1) The cost of the medication equals or exceeds $500 for a thirty (30) day supply;
2) The medication is only approved to treat limited patient populations, indications, or conditions;
3) The medication is typically injected, infused, or requires close monitoring by a physician or clinically trained individual;
4) The medication has limited availability, special dispensing, and delivery requirements, and/or requires additional patient support.

q. **Key Personnel** means the specific staff roles within the Contractor's staff identified in section A.7.b. of this Contract and which are subject to heightened requirements on matters including but not limited to availability, notice of staffing changes, and TennCare's right to review and approve candidates

r. **Third Party Liability (TPL)-** By law, TennCare is the payer of last resort. If another insurer or program has the responsibility to pay for medical costs incurred by a Medicaid-eligible individual, that entity is generally required to pay all or part of the cost of the claim prior to Medicaid making any payment. This process may also be referred to as Coordination of Benefits (COB).

s. **Brand** - A drug sold by a drug company under a specific name or trademark and that is protected by a patent.

t. **Generic** - A generic drug is a medication that has exactly the same active ingredient as the brand name drug and yields the same therapeutic effect. It is the same in dosing, safety, strength, quality, the way it works, the way it is taken, and the way it should be used. Generic drugs do not need to contain the same inactive ingredients as the brand name product. However, a generic drug can only be marketed after the brand name drug's patent has expired, which may take up to 20 years after the patent holder's drug is first filed with the U.S. Food and Drug Administration

(FDA).

u. Point of Sale (POS)- means a pharmacy claims processing system capable of receiving and adjudicating claims on-line in real time.

v. Chief Pharmacy Officer (CPO)- means the pharmacy director responsible for the overall operation of the pharmacy department. The position requires extensive contact with the Deputy Commissioner of TennCare, medical staff, pharmacy service staff, PBM account staff, and other contractors (vendors, auditors).

w. TennCare Pharmacy Unit (TPU)- means the pharmacy unit within the medical office department and includes service staff composed of licensed pharmacists and support staff under the direction of the CPO.

x. Pharmacy Network- means a group of pharmacies that have contracted with a health plan or pharmacy benefit manager to provide covered products and services to members.

y. Call Center- is a department within a business that exists to handle massive streams of calls. Call centers take care of both inbound and outbound calls, with the major channel of communication being phones.

z. TPU PBM Audit Management – the TennCare Chief Pharmacy Officer together with the TennCare Pharmacy Unit team of four (4) pharmacists collectively are TPU PBM Audit Management.

aa. Corrective Action Audit – A subsequent audit requested by TennCare based on specific adverse audit findings, recommendations for improvement, or cost savings suggestions made by the auditor as a result of the initial PBM services audit. In these situations, TennCare will have required the PBM to develop a corrective action plan (CAP) to correct the adverse findings, improve PBM services, or implement cost savings measures. The Corrective Action Audit will evaluate whether the PBM is now operating within industry best practices.

A.3. PBM Audit Services. The Contractor shall work under the direction of the TennCare Chief Pharmacy Officer (CPO) and the TennCare Pharmacy Unit (TPU) Team, collectively known as TPU PBM Audit Management. Unless otherwise directed by TPU PBM Audit Management, the Contractor shall do the following:

a. Assist the State ensuring that TennCare's Pharmacy Benefits Manager (PBM) has accurately implemented the TennCare's distinctive pharmacy programs, and is meeting its financial, contractual, and regulatory obligations by conducting an audit of PBM records for all three pharmacy programs as specified by TPU PBM Audit Management.

b. Analyze Medicaid, CHIP, and CoverRx pharmacy claims data to assess the PBM's performance and to advise the State on potential improvements in its contracting that the State will utilize to help maximize pharmacy spend and trends where applicable. Specifically, Contractor shall conduct analysis of the following:

1) Whether the PBM has implemented TennCare, CoverKids, and CoverRx benefit design including the pharmacy point of sale system, pharmacy network, member and provider call center response times and procedures, pharmacy appeals for applicable programs, accuracy of rebate collections and reporting, formulary administration and preferred drug list and covered drug list maintenance, lock-in program, and pharmacy provider engagement and oversight in accordance with the PBM contract.
2) Ensure that the PBMs definition of brand and generic drugs align with the State's definition and that management of edits are applicably aligned with the State's.
3) Ensure pricing and rebates reconcile for all programs and for each distinctive pharmacy type as defined by the State's SPA. The Contractor shall recognize that audit services particularly rebate audits of Medicaid, CoverKids and CoverRx, will require the PBM to provide information that is protected by signed confidentiality agreements with

pharmaceutical manufacturers and to the extent such information is not in the public domain, the Contractor understands that the information is proprietary property and the PBM may be harmed if the information is improperly disclosed. Moreover, the Contractor will be required to sign a confidentiality agreement with the PBM ensuring that all details and terms of all manufacturer rebate contracts with the PBM (except the total aggregate amount due TennCare) will be treated as confidential and will not be revealed in any manner or form by or to any person or entity including TennCare. Therefore, the audit rebate validation shall be restricted to determining whether monies paid to TennCare are in accordance with its PBM contract.

4) Ensure the PBM is applying the financial and pricing terms in its contract, and at direction of the state, for each Division pharmacy program. Analysis shall include an assessment of ingredient cost methodology including Actual Acquisition Cost (AAC) and Average Actual Acquisition Cost (AAAC), Professional Dispensing Fees (PDFs) 340B ceiling price application, and contract provisions about drug pricing algorithms, and whether brand and generic drugs are classified, as well as analysis of claims and costs for compound drugs, specialty pharmaceuticals, mail-order, long-term care, OTC drugs, benefit limits, and ninety (90) day supply lists.
5) Assess the PBM's effectiveness at detecting fraud, waste, and abuse;
6) Assess the PBM's performance in calculating and passing through federal and supplemental rebates to TennCare, and manufacturer rebates to CoverRx and CoverKids in accordance with terms of the contract. The Contractor shall propose methods for TennCare approval to conduct follow-up on-site audits at the PBM offices as needed.
7) Assess the PBM's performance in managing the TPL process. PBM uses their proprietary TPL file at the point of sale to determine if the TennCare member has other insurance. PBM has a process which involves denying the claim and providing the other insurance information to the pharmacy provider online and in real-time. Assessment of TPL management is twofold:
    i. Contractor shall assess whether the PBM's TPL process is identifying all claims subject to TPL. The assessment shall include a re-processing of claims using the TennCare TPL file, to help determine if the PBM should be using TennCare's file instead of PBM's proprietary file.
    ii. Contractor shall monitor pharmacy providers to ensure that the TPL process is followed, and shall include an assessment of PBM's performance by network pharmacy, demonstrating whether the process is being utilized, or whether pharmacies are turning members away

c. A TPL report shall be due forty-five (45) days from completion of network TPL audit. A written report shall be provided within ninety (90) days of completion of the entire PBM audit which includes the scope of the analysis (specific types of analyses performed), how the analysis was conducted, results of the analysis, and specific recommendations about opportunities to achieve cost savings by outlining best practices and measures to be applied to systems, standards of operations, policy and procedures, and recommended clarification and contract terms modification, where applicable. The State will maintain full ownership of the final reports, including documentation and other related work products. Because the rebate audit requires a longer period, a separate report should be prepared describing the rebate audit process, results, and recommendations for each pharmacy program.
d. Analyses must be based on one hundred percent (100%) of the pharmacy claims processed by the PBM for each pharmacy program and processed by the MCOs, where applicable, over a twelve (12) month, calendar period. A data file will be provided to the Contractor after contract execution.
e. Shall obtain and compare other similarly aligned pharmacy program performance metrics, including but not limited to, administrative costs, total reimbursement, and net reimbursement per member per month in comparison to the State's similarly designed plans.
f. Deliver presentations on audit-related topics at the discretion of TPU PBM Audit Management and at a mutually agreed upon time.
g. The Contractor shall conduct a Corrective Action Audit at the written request of TennCare.
h. Perform all work under this Contract in compliance with the most current version applicable at

the time the services are rendered of the following standards:

i. Government Auditing Standards issued by the Comptroller General of the United States and available at https://www.gao.gov/products/gao-21-368g
International Standards for the Professional Practice of Internal Auditing (Revised, January 1, 2017) issued by the Institute of Internal Auditors and available for download at https://na.theiia.org/standards-guidance/mandatory- guidance/pages/standards.aspx.

A.4. Reports. In addition to the reporting requirements in A.3., the Contractor shall submit to the TennCare's CPO, or TPU PBM Audit Management, all interim reports described below at no additional cost to the State:

a. Status Report: On a weekly basis, the Contractor shall provide a status report at the weekly team meeting with TPU PBM Audit Management. The contents of the weekly Status Report shall include the following:

i. A list of completed audit steps or procedures performed as outlined in Section A.3;

ii. Any findings resulting from the procedures performed; and

b. Custom Reports: In addition to status reports, the Contractor shall provide the following, as applicable:

i. The Contractor's audit management reporting package customized to meet TennCare program analysis needs, including observations, findings, and tracking.

ii. TennCare On Request Reports (ORRs) and Ad Hoc Reports. The Contractor shall be able to provide, at no extra cost to the State, ORRs and Ad Hoc Reports that shall assist in assessment of PBM clinical initiatives, the identification of observations, findings, and corrective action for the PBM. ORRs and Ad Hoc Reports shall be provided in a format pre-approved by the State and on a mutually agreed upon timetable.

c. Such other reports as TennCare may request from time to time through Control Memoranda as defined in Contract Section A.9.

A.5. Contractor Availability. Unless otherwise directed by TennCare the Contractor shall meet with the CPO or TPU PBM Audit Management at least once per week to discuss the weekly status of the Contractor's performance, any necessary changes in the Contractor's practices, and planning. At the direction of TennCare, the Contractor shall participate in such meetings in person, by telephone, via videoconference, or any other means. The Contractor shall ensure that its Key Personnel, as defined in Contract Section A.7.b, are available for such meetings and attend in accordance with the State's instructions.

A.6. Coordination with Other Contractors and State Agencies. The Contractor shall, as directed by the State and at no additional cost to the State, coordinate with, facilitate the prompt exchange of information between, and work collaboratively with, any and all other State contractors and State agencies. If the State requires the Contractor to share with or obtain from another state contractor or state agency any records or information that are not subject to public disclosure under applicable State or federal law, rules, or regulations, the Contractor shall keep the records or information confidential and, at TennCare's request, shall any sign documents including but not limited to, Non-Disclosure Agreements (Non-Disclosure Documents).

All records or information that the Contractor receives, have disclosed to it, or otherwise becomes known to Contractor during the performance of this Contract from any other state contractor or state agency, that the state contractor or state agency considers to be proprietary or confidential in nature pursuant to a Non-Disclosure Document entered into between the Contractor and another State contractor or State agency, to the extent permitted by law, shall be

governed by such Non-Disclosure Document.

Nothing in this Section, including failure to negotiate and enter a Non-Disclosure Document acceptable to Contactor with another State contractor or State agency, shall be construed to relieve the Contractor of its duty to perform any requirements or deliverables under this Contract. Other than as permitted in Section C.3 of this Contract, Payment Terms and Conditions, the Contractor shall not invoice the State for any such coordination services, and the State shall not be liable to the Contractor for payment for any such coordination services.

A.7. Staffing. The Contractor shall hire and maintain staff and management in accordance with the terms of this Contract.

a. Workforce Requirements. The Contractor shall provide dedicated staff in sufficient numbers to ensure completion of the Contractor's duties under the terms of this Contract. In its sole discretion, the State shall have the right to require additional employee staffing levels to perform the services required under this Contract.

i. The Contractor shall maintain an alphabetical list by last name listing of the titles, responsibilities, location, telephone numbers, and email addresses for all Contractor employees and subcontractors that will perform services under this Contract. The Contractor shall provide the list of the Contractor's employees and subcontractors to the State within thirty (30) days of the commencement of the Contract's term and shall provide an updated list to the State of any changes to the Contractor's employees or subcontractors no later than ten (10) days after changes in staff performing work under this Contract or as otherwise directed by the State.

ii. The Contractor shall ensure that all employees, contractors, or subcontractors who perform any services under this Contract shall have the necessary credentials, licenses, and certifications required to perform the work under this Contract. The Contractor shall ensure that all persons who perform work under this Contract have prior audit experience.

iii. The Contractor shall cause all of its employees, contractors, and consultants who perform work under this Contract to be trained in compliance with safeguarding regulations, HIPAA/HITECH and any other federal or State privacy and security laws, including, but not limited to the Gramm-Leach Bliley Act (GLBA); the Privacy Act of 1974, as amended; the Tennessee Consumer Protection Act, Identity Theft Safeguards, The Red Flag Rules; the Tennessee Consumer Protection Act, Identity Theft Safeguards, and 26 U.S.C. § 6103(p)(4) that applies to authorized recipients of FTI. The Contractor and Its subcontractors shall comply with the provisions of 42 U.S.C. § 1396a(a)(68) et seq. as applicable, regarding policies and education of employees as regards the terms of the False Claims Act and whistleblower protections.

b. Key Personnel. The Contractor shall submit to the State for prior review and approval the names, titles, and resumes of candidates for initial engagement as Key Personnel and other employees, contractors, and subcontractors any time a change in personnel is proposed.

i. If, during the term of this Contract, any Key Personnel should leave the Contractor's employment, the Contractor shall fill the vacant Key Personnel position within thirty (30) days from the date of the vacancy's inception. The Contractor shall fill the vacancy with a temporary replacement within three (3) days of such termination or resignation.

ii. If the State requests in writing that specific Key Personnel no longer perform services under this Contract, the Contractor shall provide a temporary replacement for the outgoing Key Personnel within three (3) days of such request, at which time the outgoing Key Personnel shall cease any work in connection with this Contract. Within thirty (30) days from the State's written

request, the Contractor shall provide a permanent replacement for the outgoing Key Personnel that is satisfactory to the State. Failure to timely replace Key Personnel may result in Liquidated Damages as set forth in Attachment B.

iii. Upon the State's request and in the sole discretion of the State, the Contractor shall offer the State an opportunity to interview any proposed replacement(s) to Key Personnel. The State shall, at any time during the Contract period, have the discretion to deny the employment or use of any employee, contractor, or subcontractor assigned by the Contractor to perform work under this Contract. Upon notification by the State to the Contractor that an employee, contractor, or subcontractor has been disapproved, the employee, contractor, or subcontractor shall immediately cease work under this Contract.

iv. The Contractor shall not remove any approved Key Personnel from their assigned duties under the Contract for any period exceeding two (2) weeks without State prior written approval. The Contractor shall notify the State in writing of any proposed change in Key Personnel at least thirty (30) days prior to the change or as soon as the change is known if the Key Personnel's notification to the provided to the Contractor is less than thirty (30) days. The Contractor shall not be required to provide notification to the State if Key Personnel are on sick or vacation leave or are attending corporate functions for less than one (1) week.

v. For each position designated as Key Personnel, and for any other Contractor employees, contractors, or subcontractors, requested by the State, the Contractor shall identify the individual(s) who shall provide the services assigned to the Key Personnel, in the event the Key Personnel are unable to perform the Contractor's services required by this Contract. Any new Key Personnel shall remain subject to the review and approval of the State, as defined this subsection b.

Failure by the Contractor to remain compliant with the Staffing requirements outlined herein may result in the assessment of liquidated damages at the sole discretion of the State.

The Contractor shall designate an employee for the following roles: Project Director, Audit Director, (Forensic) CPA, Pharmacist, and Data Analyst, and Project Manger, which constitute the minimum of Key Personnel. Additional personnel may include but not be limited to a Project Manager. Key Personnel need not have one hundred percent (100%) of their time assigned to the Contract.

Table 1 Key Personnel

Key Position	Description	Minimum Qualification
Project Director.	The Project Director shall assume direct operational responsibilities for all work within the scope of work in this Contract including but not limited to oversee quality review responsibilities, coordinate operations with the Stale, and provide leadership and expertise, as approved by the State. The Project Director shall be available to the State in person at TennCare offices in Nashville, Tennessee at the State's request. The Project Director shall serve as the Contractor's point of contact with the State. The Project Director shall have the authority to make decisions	Must have five (5) years of experience in Medicaid PBM auditing or equivalent experience

	and resolve problems on behalf of the Contractor. The Project Director shalt attend the monthly status meeting referenced in Contract Section A5, and any other meetings as directed by TennCare.	
Audit Director	The Audit Director will develop a strong understanding of business and system procedures and protocols, evaluate internal controls, identify Artifacts and processes to be examined for each control, identify methods and objects to test each control including identifying automation tool use (if any), identifying personnel or roles responsible for the implementation of each control and conducting interviews, reviewing and evaluating documentation, determining risk exposure (operational, financial, reputational, systems) as well as developing remediation strategies	A degree from an accredited college or university in computer science, information technology/computer information systems, a business degree with data analyst emphasis, an accounting degree (Certified Public Accountant preferred), or Certified Internal Auditor, or Certified Systems Auditor. Audit staff should have appropriate auditing certification. -A minimum of five (5) years of audit experience -Familiar with pharmacy networking, operating systems, data encryption, cloud computing, and operational controls. -Clear understanding of audit methodologies -Must be able to conduct audits of system controls, access controls, or change management controls -Solid communication skills to not only understand technical jargon but to translate technical jargon to business-related decisions
Certified (Forensic) Public Accountant	Analyze rebate financial records to ascertain accuracy of rebate invoicing and collections, assess loss of rebate revenue, if any, determine if rebate payment has been properly paid to the State.	Accountant should have at least an undergraduate degree in accounting or finance and experience in pharmaceutical rebate invoicing and manufacturer dispute resolution.
Data Analyst	Partner with the Project Pharmacist to analyze claims data to determine correct reimbursement payment for ingredient cost and professional dispensing fee, correct panel placement of provider, and assess ongoing claw back of overpayments to providers.	A Bachelor's Degree in statistics, applied statistics, social or behavioral sciences, health sciences, business, business administration, or public policy and five or more (5+) years of full-time professional work directing statistical research and developing, writing, testing code or algorithms to assess accurate application of our contract.
Pharmacist	Partner with Data analyst to assess claims data and offer expertise and PBM insight to project team.	Licensed pharmacist with pharmacy benefit management experience and has worked in a Point-of-Sale environment who understands claims coding, and claims business intelligence.
Project Manager	Project manager identifies the project's goals, objectives, and scope and creates a project plan that outlines the tasks, timelines, and resources required. Communicates with the project team and stakeholders, manage risks and issues, and monitor progress to ensures the project completion.	A Bachelor's or Master's degree in business, or health care, policy, or related field. Project Management Professional (PMP) or PRINCE II certification, and five or more (5+) years of full time professional project management work and audit project management.

A.8. Problem Notification. At the point at which the Contractor discovers or reasonably should have known of any problem that is reasonably likely to jeopardize the Contractor's ability to perform any function as specified in this Contract, the Contractor shall notify the CPO or TPU PBM Audit Management in person, videoconference, via phone, or by email within one (1) hour if the problem is discovered within the business day and no later than 9:00 a.m. CT the following

business day if the problem occurs after close of business.

a. Corrective Action Plan. Unless otherwise directed by the State, the Contractor shall within three (3) business days of a problem's occurrence deliver comprehensive written documentation, including a Corrective Action Plan that describes how the Contractor shall determine the root cause of the issue, remedy the immediate operational challenges, and prevent this or similar problems from occurring again.

A.9. Control Memorandum Process.

a. The Control Memorandum ("CM") process shall be utilized by the State to clarify Contract requirements, issue instruction to the Contractor, document action required of the Contractor, or request information from the Contractor. In addition, the CM process shall be used by the State to impose assessments of damages, either actual or liquidated. This process will be used to address issues or matters that do not require a contract amendment. Each CM must be in writing and indicate the date on which it was issued. CMs may provide relevant history, background, and other pertinent information regarding the issue(s) being addressed in the CM. Each CM will establish a deadline or timeframe for the Contractor's reply or other action. All CMs submitted to the Contractor must be signed and approved by the State's Project Director (or his/her designee). When the CM pertains to damages, either actual or liquidated, the State may issue consecutive CMs, as may be necessary or appropriate.

b. A CM may include one (1) or more of the five (5) components of the CM process described below:

(1) On Request Report – a request directing the Contractor to provide information by the time and date set out in the CM.

(2) Control Directive (CD) – instructions that require the Contractor to complete, within a designated timeframe, one (1) or more deliverables or to perform any other request from the State that is within the scope of the Contract. The CD may include a Corrective Action Plan. A CD may also provide clarification of certain Contract terms. Once a CM/CD has been issued, it shall be incorporated into this Contract.

(3) Notice of Potential Damages (Actual or Liquidated) (NPD) – notification to the Contractor that the State has determined that a potential Contract performance or compliance failure exists and that the State is contemplating assessing damages. The NPD shall identify the Contract provision(s) on which the State determination rests.

(4) Notice of Calculation of Potential Damages (Actual or Liquidated) (NCPD) – notification to the Contractor that provides a calculation of the number of potential damages that the State is contemplating assessing against the Contractor. NPDs and NPCDs may be issued consecutively or simultaneously.

(5) Notice of Intent to Assess Damages (Actual or Liquidated) (NIAD) – notification to the Contractor that the State is assessing damages and specifying whether the damages, due to a performance or compliance failure, are actual damages or Liquidated Damages and setting out the performance or compliance failure underlying each intended damage assessment. The NIAD shall identify the NPD and NCPD upon which it is based. The NIAD shall specify the total amount and type of damages, whether actual or liquidated, that the State intends to assess. Following the issuance of an NIAD, the State may elect to withhold damages from payments due to Contractor. The State may not issue a NIAD without first issuing a NPD and a NPCD. The State may not obtain both Liquidated Damages and Actual Damages for the same occurrence of a Contract performance or compliance failure.

c. Damages for failure to comply with CM. The Contractor shall fully comply with all CMs. Failure to do so may result in the State pursuing recovery of damages, as defined in Section E.7, including Liquidated Damages as listed in Contract Attachment B, a corrective action plan, and/or termination of the Contract.

d. Appeal of Damages by Contractor. Contractor may appeal either the basis for NPD or calculation of NCPD potential damages, either actual or liquidated. To do so, the Contractor shall submit to the State's Project Director (or his/her designee) a written response to the NPD and/or NCPD within ten (10) business days of receipt of a CM which includes a NPD or a NCPD. The State's Project Director (or his/her designee) shall review the appeal and provide notice of his/her determination to the Contractor through a CM. If the Contractor disagrees with the State's Project Director's (or his/her designee) initial appeal determination or the State's Project Director (or his/her designee) is unable to resolve the appeal, the Contractor may submit a written request to the State's Project Director (or his/her designee) that the matter be escalated to senior management of the Agency. Contractor shall submit such a request for escalation within ten (10) business days of its receipt of the initial appeal determination from the State's Project Director (or his/her designee) or of notification by the State's Project Director that he/she is unable to resolve the appeal. The State's senior management shall provide written notice of its final determination to the Contractor within ten (10) days of the receipt of the appeal from the Contractor. Upon appeal or escalation, the State shall not increase the amount of the potential damages.

A.10. Transmission of Contract Deliverables. All information or data that is necessary for one or more deliverables set forth in this Contract shall be transmitted between TennCare and Contractor via the data transfer method specified in advance by TennCare. This shall include transfer through the TennCare Secure File Transfer Protocol (SFTP) system, unless directed otherwise by the State. Failure by the Contractor to transmit information or data that is necessary for a deliverable in the manner specified by TennCare, may, at the option of TennCare, result in liquidated damages as set forth in this Contract. The Contractor shall limit resources to US-based (onshore) resources only.

A.11. Reporting Suspected Fraud and Abuse.

a. The Contractor shall cooperate with all appropriate state and federal agencies, including the Tennessee Bureau of Investigation Medicaid Fraud Control Division (TBI MFCD) and the Office of the Inspector General (OIG), in investigating fraud and abuse if requested. In addition, the Contractor shall fully comply with T.C.A. § 71-5-2603 in performance of its obligations under this Contract.

b. The Contractor shall notify the TennCare Office of Program Integrity (OPI) and TBI MFCD and TPU PBM Audit Management in a timely manner regarding all internal and external tips with potential implications to TennCare providers' billing anomalies and/or safety of TennCare enrollees. Along with a notification, the Contractor shall take steps to triage and/or substantiate these tips and provide simultaneous and timely updates to the TennCare and TBI MFCD when the concerns and/or allegations of any tips are authenticated.

c. The Contractor shall report all tips, confirmed fraud, and suspected fraud and abuse to TPU PBM Audit Management and the appropriate agency as follows:

Report suspected fraud **within TennCare** to:

- The State of Tennessee Comptroller via their hotline number, **1.800.232.545**

Report suspected **provider fraud** within TennCare to:

- TennCare's Office of Program Integrity via their hotline number, 1-833-687-9611 or email TennCare.Fraud@tn.gov ,
- The State of Tennessee Bureau of Investigation's Medicaid Fraud Control Division (TBI MFCD) via their hotline number, 1-800-433-5454, or email TBI.MedicaidFraudTips@TN.gov.

Report suspected **member fraud** to:

- The Tennessee Department of Finance and Administration's Office of Inspector General (OIG) (via their fraud and abuse hotline number, 1-800-433-3982, or their "Report TennCare Fraud" webpage located at https://www.tn.gov/finance/fa-oig/fa-oig-report-fraud.html).

d. Pursuant to TCA 71-5-2603(d), the Contractor shall be subject to a civil penalty, to be imposed by the OIG, for willful failure to report fraud and abuse by recipients, enrollees, or applicants to TennCare as appropriate.

e. Unless prior written approval is obtained from the agency to whom the incident was reported, after reporting suspected or confirmed fraud or abuse, the Contractor shall not take any of the following actions as they specifically relate to TennCare claims:

i. Contact the subject of the investigation about any matters related to the investigation;

ii. Enter into or attempt to negotiate any settlement or agreement regarding the incident; or

iii. Accept any monetary or other thing of valuable consideration offered by the subject of the investigation in connection with the incident.

f. The Contractor shall cooperate fully in any further investigation or prosecution by any duly authorized government agency, whether administrative, civil, or criminal. The Contractor shall provide, upon request, information, access to records, and access to interview Contractor's employees, contractors, and subcontractors.

A.12. 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.

A.13. End of Contract Transition Requirements. Prior to the end of the Contract term or extension of the Contract term, or in the event of a Contract Termination or Partial Takeover as further defined herein, the State may contract with a successor contractor (Successor Contractor) to assume the Contactor's duties and requirements upon the end of the term or termination of this Contract. This may result in a period of transition during which the Contractor continues to provide services while the Successor Contractor prepares to assume those services, with a switch over from the Contractor to the Successor Contractor occurring on an implementation date (Implementation Date) specified by the State. The Implementation Date will typically coincide with the Successor Contractor's Go-Live Date pursuant to its contract with the State. However, the State may elect, in its sole discretion, to have the Contractor continue some portion of its services and systems after the Successor Contractor's Implementation Date, in which case, unless otherwise agreed to in writing by the State and Contractor, the Contractor shall be compensated for such services and systems in accordance with the provisions of Contract Section C.

The Contractor shall be required to participate as directed by the State, at no additional cost to the State, in assisting with the transition by providing specified deliverables, information relating to the Contractor's duties and attending meetings with the State and/or Successor Contractor. The Contractor shall also work with designated State personnel and/or the Successor Contractor to develop and provide to the State for its review and approval a comprehensive audit services transition plan (Transition Plan) no later than ninety (90) days prior to the Contract end date, Termination, or Partial Takeover. The Transition Plan shall cover both the Contractor's and the Successor Contractor's duties and responsibilities to ensure an orderly transition of responsibilities, and shall, at minimum, include the following information:

a) Define transition approach, all tasks and subtasks and party responsible for each, and provide a schedule for the transition effort to achieve State requirements;

b) As applicable, transfer all equipment, title to equipment, files, data, service contracts, and other materials developed under this Contract, and any and all amendments thereto, to the State or its designated agent;

c) Provide training to the State or its designated agent in the performance of all Contract related

audit functions;

d) Provide an estimated inventory of all work in progress and its projected status at the end of the Contract three (3) months before final termination of this Contract;

e) Update the work in progress and inventory estimates weekly throughout the Transition Phase;

f) Provide a final, detailed, inventory and accounting of all work in progress and all completed work within thirty (30) working days of final Contract expiration; and

g) Such other information as may be requested by TennCare.

The Contractor shall, at all times, act in good faith toward the State and/or Successor Contractor to facilitate as seamless a transition as possible. The State shall specify deliverables required of the Contractor in aid of the transition process. Failure to fully and timely cooperate with the State's request or provide the requested deliverables may result in the assessment of actual or liquidated damages, as set forth in Contract Section E.7 and Contract Attachment B. The State shall not be liable to the Contractor for any costs and expenses relating to these deliverables or relating to the services provided by the Contractor during the transition period, other than as set forth in Contract Section C.3.

B. TERM OF CONTRACT:

B.1. This Contract shall be effective on November 15, 2023 ("Effective Date") and extend for a period of thirty-six (36) months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

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

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed One Million Five Hundred Forty Eight Thousand One Hundred Seventy Four Dollars and Zero Cents ($1,548,174.00) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

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

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

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

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

Goods or Services Description	Amount (per compensable increment)
PBM Audit Services Fee (See A.3.)	$462,205.00 Per Completed Audit
Corrective Action Audit (See Section A.3.)	$24,500.00 Per Completed Audit

Optional Year 1	Amount (per compensable increment)
PBM Audit Services Fee (See A.3.)	$497,795.00 Per Completed Audit
Corrective Action Audit (See Section A.3.)	$26,387.00 Per Completed Audit

Optional Year 2	Amount (per compensable increment)
PBM Audit Services Fee (See A.3.)	$510,240.00 Per Completed Audit
Corrective Action Audit (See Section A.3.)	$27,047.00 Per Completed Audit

*Other than as permitted in Section C.3 of this Contract, Payment Terms and Conditions, the Contractor shall not invoice the State for any such coordination services, and the State shall not be liable to the Contractor for payment for any such coordination services.

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

C.5. Invoice Requirements. The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:

Division of TennCare
310 Great Circle Road
Nashville, TN 37243

a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):

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

(14) Total amount due for the invoice period.

b. Contractor's invoices shall:

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

c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.

C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.

C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.

C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.

C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.

a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and

b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

D. MANDATORY TERMS AND CONDITIONS:

D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.

D.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as

stated below or any other address provided in writing by a Party.

The State:

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

The Contractor:

Allan Hansen, Principal
Myers and Stauffer, LLC
700 W 47th Street, Suite 1100, Kansas City, MO, 64112
ahansen@mslc.com
816-945-5318

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

D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.

D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.

D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.

D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.

D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the

use of subcontractors in fulfilling the Contractor's obligations under this Contract.

D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination. This Section D.9 shall not be deemed to limit or abridge any requirement set forth in Section E.23.

D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.

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

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

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

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

D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The

books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of ten (10) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

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

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

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

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

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

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

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

D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on

the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys' fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.

a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules and will comply with all applicable requirements in the course of this Contract.

b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.

c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.

d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq*., the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.

D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.

D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors, and their principals:

a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or

voluntarily excluded from covered transactions by any federal or state department or agency;

b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and

d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers, or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees for the affected obligations until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.

D.25. State and Federal Compliance. The Contractor shall comply with all State and federal laws and regulations applicable to Contractor in the Contractor's performance of this Contract.

D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 408.

D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties'

agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.

D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.

D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:

a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes Attachment A Personnel Attestation, Attachment B Liquidated Damages, Attachment C Business Associate Agreement
c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
e. any technical specifications provided to proposers during the procurement process to award this Contract; and
f. the Contractor's response seeking this Contract.

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

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

To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an aggregate meeting or exceeding the required coverage amounts is acceptable. For example: If the required policy limit under this Contract is for two million dollars ($2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars ($1,000,000) combined with an umbrella policy for an additional one million dollars ($1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers' Liability Accident), Contractor shall provide a copy of the umbrella insurance policy documents to ensure that no aggregate limit applies to the umbrella policy for that coverage area. In the event that an umbrella policy is being

provided to achieve any required coverage amounts, the umbrella policy shall be accompanied by an endorsement at least as broad as the Insurance Services Office, Inc. (also known as "ISO") "Noncontributory—Other Insurance Condition" endorsement or shall be written on a policy form that addresses both the primary and noncontributory basis of the umbrella policy if the State is otherwise named as an additional insured.

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

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

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

a. Commercial General Liability ("CGL") Insurance

    1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises and operations products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

       The Contractor shall maintain single limits not less than one million dollars ($1,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this policy or location of occurrence or the general aggregate limit shall be twice the required occurrence limit.

b. Workers' Compensation and Employer Liability Insurance

    1) For Contractors statutorily required to carry workers' compensation and employer

liability insurance, the Contractor shall maintain:

i. Workers' compensation in an amount not less than one million dollars ($1,000,000) including employer liability of one million dollars ($1,000,000) per accident for bodily injury by accident, one million dollars ($1,000,000) policy limit by disease, and one million dollars ($1,000,000) per employee for bodily injury by disease.

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

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

ii. The Contractor is a sole proprietor;

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

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

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

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

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

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

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

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

ii. Any professional liability insurance policy shall have a limit not less than one million dollars ($1,000,000) per claim and two million dollars ($2,000,000) in the aggregate; and

iii. If the Contract involves the provision of services by medical professionals, a policy limit not less than three million ($3,000,000) per claim and three million dollars ($3,000,000) in the aggregate for medical malpractice insurance.

e. Technology Professional Liability (Errors & Omissions)/Cyber Liability Insurance

1) The Contractor shall maintain technology professional liability (errors & omissions)/cyber liability insurance appropriate to the Contractor's profession in an amount not less than ten million dollars ($10,000,000) per occurrence or claim and ten million dollars ($10,000,000) annual aggregate, covering all acts, claims, errors, omissions, negligence, infringement of intellectual property (including copyright, patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, information theft, damage to destruction of or alteration of electronic information, breach of privacy perils, wrongful disclosure and release of private information, collection, or other negligence in the handling of confidential information, and including coverage for related regulatory fines, defenses, and penalties.

2) Such coverage shall include data breach response expenses, in an amount not less than ten million dollars ($10,000,000) and payable whether incurred by the State or Contractor, including but not limited to consumer notification, whether 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. The Contractor shall only use Confidential information for activities pursuant to and related to the performance of the Contract, including limited disclosures of information to subcontractors to satisfy the requirements of the Contract. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

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

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

E. SPECIAL TERMS AND CONDITIONS:

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

E.2. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's Response to 31865-00643 (RFQ Attachment B Technical Response & Evaluation Guide 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. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible personal property furnished by the State for the Contractor's use under this Contract. Upon termination of this Contract, all property furnished by the State shall be returned to the State in the same condition as when received, less ordinary wear and tear. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the fair market value of the property at the time of loss.

E.4. Work Papers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis work papers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.

E.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. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

a. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering this transaction imposed by 31 U.S.C. § 1352.

E.7. Liquidated Damages. In the event of a Contract performance or compliance failure by the Contractor, the State may, but is not obligated to address such Contract performance failure and/or assess damages ("Liquidated Damages") in accordance with Attachment B. The State shall notify the Contractor of any amounts to be assessed as Liquidated Damages via the Control Memorandum process. The Parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for a Contract performance or compliance failure, as these amounts are likely to be uncertain and not easily proven. Contractor has carefully reviewed the Liquidated Damages contained in Contract Attachment B and agrees that these amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of a Contract performance or compliance failure, are reasonable estimates of the damages that would occur from a Contract performance or compliance failure and are not punitive. The Parties agree that although the Liquidated Damages represent the reasonable estimate of the damages and injuries sustained by the State due to the Contract performance or compliance failure, they do not include any injury or damage sustained by a third party. The Contractor agrees that the Liquidated Damages are in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or any other sections of this Contract.

The State is not obligated to assess Liquidated Damages as a result of a Contract performance or compliance failure before availing itself of any other remedy. In the event of multiple Contract performance or compliance failures, the Parties recognize that the cumulative effect of these Contract performance failures may exceed the compensation provided by Liquidated Damages. The State may choose to avail itself of any other remedy available under this Contract or at law or equity. The Parties further recognize that the State may not obtain both Liquidated Damages and Actual Damages for the same occurrence of a Contract performance failure.

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

E.8. Partial Takeover of Contract. The State may, at its convenience and without cause, exercise a partial takeover of any service that the Contractor is obligated to perform under this Contract, including any service which is the subject of a subcontract between Contractor and a third party (a "Partial Takeover"). A Partial Takeover of this Contract by the State shall not be deemed a breach of contract. The Contractor shall be given at least three (3) days prior written notice of a Partial Takeover. The notice shall specify the areas of service the State will assume and the date the State will be assuming. The State's exercise of a Partial Takeover shall not alter the Contractor's other duties and responsibilities under this Contract. The State reserves the right to withhold from the Contractor any amounts the Contractor would have been paid but for the State's exercise of a Partial Takeover. The amounts shall be withheld effective as of the date the State exercises its right to a Partial Takeover. The State's exercise of its right to a Partial Takeover of this Contract shall not entitle the Contractor to any actual, general, special, incidental, consequential, or any other damages irrespective of any description or amount.

E.9. Unencumbered Personnel. The Contractor shall not restrict its employees, agents, subcontractors, or principals who perform services for the State under this Contract from performing the same or similar services for the State after the termination of this Contract, either as a State employee, an independent contractor, or an employee, agent, subcontractor or principal of another contractor with the State.

E.10. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of

the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents, and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents, and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify or ensure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State all PII which it has received under this Contract and shall destroy all records of such PII.

The Contractor shall report to the State any instances of unauthorized access to or potential disclosure of PII in the custody or control of Contractor ("Unauthorized Disclosure") that come to the Contractor's attention. Any such report shall be made by the Contractor within forty-eight (48) hours after the Unauthorized Disclosure have come to the attention of the Contractor. Contractor shall take all necessary measures to halt any further Unauthorized Disclosures. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals whose PII was affected by the Unauthorized Disclosure. The Contractor shall bear the cost of notification to all individuals affected by the Unauthorized Disclosure, including individual letters and public notice. The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to this State under this Contract or otherwise available at law. The obligations set forth in this Section shall survive the termination of this Contract.

E.11. Federal Funding Accountability and Transparency Act (FFATA). This Contract requires the Contractor to provide supplies or services that are funded in whole or in part by federal funds that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Contractor provides information to the State as required.

The Contractor shall comply with the following:

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

(1) The Contractor shall report the names and total compensation of each of its five most highly compensated executives for the Contractor's preceding completed fiscal year, if in the Contractor's preceding fiscal year, it received:

i. 80 percent or more of the Contractor's annual gross revenues from federal procurement contracts and federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

ii. $25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts), and federal financial assistance subject to the Transparency Act (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Securities and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.).

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

(2) Total compensation means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 C.F.R. § 229.402(c)(2)):

i. Salary and bonus.

ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives and are available generally to all salaried employees.

iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

v. Above-market earnings on deferred compensation which is not tax qualified.

vi. Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds $10,000.

b. The Contractor must report executive total compensation described above to the State by the end of the month during which this Contract is awarded.

c. If this Contract is amended to extend the Term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the term extension becomes effective.

d. The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at: http://fedgov.dnb.com/webform/

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

E.12. Drug-Free Workplace. The Contractor shall provide a drug-free workplace pursuant to the Drug-Free Workplace Act of 1988, Title 41 U.S.C. §§ 701, *et seq.*, and the regulations in Title 41 U.S.C.A. §§ 8101 through 8106.

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

E.14. Applicable Laws, Rules, Policies and Court Orders. The Contractor agrees to comply with all applicable federal and State laws, rules, regulations, sub-regulatory guidance including but not limited to the State Medicaid Manual, executive orders, TennCare waivers, and all current, modified or future Court decrees, orders or judgments applicable to the State's TennCare and CHIP programs. Such compliance shall be performed at no additional cost to the State.

E.15. Business Associate. As the Contractor will provide services to TennCare pursuant to which the Contractor will have access to, receive from, create, or receive on behalf of TennCare Protected Health Information, or Contractor will have access to, create, receive, maintain or transmit on behalf of TennCare Electronic Protected Health Information (as those terms are defined under HIPAA and HITECH), Contractor hereby acknowledges its designation as a business associate under HIPAA and agrees to comply with all applicable HIPAA regulations and any further responsibilities set forth in the Business Associate Agreement (See Attachment D) between the Parties.

E.16. Notification of Breach and Notification of Suspected Breach. The Contractor shall notify TennCare's Privacy Office immediately upon becoming aware of—and in no case later than forty-eight (48) hours after discovery of—any incident, either confirmed or suspected, that represents or may represent unauthorized access, use or disclosure of encrypted or unencrypted computerized data that materially compromises the security, confidentiality, or integrity of a TennCare enrollee's Protected Health Information (PHI) that is maintained or held by the Contractor, including any unauthorized acquisition of enrollee PHI by an employee or otherwise authorized user of the Contractor's system. This includes, but is not limited to, loss or suspected loss of remote computing or telework devices such as laptops, Personal Digital Assistants (PDA), Blackberry devices (or other Smartphones), Universal Serial Bus (USB) drives, thumb drives, flash drives, Compact Discs (CD), and/or hard disks.

E.17. Social Security Administration (SSA) Required Provisions for Data Security. The Contractor shall comply with limitations on use, treatment, and safeguarding of data under the Privacy Act of 1974 (5 USC 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, related Office of Management and Budget guidelines, the Federal Information Security Management Act of 2002 (44 USC §3541, et seq.), and related National Institute of Standards and Technology guidelines. In addition, the Contractor shall have in place administrative, physical, and technical safeguards for data.

a) The Contractor shall specify in its agreements with any agent or subcontractor that will have access to data that such agent or subcontractor agrees to be bound by the same restrictions, terms and conditions that apply to the Contractor pursuant to this Section.

b) The Contractor shall not duplicate in a separate file or disseminate, without prior written permission from TennCare, the data governed by the Contract for any purpose other than that set forth in this Contract for the administration of the TennCare program. Should the Contractor propose a redisclosure of said data, the Contractor must specify in writing to TennCare the data the Contractor proposes to redisclose, to whom, and the reasons that justify the redisclosure. TennCare will not give permission for such redisclosure unless the redisclosure is required by law or essential to the administration of the TennCare program.

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

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

e) The Contractor shall restrict access to the data obtained from TennCare to only those authorized employees who need such data to perform their official duties in connection with

purposes identified in this Contract. The Contractor shall not further duplicate, disseminate, or disclose such data without obtaining TennCare's prior written approval.

f) The Contractor shall ensure that its employees:

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

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

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

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

5) Send emails containing SSA-supplied data only if the information is encrypted or if the transmittal is secure; and,

6) Limit disclosure of the information and details relating to a SSA-supplied data loss only to those with a need to know.

Contractor employees who access, use, or disclose TennCare or TennCare SSA-supplied data in a manner or purpose not authorized by this Contract may be subject to civil and criminal sanctions pursuant to applicable federal statutes.

g) Loss or Suspected Loss of Data–If an employee of the Contractor becomes aware of suspected or actual loss of SSA-supplied data, the Contractor must contact TennCare immediately upon becoming aware to report the actual or suspected loss. The Contractor must provide TennCare with timely updates as any additional information about the loss of SSA-supplied data becomes available.

If the Contractor experiences a loss or breach of said data, TennCare will determine whether notice to individuals whose data has been lost or breached shall be provided and the Contractor shall bear any costs associated with the notice or any mitigation.

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

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

j) Definitions:

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

E.18. Medicaid and CHIP. The Contractor must provide safeguards that restrict the use or disclosure of information concerning Medicaid and Children's Health Insurance Plan (CHIP) applicants and beneficiaries to purposes directly connected with the administration of the plan.

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

   1. Establishing eligibility;

   2. Determining the amount of medical assistance;

   3. Providing services for beneficiaries; and,

   4. Conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to Medicaid or CHIP administration.

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

   1. Information is made available only to the extent necessary to assist in the valid administrative purposes of those receiving said information, and

   2. Information received under the Internal Revenue Code (Title 26 of the United States Code (USC)) is exchanged only with parties authorized to receive that information under that section of the United States Code; and the information is adequately stored and processed so that it is protected against unauthorized disclosure for other purposes.

c. The Contractor must have criteria that govern the types of information about applicants and beneficiaries that are safeguarded. This information must include, at minimum, the following:

   1. Names and addresses;

   2. Medical services provided;

   3. Social and economic conditions or circumstances;

   4. Contractor evaluation of personal information;

   5. Medical data, including diagnosis and past history of disease or disability;

   6. Any information received for verifying income eligibility and amount of medical assistance payments, including income information received from the Social Security Administration (SSA) or the Internal Revenue Service (IRS);

   7. Income information received from SSA, or the IRS must be safeguarded according to Medicaid and CHIP requirements;

   8. Any information received in connection with the identification of legally liable third-party resources; and,

   9. Social Security Numbers.

d. The Contractor must have criteria approved by TennCare specifying:

   1. Conditions for release and use of information about applicants and beneficiaries;

   2. Access to information concerning applicants or beneficiaries must be restricted to Contractor representatives or other individuals who are subject to standards of confidentiality that are comparable to those of TennCare;

   3. The Contractor shall not publish names of applicants or beneficiaries;

4. The Contractor shall obtain permission from a family or individual, whenever possible, before responding to a request for information from an outside source, unless the information is to be used to verify income, eligibility and the amount of medical assistance payment to an authorized individual or entity, or if, because of an emergency situation, time does not permit obtaining consent before release, the Contractor shall notify TennCare, the family, or individual immediately after supplying the information.

5. The Contractor's policies must apply to all requests for information from outside sources, including governmental bodies, the courts, or law enforcement officials.

6. The Contractor shall notify TennCare of any requests for information on applicants or beneficiaries by other governmental bodies, the courts or law enforcement officials ten (10) days prior to releasing the requested information.

7. If a court issues a subpoena for a case record or for any Contractor representative to testify concerning an applicant or beneficiary, the Contractor must notify TennCare at least ten (10) days prior to the required production date so TennCare may inform the court of the applicable statutory provisions, policies, and regulations restricting disclosure of information.

8. The Contractor shall not request or release information to other parties to verify income, eligibility, and the amount of assistance under Medicaid or CHIP prior to express approval from TennCare.

E.19. Employees Excluded from Medicare, Medicaid, or CHIP. The Contractor does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly employ, in the performance of this Contract, employees who have been excluded from participation in the Medicare, Medicaid, and/or CHIP programs pursuant to the Social Security Act, Section 1128 (Exclusion of Certain Individuals and Entities from Participation in Medicare and State Health Care Programs).

E.20. Offer of Gratuities. By signing this Contract, the Contractor signifies that no member of or a delegate of Congress, nor any elected or appointed official or employee of the State of Tennessee, the federal General Accounting Office, federal Department of Health and Human Services, the Center for Medicare and Medicaid Services, or any other state or federal agency has or will benefit financially or materially from this Contract. This Contract may be immediately terminated by TennCare if it is determined that gratuities of any kind were offered to or received by any of the officials or employees from the Contractor, its agent, or employees.

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

E. 22. Litigation Support. If any litigation should arise that requires the defense of a TennCare claim before any court or tribunal, the Contractor shall cooperate fully and timely with any State attorneys or paralegals in defense of the claim at no additional cost to the State. The Contractor shall make its personnel available to testify in Tennessee, whether in person before a tribunal or by deposition. The Contractor agrees to waive any objections to any subpoena issued by a Tennessee tribunal, in a case related to this Contract. The Contractor shall promptly provide the TennCare Office of General Counsel with all information within the Contractor's control if required to do so by a discovery demand or court order.

E.23. Nondiscrimination Compliance Requirements.

a) General Requirements. The Contractor shall comply with all applicable federal and state civil rights laws, regulations, rules, and policies, which may include, but are not limited to, Title VI

of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, and 42 U.S.C. § 18116 (codified at 45 C.F.R. pt. 92) and Contract Section D.9.

b) Records. The Contractor shall keep such records as may be necessary to submit timely, complete, and accurate compliance reports that may be requested by the U.S. Department of Health and Human Services (HHS), the U.S. Department of Justice (DOJ), TennCare, and the Tennessee Human Rights Commission (THRC) or their designees. If requested, the information shall be provided in a format and timeframe specified by HHS, DOJ, TennCare, or THRC. The requested information may be necessary to enable HHS, DOJ, TennCare, or THRC to ascertain whether the Contractor is complying with the applicable civil rights laws. For example, the Contractor should have available data showing the way services are or will be provided by the program in question, and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination. Further examples of data that could be requested can be found at 45 C.F.R. § 80.6 and 28 C.F.R. § 42.406.

c) Access. The Contractor shall permit access as set forth in the applicable civil rights laws, such as, 45 C.F.R. § 80.6 to HHS, DOJ, TennCare, and THRC or their designees during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain whether the Contractor is complying with the applicable civil rights laws.

d) Discrimination Complaint Investigations. In the event, a discrimination complaint is filed by either a TennCare employee or a Contractor staff member alleging an incident claimed to be caused by either the Contractor's staff or one of its subcontractors who are performing duties under this contact, the Contractor shall cooperate with TennCare's Office of Civil Rights Compliance (OCRC) during the investigation and resolution of the complaint allegation. Should the Contractor receive a report of a discrimination complaint allegation related to the activities being performed under this contract, the Contractor shall inform OCRC of the complaint within two (2) Business Days from the date Contractor learns of the complaint, OCRC shall determine the complaint investigation outcome, resolution, and/or corrective action.

e) Electronic and Information Technology Accessibility Requirements. To the extent that the Contractor is using electronic and information technology to fulfill its obligations under this Contract, the Contractor agrees to comply with the electronic and information technology accessibility requirements under the federal civil rights laws including Section 504 and Section 508 of the Rehabilitation Act of 1973 ("Section 508"), the Americans with Disabilities Act, and 45 C.F.R. pt. 92 (or any subsequent standard adopted by an oversight administrative body, including the Federal Accessibility Board). To comply with the accessibility requirements for Web content and non-Web electronic documents and software, the Contractor shall use the most current W3C's Web Content Accessibility Guidelines ("WCAG") level AA or higher with a goal to transition to WCAG 3 level silver (For the W3C's guidelines see: https://www.w3.org/WAI/standards-guidelines/ and Section 508 standards: https://www.access-board.gov/ict/).

f) Training. On an annual basis, the Contractor shall be responsible for making nondiscrimination training available to all Contractor staff and to its subcontractors that are recipients of federal financial assistance under this contract. The Contractor shall be able to show documented proof to OCRC that the training was made available to the Contractor's staff and to its subcontractors that are recipients of federal financial assistance under this contract.

E.24. 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.

IN WITNESS WHEREOF,

MYERS AND STAUFFER, LLC:

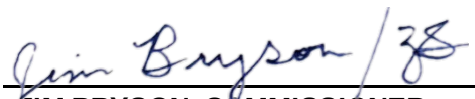
October 27, 2023

CONTRACTOR SIGNATURE **DATE**

T. Allan Hansen, Principal

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

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



11/2/2023

JIM BRYSON, COMMISSIONER **DATE**

ATTACHMENT A

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	RFQ #31865-00643
CONTRACTOR LEGAL ENTITY NAME:	Myers and Stauffer LLC
EDISON VENDOR IDENTIFICATION NUMBER:	0000156383

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

CONTRACTOR SIGNATURE

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

T. Allan Hansen, Principal

PRINTED NAME AND TITLE OF SIGNATORY

October 27, 2023

DATE OF ATTESTATION

ATTACHMENT B

LIQUIDATED DAMAGES

In the event of a Contract performance or compliance failure by Contractor and such Contract performance or compliance failure is not included in the following table with an associated Liquidated Damage amount, the parties hereby agree that the State may choose one of the following courses of action in order to obtain redressability for such Contract performance or compliance failure: (1) the State may assess actual damages resulting from the Contract performance or compliance failure against the Contractor in the event that such actual damages are known or are reasonably ascertainable at the time of discovery of such Contract performance or compliance failure; or (2) if such actual damages are unknown or are not reasonably ascertainable at the time of discovery of the Contract performance or compliance failure, the State may (a) require the Contractor to submit a corrective action plan to address any such Contract performance or compliance failure and (b) assess liquidated damages against Contractor for an amount that is reasonable in relation to the Contract performance or compliance failure as measured at the time of discovery of the Contract performance or compliance failure. In the event that the State chooses to assess a Liquidated Damage for a Contract performance or compliance failure according to the immediately preceding sentence, in no event shall such Liquidated Damage be in excess of $1,000 for any single Contract performance or compliance failure. The State reserves the right to assess a general liquidated damage of five hundred dollars ($500) per occurrence for any deficiency not enumerated in this Attachment.

The State may elect to apply the following liquidated damages remedies in the event the Contractor fails to perform its obligations under this Contract in a proper and/or timely manner. Upon determination by the State that the Contractor has failed to meet any of the requirements of this Contract in a proper and/or timely manner, the State will notify the Contractor in writing of the performance or compliance failure and of the potential liquidated damages to be assessed. Should the performance or compliance failure remain uncorrected for more than thirty (30) calendar days from the date of the original notification of the performance or compliance failure by the State, the State may impose an additional liquidated damage of Five Hundred Dollars ($500) per day from the date of the original notification to Contractor until said performance or compliance failure is resolved.

All liquidated damages remedies set forth in the following table may, at the State's election, be retroactive to the date of the initial occurrence of the failure to comply with the terms of the Contract as set forth in the notice of performance or compliance failure from the State and may continue until such time as the State determines the performance or compliance failure has been cured.

If liquidated damages are assessed, the State shall reduce the amount of any payment due to the Contractor in the next invoice by the amount of damages. In the event that damages due exceed the amount the State is to pay to Contractor in a given payment, the State shall invoice Contractor for the amount exceeding the amount payable to Contractor, and such excess amount shall be paid by Contractor within thirty (30) calendar days of the invoice date. In situations where the Contractor wishes to dispute any liquidated damages assessed by the State, the Contractor must submit a written notice of dispute, including the reasons for disputing the liquidated damages, to the State within thirty (30) calendar days of receipt of the notice from the State containing the total amount of damages assessed against the Contractor. If the Contractor fails to timely dispute a liquidated damages assessment as set forth herein, such failure shall constitute a bar to the Contractor seeking to have the assessment amount overturned in a forum or court of competent jurisdiction.

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

	PROGRAM ISSUES		DAMAGE
1.	Failure by the Contractor to meet the standards for privacy, security, and confidentiality of individual data as evidenced by a breach of security per Section D.34 and E.18.		The damaged that may be assessed shall be one thousand dollars ($1,000.00) per affected member per occurrence.
2.	Failure by the Contractor to timely report violations in the access, use, and disclosure of PHI or timely report a security incident or timely make a notification of breach or notification of suspected breach. (See E.16 and Attachment D, Business Associate Agreement between the parties)		The damage that may be assessed shall be one thousand dollars ($1,000.00) per affected member per occurrence.
3.	Failure by the Contractor to comply with a Control Memorandum and Control Directive (CM/CD) or Corrective Action Plan (CAP). (See Section A.8.a., A.9 and E.7)		The damage that may be assessed shall not exceed two thousand dollars ($2,000.00) per calendar day for each separate failure to comply with a CM/CD or CAP until compliance is met. If the Contractor fails to comply with a CM/CD or CAP for more than thirty (30) calendar days from the date of issuance of the CM/CD or CAP, TennCare may assess an additional two thousand dollars ($2,000.00) per calendar day until the Contractor complies with the CM/CD or CAP.
4.	Failure by the Contractor to comply with any requirement found in Section A.7.a Workforce Requirements provision of this Contract. (See Section A.7.a)		The damage that may be assessed shall be one thousand dollars ($1,000.00) per calendar day, per occurrence.

5.	Failure by the Contractor to comply with any requirement found in Section A.7.b Key Personnel provision of this Contract. (See Section A.7.b)		The damage that may be assessed shall be one thousand dollars ($1,000.00) per calendar day, per occurrence. If the Contractor's deficiency persists for more than thirty (30) days, the damage that may be assessed shall be two thousand dollars ($2,000.00) per calendar day, per occurrence, beginning on the thirty-first (31) day of the deficiency.
6.	Failure to timely deliver any report required by the Contract. (See Section A.4)		TennCare may assess damages of one thousand dollars ($1,000.00) for each day on and after the Contractor fails to deliver each report by the deadline specified.
7.	Failure to provide an acceptable Transition Plan or to comply with any approved Transition Plan requirement in a timely or complete manner. (See Section A.13)		The damage that may be assessed shall be ten thousand dollars ($10,000.00) per calendar month or any portion thereof, per occurrence. If the Contractor's deficiency persists for more than thirty (30) days, the damage that may be assessed, in TennCare's sole discretion, shall include an additional five thousand dollars ($5,000.00) per calendar month or any portion thereof, per occurrence, beginning on the thirty-first (31) day of the deficiency.

HIPAA Business Associate Agreement

THIS HIPAA BUSINESS ASSOCIATE AGREEMENT ("Agreement") is between The State of Tennessee, Division of TennCare ("TennCare" or "Covered Entity"), located at 310 Great Circle Road, Nashville, TN 37243 and Myers and Stauffer LLC ("Business Associate"), located at 700 W 47th Street, Suite 1100, Kansas City, Missouri 64112 , including all office locations and other business locations at which Business Associate data may be used or maintained. Covered Entity and Business Associate may be referred to herein individually as "Party" or collectively as "Parties."

BACKGROUND

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

LIST OF AGREEMENTS AFFECTED BY THIS HIPAA BUSINESS ASSOCIATE AGREEMENT:

_____

_____

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

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

1. DEFINITIONS

All capitalized terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms defined in 45 C.F.R. Parts 160 through 164 or other applicable law or regulation. A reference in this Agreement to a section in the Privacy or Security Rule means the section as in effect or as amended.
1.1 "Commercial Use" means obtaining PHI with the intent to sell, transfer or use it for commercial, or personal gain, or malicious harm; sale to third party for consumption, resale, or processing for resale; application or conversion of data to make a profit or obtain a benefit contrary to the spirit of this Agreement, including but not limited to presentation of data or examples of data in a conference or meeting setting where the ultimate goal is to obtain or gain new business.

1.2 "Confidential Information" shall mean any non-public, confidential or proprietary information, whether written, graphic, oral, electronic, visual or fixed in any tangible medium or expression, which is supplied by TennCare to the Business Associate under this Agreement. Any information, whether written, graphic, oral, electronic, visual or fixed in any tangible medium or expression, relating to individuals enrolled in the TennCare program ("TennCare enrollees"), or relating to individuals who may be potentially enrolled in the TennCare program, which is provided to or obtained through the Business Associate's performance under this Agreement, shall also be treated as "Confidential Information" to the extent that confidential status is afforded such information under state and federal laws or regulations. All confidential information shall not be subject to disclosure under the Tennessee Public Records Act.
1.3 "Electronic Signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) If Covered Entity directs Business Associate to provide an accounting of disclosures of the Individual's PHI directly to the Individual, the Business Associate shall have sixty (60) days from the date of the Individual's request to provide access to or deliver such information to the Individual or Individual's designee. The Covered Entity shall provide notice to the Business Associate in time to allow the Business Associate a minimum of thirty (30) days to timely complete the Individual's request.
(b) If the Covered Entity elects to provide the accounting to the Individual, the Business Associate shall have thirty (30) days from date of Covered Entity's notice of request to provide information for the Accounting to the Covered Entity so that the Covered Entity may timely respond to the Individual within the sixty (60) day period.
(c) If either of the Parties is unable to complete the response to the request in the times provided above, that Party shall notify the Individual with a written statement of the reasons for the delay

and the date by which the Party will complete its action on the request. The Parties may extend the response time once for no more than thirty (30) additional days.

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

(1) date of the disclosure;

(2) name of the third party to whom the PHI was disclosed,

(3) if known, the address of the third party;

(4) brief description of the disclosed information; and

(5) brief explanation of the purpose and basis for such disclosure.

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

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

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

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

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

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

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

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

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

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

systems and information storage, and that only authorized transactions are allowed. The Business Associate will maintain appropriate documentation of its compliance with the Security Rule.

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

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

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

T. Allan Hansen, Principal ahansen@mslc.com

Rebecca Matthews, Privacy Officer, RMatthews@mslc.com

Myers and Stauffer LLC

700 W 47th Street Suite 1100

Kansas City, Missouri 64112

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

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

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

3.6 Security Compliance Review upon Request. Business Associate shall make its internal practices, books, and records, including policies and procedures relating to the security of Electronic PHI received from, created by or received by Business Associate on behalf of Covered Entity, available to the Covered

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

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

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

4. USES AND DISCLOSURES BY BUSINESS ASSOCIATE

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

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

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

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

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

4.6 Prohibition of Offshore Disclosure. Nothing in this Agreement shall permit the Business Associate

to share, use or disclose PHI in any form via any medium with any third party beyond the boundaries and jurisdiction of the United States without express written authorization from the Covered Entity.

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

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

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

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

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

5. OBLIGATIONS OF COVERED ENTITY

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

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

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

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

6. TERM AND TERMINATION

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

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

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

(a) Provide notice of breach and an opportunity for Business Associate to reasonably and promptly cure the breach or end the violation, and terminate this BAA if Business Associate does not cure the breach or end the violation within the reasonable time specified by Covered Entity; or

(b) Immediately terminate this BAA if Business Associate has breached a material term of this BAA and cure is not possible.

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

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

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

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

6.3.4 Except for Business Associate Agreements in effect prior to April 21, 2005 when the Security Rule

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

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

7. MISCELLANEOUS

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

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

7.3 Survival. The respective rights and obligations of Business Associate under Confidentiality and Section6.3 of this Agreement shall survive the termination or expiration of this Agreement.

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

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

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

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

COVERED ENTITY: BUSINESS ASSOCIATE:

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

T. Allan Hansen, Principal
Rebecca Matthews, Privacy Officer
Myers and Stauffer LLC
700 W 47th Street, Suite 1100
Kansas City, Missouri 64112
Fax 816-945-5301

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

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

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

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

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

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

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

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

DIVISION OF TENNCARE

By: _____

Stephen Smith, Director

Date: 11/2/2023

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

BUSINESS ASSOCIATE

By: _____

T. Allan Hansen, Principal

Date: 10/27/2023