



CONTRACT

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

Begin Date December 1, 2025	End Date July 31, 2029	Agency Tracking # 31865-00657	Edison Record ID 88871		
Contractor Legal Entity Name Myers and Stauffer LC			Edison Vendor ID 0000156383		
Goods or Services Caption (one line only) Estate Recovery Services					
Contractor <input checked="" type="checkbox"/> Contractor		Assistance Listing Number# 93.778 Dept. of Health & Human Services/Title XIX			
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2027	\$2,203,041.00	\$2,203,041.00	\$0.00	\$0.00	\$4,406,082.00
2028	\$2,403,312.00	\$2,403,312.00	\$0.00	\$0.00	\$4,806,624.00
2029	\$2,403,312.00	\$2,403,312.00	\$0.00	\$0.00	\$4,806,624.00
2030	\$200,276.00	\$200,276.00	\$0.00	\$0.00	\$400,552.00
TOTAL:	\$7,209,941.00	\$7,209,941.00	\$0.00	\$0.00	\$14,419,882.00
Selection Method & Process Summary (mark the correct response to confirm the associated summary)					
<input checked="" type="checkbox"/> Competitive Selection		RFP 31865-00657			
<input type="checkbox"/> 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.					
<p>Crystal Allen Digitally signed by: Crystal Allen DN: CN = Crystal Allen email = crystal.g.allen@tn.gov C = US O = TennCare OU = Fiscal Date: 2025.10.31 09:12:40 -05'00'</p>					
Speed Chart (optional)		Account Code (optional)			

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

This Contract, by and between the State of Tennessee, Department of Finance and Administration, Division of TennCare ("State" or "TennCare") and Myers and Stauffer LC ("Contractor"), is for the provision of Estate Recovery services, as further defined in the "SCOPE." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is a Limited Liability Company.

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.** Listed below are the definitions, acronyms, and abbreviations used in this Contract.

- a. **Abandoned Call:** A call or calls in which the caller selects an option and is either not permitted access to that option or disconnects from the system.
- b. **Acceptable Risk Controls for ACA, Medicaid, and Partner Entities (ARC-AMPE):** CMS has developed a set of standards for managing security and privacy risks of the Exchanges, including the Minimum Acceptable Risk Standards for Exchanges (MARS-E) and Non-Exchange Entity Governance, Risk Management, and Compliance (NEE GRC). The Acceptable Risk Controls for ACA, Medicaid, and Partner Entities (ARC-AMPE) is the next iteration of security and privacy standards to address the complex business and regulatory environment of the Exchanges. ARC-AMPE incorporates updates to federal laws, agency regulations, and the latest National Institute of Standards and Technology (NIST) standards and guidelines. ARC-AMPE includes technical controls that may facilitate adherence to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) requirements. ARC-AMPE accommodates the evolving ACA environment, including new entities, functions, and technology advancements governing both business functions and security safeguards. ARC-AMPE integrates enterprise risk management (ERM) to provide a comprehensive approach to manage risks
- c. **Artificial Intelligence (AI)** – any system that performs tasks under varying and unpredictable circumstances without significant human oversight or can learn from experience and improve such performance when exposed to data sets. AI is also made up of a set of techniques, included, but not limited to, machine learning, that is designed to approximate cognitive tasks.
- d. **Answer:** The beginning of an "uninterrupted dialogue with the caller". If a Contractor representative asks the caller to hold during the first sixty (60) seconds of the dialogue, the Contractor shall not consider the call to be an "Answer" or "Answered" for purposes of this definition until the Contractor representative returns to the caller and begins an uninterrupted dialogue.
- e. **Average Speed of Answer or ASA:** The mean time between: (a) the moment at which a caller to the Contractor first hears an introductory greeting and enters the queue and (b) the time at which the Contractor answers the call.
- f. **Batch Upload Process:** The method of uploading or processing multiple files, records, or data to the ERCMS simultaneously rather than manual entry.

- g. **Blocked Call:** A call that cannot be connected immediately because no circuit is available at the time the call arrives or the telephone system is programmed to block calls from entering the queue when the queue backs up behind a defined threshold.
- h. **Business Day:** Traditional workday(s), including Monday, Tuesday, Wednesday, Thursday, or Friday. State holidays are excluded. A list of State holidays can be located at <https://www.tn.gov/about-tn/state-holidays.html>.
- i. **Capitation Charges:** A fixed monthly amount per member that TennCare pays its Managed Care Organizations for providing medical care to TennCare members.
- j. **Capitation File:** A data file transferred monthly from TennCare to the Contractor. This file contains information on current and former TennCare members who received Long-Term care. For each Member, the file has a list of Capitation Charges attributable to the Member.
- k. **Case:** The object of investigation or consideration which includes all records and information pertaining to the Members, individuals, or circumstances identified in Contract Sections A.7.a.1 through A.7.a.5.
- l. **Check Record:** A record kept by Contractor for each Member that contains information regarding any checks or electronic payments related to that case that Contractor has written.
- m. **Claim Amount:** The amount of TennCare's Estate Recovery claim as determined by TennCare.
- n. **TennCare Notification of Death:** The day that TennCare makes its eligibility file available to Contractor by saving the file on the Secure File Transfer Portal ("SFTP") or notifying the Contractor of a Member's death through any other means. If TennCare makes the eligibility file available outside of a Business Day, then the Date for the TennCare Notification of Death is the first Business Day after the day that TennCare makes the eligibility file available.
- o. **Document:** A piece of written, printed, or electronic matter that provides information or evidence or that serves as an official record.
- p. **ERCMS Record:** Any document or electronically stored information related to a Case. This could include mail, e-mail(s), fax, digital records, call recordings, annotations of phone calls, drawings, graphs, charts, photographs, images, and other data or data compilations.
- q. **Estate Recovery or ER:** A program created under Section 1917(b) of the Social Security Act that requires states offering Medicaid-reimbursed Long Term Care Services to seek adjustment or recovery for certain types of medical assistance from the estates of individuals who were age fifty-five (55) or older at the time such assistance was received, and from permanently institutionalized individuals of any age.
- r. **Estate Recovery Information Letter:** A letter that provides information on TennCare Estate Recovery.
- s. **Estate Recovery Itemization:** A report that itemizes charges that TennCare incurred providing Long-Term Care to a member.
- t. **Estate Recovery Case Management System or ERCMS:** The case management system used by TennCare that Contractor shall maintain, use, update, and customize, to perform Contractor's duties under this Contract.
- u. **Federal Tax Information or FTI:** Federal tax information which regulated by the United States Internal Revenue Service.

- v. **GenAI:** Any system that learns patterns and relationships from massive amounts of information and data, which enables them to generate new content that may be similar, but not identical, to the underlying training information and data. The systems generally require a user to submit prompts that guide the generation of new content.
- w. **Health Insurance Portability and Accountability Act of 1996 or HIPAA:** a federal law which addresses, among other topics, the security and privacy of protected health information as well as requirements regarding electronic transaction standards. For purposes of this contract, any reference to HIPAA should be read to include reference to any amending legislation, to include the Health Information Technology for Economic and Clinical Health Act (HITECH).
- x. **Health Information Technology for Economic and Clinical Health Act (HITECH):** Federal law passed in 2009 as part of the American Recovery and Reinvestment Act that promotes the use of electronic health records and the secure exchange of health information.
- y. **Home and Community Based Services (HCBS):** Optional benefits that assist persons with disabilities that live in their homes.
- z. **Implementation Date:** The specific date listed in Contract Section A.6. on which the Contractor must demonstrate that it is able to meet ER requirements listed within this Contract prior to beginning ER services.
- aa. **Individuals with Limited English Proficiency or LEP:** Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English.
- bb. **Interactive Voice Response (IVR):** Functionality that enables automated communication between callers and the Contact Center, often using pre-recorded voice prompts.
- cc. **Invoice Base Amount:** The fee portion of the invoice calculated as if the Contractor successfully met all of its performance guarantees.
- dd. **Key Staff:** Dedicated full-time staff performing ER services exclusively for TennCare as outlined in Contract Section A.3.
- ee. **Long-Term Services and Supports or LTSS:** The program integrating nursing facility services for TennCare-eligible individuals of any age and Home and Community Based Services (HCBS) for individuals aged sixty-five (65) and older and/or adults aged twenty-one (21) and older with physical disabilities that are integrated into TennCare's Managed Care System. LTSS Programs also include Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs/IID), HCBS through a section 1915(c) Waiver Program, and the Program for All-Inclusive Care for the Elderly.
- ff. **Litigation Expenses:** This includes costs to prepare a Case for trial or investigate a Case outside of filing fees and courts costs. It could include, but is not limited to, expert witness fees, certified appraisals of real property, and title opinions.
- gg. **Medicaid Management Information System or MMIS:** a mechanized claims processing and information retrieval system for Medicaid that's required by the federal government.
- hh. **Member:** Any living or deceased person that receives or has received TennCare services.
- ii. **Minimum Acceptable Risk Safeguards for Exchanges (MARS-E):** A document suite of guidance, requirements, and templates assembled by CMS. The document suite contains implementation standards for key security requirements contained in Department of Health and Human Services (HHS) Affordable Care Act (ACA) Regulations (45 CFR §§155.260 and 155.280) and other State and Federal regulations and policies. This is a harmonized set of

- guidelines inclusive of CMS and portions of Internal Revenue Service (IRS) requirements. Any reference to this package, even under CMS context references, should also infer compliance with current IRS Safeguards Program and IRS Pub 1075, where applicable by usage of data type and/or classification
- jj. **Net Claim Amount:** The claim amount minus payments received and applied to the claim amount.
 - kk. **Non-Abandoned Call:** A call or calls that is/are not an Abandoned Call.
 - ll. **Notation:** Annotation(s) entered, typed, or inputted into the ERCMS.
 - mm. **Overall Timeline:** The timeline developed by the Contractor for the design and implementation of the Contract.
 - nn. **Phone Interpreter Services:** Services that help people who are deaf, hard of hearing, or who speak limited English, communicate by telephone.
 - oo. **Protected Health Information or PHI:** Individually Identifiable Health Information, as defined in 45 C.F.R. § 160.103, that is (i) transmitted by electronic media; (ii) maintained in electronic media; or (iii) transmitted or maintained in any other form or medium. Protected Health Information excludes Individually Identifiable Health Information in the following: (i) education records covered by the Family Educational Rights and Privacy Act, as amended, (see 20 U.S.C. § 1232(g)); (2) records described at 20 U.S.C. § 1232g(a)(4)(B)(iv); and (iii) employment records held by a covered entity in its role as employer.
 - pp. **Readiness Review:** A process by which Contractor demonstrates its readiness to perform the requirements of this Contract.
 - qq. **Refer a Probate Case:** The point at which Contractor forwards the Case information and all documents to TennCare in the manner that TennCare requests.
 - rr. **Secure File Transfer Protocol (SFTP):** Network protocols for transferring, accessing, and managing sensitive data.
 - ss. **Speed of Answer:** The total time between: (a) the moment at which a caller first hears an introductory greeting and enters the queue and (b) the time at which the Contractor answers the call.
 - tt. **Tennessee Eligibility Determination System (TEDS):** The State's eligibility determination system for TennCare and CoverKids. TEDS contains functionality related to TennCare and CoverKids application intake, case management, appeals management, and document management, which together are used to determine eligibility for TennCare and CoverKids services. TEDS may be used to perform the various operations, including, but not limited to, phone call intake, chat interfaces, completion of application/redetermination tasks, and document intake.
 - uu. **Telecommunications Relay Services or TRS:** A telephone service that allows persons with hearing or speech disabilities to place and receive telephone calls.
 - vv. **Timeline Components:** The design and implementation schedule of the Overall Timeline for this Contract that is divided into manageable components.
 - ww. **Warm Transfer:** Executing a telephonic transfer directly to a specific individual within or outside of the Contractor's place of business, without caller having to wait in a queue or interact with an Interactive Voice Response (IVR). A Warm Transfer also includes introducing the caller to the individual to whom the caller is transferred before hanging up.

A.3. Staffing and Resolution of Simple Technical Issues.

- a. **Key Staff.** The Contractor shall, at all times during this Contract, have the following Key Staff dedicated full-time to performing ER services exclusively for TennCare or any other services assigned by TennCare. For purposes of this Contract Section A.3., 'full-time' means at least thirty-seven and one half (37.5) hours per week, excluding State of Tennessee holidays. The Contractor shall ensure that:
1. One (1) project manager is assigned directly to the Scope of work included in this Contract. The Contractor shall ensure that the project manager or the project manager's designee is responsible for resolving simple technical issues, including, but not limited to, password resets and account lockouts, within the ERCMS as they are encountered by TennCare staff. The Contractor shall resolve simple technical issues within two (2) Business Days.
 2. Two (2) legal assistants shall perform ER services under the direction and supervision of TennCare. TennCare will be solely responsible for assigning all tasks and duties to said legal assistants. The Contractor shall ensure that the legal assistants are fully dedicated to working with TennCare daily and receive work assignments directly from TennCare.
 3. All Key Staff will have access to the ERCMS as described in this Contract and are able to access and operate any case management software as required by TennCare.
- b. **Hiring and Removal of Key Staff.** The hiring, removal, or replacement of any Key Staff shall require the written approval of the State, and interviews by the State if the State finds interviews necessary. The State's discretion shall be limited only by written policies of the Contractor that generally apply to all the Contractor's employees. The State may, at any time during the Term, require the removal of any Key Staff from work covered by this Contract. Upon notification by the State to the Contractor to remove a Key Staff person, the Contractor shall ensure that Key Staff person is prevented from working, and immediately ceases work, on this Contract. The State may further request removal or replacement of any staff person assigned by the Contractor to perform ER services under this Contract, regardless of whether that person is Key Staff.
- c. **Vacancies in Key Staff.** Any vacancy in a Key Staff position, regardless of cause, shall be filled by the Contractor within thirty (30) calendar days following the last day of work by the former Key Staff member in that position. Should the Contractor fail to fill the vacancy within thirty (30) calendar days, the Contractor shall deduct the following amount from the Contractor's monthly invoice to the State each month until the Key Staff position is filled: The daily salary of the former Key Staff member for each calendar day over thirty (30) Days that the position has remained unfilled.
- d. **Key Staff Location.** Unless otherwise directed by the State, the Contractor shall ensure and require that its Key Staff work on-site and in TennCare office space, located at: 310 Great Circle Road, Nashville, Tennessee 37228. No additional cost shall be paid to the Contractor for on-site Key Staff. The Contractor shall ensure and require that all other Contractor staff required to support the Contract, including support for Key Staff, are located at offices provided and paid for by the Contractor.
- e. **Key Staff Hours.** The Key Staff work hours shall be between 7:00AM and 5:00PM Central Time on Business Days, or as otherwise directed by TennCare in writing.
- f. **Key Staff Training.** The Contractor shall ensure that all Key Staff complete mandatory ER training provided by the State, prior to the Key Staff being permitted to start work, including any new or substitute Key Staff. TennCare shall have sole discretion to determine the need, frequency, and manner of any follow-up training(s) of Key Staff. In addition to the training provided by TennCare, the Contractor shall develop training materials for Key Staff. All training materials developed by the Contractor shall be subject to review and approval by TennCare prior to use and/or distribution by the Contractor.

A.4. Check Writing, Voiding Checks, Payment Card, and Record of Payment.

- a. The Contractor shall pay all court filing fees, court costs, or any other Litigation Expenses associated with a Case and TennCare shall reimburse the Contractor for the actual costs Contractor incurred with no processing fee or markup. Each month, the Contractor shall include a line item in its invoices for the total amount of reimbursement requested as stated in Contract Section C.3. below. The Contractor shall also include an itemization which contains the following information for each check written on TennCare's behalf: Case Name, Member SSN, Date Check Requested, Date Check Delivered or Transmitted, Payee, Check Date, and Check Amount.
- b. On the last Business Day of each month, the Contractor shall void all Contractor issued checks that have not cleared or been deducted from the Contractor's bank account within ninety (90) days of the date the Contractor printed the check. The Contractor shall include a separate line item on its monthly invoice that credits the voided checks against the reimbursement requested. The Contractor shall also include an itemization which contains the following information for each voided check: Case Name, Member SSN, Date Check Requested, Date Check Delivered or Transmitted, Payee, Check Date, and Check Amount and Date Check Voided.
- c. When the Contractor files a probate claim with the Court, the Contractor shall mail the check for the filing fee directly to the Court. TennCare will file all other pleadings with the Court and the Contractor shall produce the check and deliver the check to TennCare for mailing with the pleading. The Contractor shall develop procedures to print, endorse, and deliver checks within one (1) Business Day of TennCare's request. Within one (1) Business Day of TennCare's request, the Contractor shall physically deliver a signed check to TennCare or its designee. All TennCare requested checks shall be printed and signed by the Contractor's agent on-site at TennCare's address: 310 Great Circle Road, Nashville, Tennessee 37228. The Contractor shall ensure that at least one of its Key Staff is authorized to sign as the payor for checks.
- d. Contractor shall also develop procedures for making electronic payments by using a payment card, credit card, or similar card within one (1) Business Day of TennCare's request. Electronic payment methods shall be stored on applicable websites, software, or applications to allow for use by designated TennCare staff.
- e. The Contractor shall store Check Records that are attributable to the Member within the appropriate Case as identified in Contract Section A.7. The Check Record shall include the following fields: date that check or payment was requested; date that check was mailed, or electronic payment was made; account number from which the check was written; and the check number. TennCare may request that additional fields be created and maintained in the Check Record. Contractor shall create and begin using any requested additional fields within forty-five (45) calendar days of TennCare's written request.

A.5. Litigation Support.

The Contractor shall cooperate with TennCare attorneys and paralegals on pre-litigation or litigation relating to or regarding any ER case before any mediator, court or tribunal at no additional cost to the State. The Contractor shall make its personnel available to testify, in person or by deposition, at any location within the state of Tennessee. Such personnel shall also remain available and attend any necessary pre-hearing preparations. The Contractor agrees to waive any objections to any subpoena issued by a Tennessee court or tribunal in an ER case. The Contractor shall promptly provide TennCare with all information within the Contractor's control, if required to do so by a discovery demand or request, or court order.

A.6. Readiness Review and Implementation.

- a. The Implementation Date is August 1, 2026.

- b. Within seven (7) calendar days of the Effective Date, Contractor will meet in-person with TennCare to discuss the requirements of this Contract, including the applicability or relevant security requirements detailed in Contract Sections A.16, D.30, and E.6. Within three (3) Business Days of this initial meeting, Contractor shall develop an Overall Timeline for the design and implementation of each part of this Contract.
- c. The Contractor shall submit the Overall Timeline in writing to TennCare for approval or rejection by TennCare. Upon receiving written approval from TennCare of the Overall Timeline, the Overall Timeline is binding on the Parties. If the Overall Timeline is rejected, TennCare will create a new written Overall Timeline that both Parties agree to be bound by, follow, and implement. At any point, TennCare may amend the Overall Timeline, whether created by the Contractor and approved by TennCare, or whether TennCare created the Overall Timeline.
- d. The Timeline Components in the Overall Timeline must be divided into manageable timeline components that allow sufficient time for internal user testing by both the Contractor and TennCare.
- e. At the beginning of each Timeline Component, TennCare and the Contractor shall develop a detailed timeline and timeframe in writing for the implementation of each Timeline Component of the Overall Timeline.
- f. Each Timeline Component must follow this format:
 - 1) Day One: Contractor identifies the part(s) of the Contract that require customization and implementation. TennCare will then provide written requirements and clarifications;
 - 2) Day Two: Contractor reviews the Timeline Component requirements from TennCare;
 - 3) Day Three: Contractor and TennCare meet to discuss the Timeline Component requirements;
 - 4) Day Four: Contractor proposes a detailed timeline for development, internal testing, TennCare user testing, and revisions for the specific Timeline Component. TennCare shall have at least five (5) Business Days per Timeline Component for internal testing. If the Timeline Component is approved by TennCare, then the detailed Timeline Component shall be binding on, and followed and implemented by, the Parties. If the detailed Timeline Component is rejected, TennCare will propose a new Timeline Component for the Contractor's consideration. The finalization of the new Timeline Component will be determined by TennCare. Once TennCare determines the new Timeline Component is final, the new Timeline Component shall be binding on, and followed and implemented by, the Parties; and
 - 5) Final Timeline Component Day: TennCare will provide written confirmation to Contractor that the Timeline Component is complete or that remaining items must be completed. Such written confirmation from TennCare will list any remaining items that shall be addressed in later Timeline Components with a date by which those items shall be resolved.
 - 6) At any point, TennCare may amend the Timeline Component(s) at TennCare's sole discretion.
- g. Once TennCare verifies that the Contractor is prepared to meet all ER requirements, TennCare shall notify the Contractor in writing, on or before the August 1, 2026, the Implementation Date, of the Contractor's readiness to begin providing ER services. The

Contractor shall commence no fee-based services, as defined in Contract Section C.3., prior to the August 1, 2026, Implementation Date.

A.7. Estate Recovery Case Management System (ERCMS)

- a. **General Requirements.** The Contractor shall use, update, customize, and maintain TennCare's current case management system. TennCare employees, Key Staff, and all Contractor staff shall be able to remotely access all content and functions in the ERCMS. All data stored in the ERCMS shall be available to TennCare in real time. The Contractor shall ensure and confirm that the ERCMS contains a single Case for each type of person referenced in Contract Sections A.7.a.1 through A.7.a.5. Excluding Contract Sections A.7.a.4 and A.7.a.5., all Cases must be created using a Batch Upload Process, in accordance with the following:
1. For every TennCare Member that received LTSS at any time during the ten-year period preceding the Implementation Date; the contractor shall address the upload of this information into the ERCMS as part of its Readiness Review and Implementation requirements. The Contractor shall complete Contract Section A.7.a.1. prior to the Implementation Date.
 2. For every TennCare Member that is receiving LTSS on the Implementation Date; the Contractor shall address the upload of every Member receiving LTSS on the Implementation Date into the ERCMS as part of the Readiness Review and Implementation requirements within seven (7) calendar days of the Implementation Date on which the requirements of Contract Section A.7.a.2. must be completed. The Contractor will provide evidence to TennCare that it has complied with this Contract Section A.7.
 3. For every TennCare Member that is approved for LTSS after the Implementation Date; the Contractor shall create the ERCMS Case within forty-five (45) calendar days of the date that the Member is approved for LTSS;
 4. For every TennCare Member that Contractor receives an inquiry on, regardless of when the Member received LTSS and for the ERCMS cases, the Contractor shall create the ERCMS Case on the same Business Day that the inquiry is received; and
 5. Regardless of whether information relates to TennCare, a TennCare Member, or TennCare Estate recovery, Contractor shall store any information including, but not limited to, mail, e-mail, phone calls, note annotations, or note annotation of phone calls received according to written instructions provided by TennCare. This information will be stored in a specific case file and prior to Readiness Review and Implementation, TennCare will provide written instructions on how this information should be stored and referred to TennCare. This information required by Contract Section A.7.a.5. shall be stored on the same Business Day that it is received.
- b. **Required Fields for ERCMS.** For each ERCMS Case, the Contractor shall include the fields listed in the table below:

Field	Required Number of Fields	Field	Required Number of Fields
First Name	1	Date Claim Mailed to Court	1
Last Name	1	Date Claim Stamped Filed by Court	1
Social Security Number	1	Member Address, City, State, & Zip Code	1
Medicaid ID Number	2	Gross Claim Amount	1

LTSS Coverage Code	3	Amount Paid	1
LTSS Coverage Sub-Code	3	Net Claim Amount	1
Enrollment Date	3	File Open Date	1
Termination Date	3	File Close Date	1
Date of Birth	1	Date of Asset Search	1
Date of Death	1	Asset Found (Y/N)	1
Age at Time of Death	1	Asset Found County	1
TEDS Member ID	2	Asset Found Address	1
TEDS Application ID	3	Asset Value	1
Date Probate Filed	1	Date Title Ordered	1
County Probate Filed	1	Date Title Received	1
Date Call Placed to Check for Open Probate	3	Last Known County of Residence according to MMIS	1
Probate Case Number	1	calendar days Since Death	1

At any time during the Contract, TennCare may request that the Contractor create additional fields or make modification to a field. The Contractor shall develop a process to track changes requested by TennCare. TennCare shall have administrator level access (or highest level of access) to any process that is customized by the Contractor. The Contractor shall create or modify the fields within forty-five (45) calendar days of the date that TennCare requests creation or modification.

- c. **Required Layouts.** TennCare will provide written instructions for page layouts for each screen within the ERCMS. Each case layout and associated tabs within the ERCMS must be identified by the Member or person's first and last name rather than a unique identifier assigned by the ERCMS. The Contractor shall implement and make accessible changes to layouts requested by TennCare within ten (10) calendar days of the request.
- d. **Calendaring Function.** The Contractor shall implement and use the ERCMS calendaring function to organize events, tasks, or activities based on predefined rules and conditions that will be established by TennCare. The Contractor shall ensure that the calendaring function provides the ability:
1. To set recurring events, tasks, or activities such as "every Monday" or "on the first day of each quarter."
 2. To adjust for holidays or weekends where events, tasks, or activities are automatically adjusted for these time periods.
 3. To set events, tasks, or activities for users using complex date calculations such as "five business days after the first Monday of the month."
 4. To alert users if there is a scheduling overlap, such as two meetings scheduled at the same time.

5. To make real-time adjustments to existing events, tasks, or activities based on changes in the rules or conditions.
 6. To reschedule and reassign multiple tasks, events, or activities at one time.
 7. To view a user or group of users tasks based on a day, week, or monthly view.
 8. To assign events, tasks, or activities to specific a specific user or group of users based upon predefined rules and conditions.
- e. **ERCMS Record Retention.** In accordance with Contract Section D.11, the Contractor shall store ERCMS Records to the ERCMS. If the ERCMS Record(s) includes or necessitates a Notation, then the Contractor shall ensure that all Notations are made directly into the ERCMS and that the Notations are automatically saved as they are typed. The Contractor shall ensure and confirm that ERCMS records that are created or transmitted by Contractor are saved to the ERCMS within twenty (20) minutes of the ERCMS Record being created or transmitted, whichever is sooner. The Contractor shall ensure ERCMS records that are received by the Contractor are saved to the ERCMS on the same Business Day that the ERCMS Records are received. If the ERCMS Record is in paper or analogue form, then Contractor shall ensure that all paper or analogue form documents received or created by Contractor are converted to, and saved to the applicable Case, in electronic format. Under no circumstances shall the Contractor maintain a paper file on a Case. The Contractor shall not, under any circumstances, convert electronic ERCMS records to analogue or paper form prior to saving the ERCMS record to the ERCMS. If Contractor receives ERCMS records, such as mail or faxes, in paper or analogue format, the Contractor shall convert the ERCMS record to an electronic format with a resolution no lower than 400x400 dpi. Once saved to the ERCMS, unless directed otherwise by TennCare, the paper or analogue ERCMS Record must be securely destroyed in compliance with applicable privacy laws.
- f. **Template File.** The Contractor shall ensure that the ERCMS has the ability to merge data from all data fields in the ERCMS into templates. The Contractor shall ensure that templates are stored in the ERCMS in a separate Template file. The Contractor shall ensure that Template files contain only the most recent version of each TennCare-approved Template. TennCare shall provide the Contractor with all forms for the Template file. The Contractor shall use only TennCare approved templates in written communications with individuals outside of TennCare or as otherwise directed by TennCare. The Contractor shall update, add, or remove files in the Template File within ten (10) calendar days of TennCare's request.

The Contractor shall ensure that all templates are able to be produced in PDF, xlsx and .docx formats. The Contractor shall ensure and establish that any template includes a live-edit function that allows any document to be previewed, printed, or edited before being downloaded or e-mailed. The Contractor shall ensure that the live-edit function allows for real time updates, such as modifying texts, fonts, colors, spacing, and alignment where user's changes to a template are reflected immediately. The Contractor shall ensure that templates allow for multiple users to access and edit the same document concurrently without requiring the creation of separate document versions.

The Contractor shall assign a member of their staff to address template changes throughout the contract period. The Contractor shall ensure that the staff member is TennCare's direct contact for all template change requests. The Contractor shall make all changes requested by TennCare within ten (10) calendar days. The Contractor shall provide training to TennCare staff on how to modify templates under this Contract Section A.7.f. as part of the Readiness Review and Implementation Contract Section. TennCare may request further training as needed throughout the Contract period. This training will be at the Contractor's expense.

- g. **E-mail Sending and E-mail Linking.** The Contractor shall ensure that the ERCMS conducts e-mail linking including linking all e-mails and e-mail attachments from the State's or the Contractor's e-mail accounts to any one or multiple Cases within the ERCMS. The Contractor

shall follow TennCare policy requiring use of State-issued e-mail accounts by Contractor when conducting TennCare business, and the Contractor shall ensure that ERCMS is configured to comply with the policy when linking e-mail accounts. The Contractor shall ensure that, for all e-mail replies, responses, and e-mail attachments, e-mail linking occurs automatically and save to the correct Case. The Contractor shall ensure that the e-mail linking function merges data from all data fields in the ERCMS into e-mail templates.

- h. **Instruction File.** The Contractor shall create, maintain, and update an instruction file which shall be a separate file in the ERCMS which contains written instructions from TennCare. The Contractor shall ensure that the Instruction File, and the documents within it, is viewable by all of the Contractor's and TennCare's employees. The Contractor shall ensure that the documents stored within the Instruction File are protected so that only users designated by TennCare can edit, delete, modify, or save any document to or in the instruction file.
 - i. **Real-Time Updates.** Unless otherwise specified, the Contractor shall make all updates to the ERCMS in real-time.
 - j. **Estate Recovery Claim Itemizations.** The Contractor shall implement an ERCMS function for Estate Recovery Itemizations that allows TennCare's employees and the Contractor's employees to request and print estate recovery claim itemizations. On a monthly basis, TennCare shall supply a Capitation File to the Contractor. The Contractor shall use this Capitation File to create a function that allows TennCare and the Contractor to query a Member by social security number or Medicaid identification number. In response to this query, the ERCMS shall produce Estate Recovery Itemizations. The Contractor shall ensure that TennCare's employees have access to this function. The Contractor shall ensure that TennCare's employees are able to utilize the ERCMS to query members and produce Estate Recovery Claim Itemizations without aid or interaction of the Contractor. The Contractor shall make available the Estate Recovery Claim Itemizations to TennCare in the following file formats: PDF, xlsx and .docx. The form of the Estate Recovery Itemizations shall be supplied by TennCare within the Template File.
 - k. **ERCMS Licenses and Third-Party Software.** The Contractor shall procure any licenses and third-party software for the ERCMS and assign the license to the State. Contractor shall also procure and maintain sufficient storage within the ERCMS to store all related ERCMS records. Contractor shall not allow data storage to exceed ninety percent (90%) of storage space. Failure to meet storage space requirements may lead to the imposition of Liquidated Damages as defined in Contract Attachment B –Liquidated Damages.
 - l. **State Access.** The Contractor shall ensure that TennCare staff can always access the ERCMS and that all ERCMS functions properly work and are fully functional. As a part of this responsibility, the Contractor shall be responsible for renewing all licenses of the ERCMS or any third-party software is timely renewed, without disruption to TennCare or ER services, and without any additional cost, late fees, or interest applied or billed to the State. TennCare will provide a list of users that must have administrator rights (or the highest privileges possible for the ERCMS). The Contractor shall ensure that administrators have the same level of access to any testing environments.
- A. 8. Report Module.
- a. The Contractor shall develop and maintain a report module within the ERCMS. The Contractor shall ensure that the report module has the ability to create on demand reports from all fields created, or to be created, in the ERCMS. The Contractor shall ensure that all fields created, or to be created, in the ERCMS are searchable. The Contractor shall ensure that TennCare employees can create on-demand reports from the report module by interfacing with the ERCMS. The Contractor shall ensure that TennCare employees can create reports without the Contractor's assistance, involvement, or permission. The Contractor shall ensure that any information input, entered, or otherwise submitted by the

Contractor or TennCare shall be searchable and reportable, including any Case notes, Notations, and e-mails.

- b. The Contractor shall be responsible for creating and modifying report templates as directed by TennCare. The Contractor shall ensure that creations and modifications of report templates are made, applied, and fully functional within fourteen (14) calendar days of TennCare's request. The Contractor shall create and maintain the form, substance, and number of report templates as determined solely by TennCare.
- c. The Contractor shall ensure that the report module shall be capable of creating reports in PDF, Excel, and Text (.txt) file formats. The Contractor shall ensure that the report module is able to, and does, export reports in the following file formats: CSV, Tab-Delimited, .mdb and all other widely recognized data file types.
- d. TennCare may designate any report as a monthly report. Every month, the Contractor shall save each newly created monthly report to the report module on the 10th Business Day of the following month. TennCare may also require that Contractor email reports to TennCare or its designee(s).

A.9. Telephone Services.

- a. **General Call Center Requirements.** The Contractor shall provide call center services to receive calls from the public, including, but not limited to:
 - 1. Promptly answering all inbound telephone calls;
 - 2. Executing Warm Transfers as necessary to appropriate TennCare business units or external entities;
 - 3. Identifying and authenticating callers and their relationship(s) with the decedent or the decedent's estate in accordance with State-approved authentication protocol and HIPAA as supplemented by additional safeguards developed by the State;
 - 4. Fully assisting callers as completely and consistently as possible within the scope of this Contract; and
 - 5. Escalating calls for which the Contractor ER staff requires assistance to the appropriate person in the TennCare Office of General Counsel via Warm Transfer.
- b. **Outbound Calls.** The Contractor shall conduct outbound calls to individuals as appropriate, including, but not limited to, returning calls to callers with questions; returning calls that were disconnected; obtaining information or documentation relating to ER Cases; completing issue resolution; and requesting verification of information that was previously provided. The Contractor shall return all telephone calls within one (1) Business Day of receipt of the telephone message.
- c. **Telephone Systems.** The Contractor shall acquire, establish, install, configure, and maintain functional and reliable telephone systems that provide call recording capability and live call monitoring. The Contractor shall ensure that systems used for call tracking, managing, monitoring, recording, and reporting of both inbound and outbound calls are accessible by TennCare through a web-based platform. The Contractor's call recording system shall record one hundred percent (100%) of all calls and voicemails in an accessible and searchable format.
- d. **State Remote Access.** The Contractor shall provide the State and its designees with secure web-based, remote access to the Contractor's call recording and monitoring system and train designated State staff on its use. The Contractor's system shall support recorded call searching capability, at minimum and without limitation, by date and time, by name of the Contractor's call representative, or by incoming telephone number.
- e. **State Direct Interface.** The Contractor shall ensure that TennCare or its designee(s) may interface directly with the Contractor's call recording and monitoring system and obtain reports of any metric that is measured by Contractor's system.

- f. **Call Recordings and Documentation.** The Contractor shall store a recording of every phone call related to the ERCMS Case identified in Contract Section A.7.a.1 through A.7.a.5. The Contractor shall ensure that all call recordings are saved to the ERCMS on the same Business Day that the call is made by the Contractor or received. The Contractor shall document every call by placing a call Notation into the ERCMS on the same Business Day that the call is made by the Contractor or received. The Contractor shall ensure that all call Notations provide a comprehensive and accurate summary of the call that is clear and easily understandable to TennCare. Call Notations shall include the following, at a minimum:
- 1) Date/time call was received
 - 2) Date/time call ended
 - 3) Whether the call was an inbound or outbound call
 - 4) The phone number of the inbound/outbound call
 - 5) Employee of Contractor making/receiving the call
- g. **Business Hours.** The Contractor shall provide sufficient staff to fulfill the requirements listed within this Contract Section A.9. for live answering services from 8:00 am (Central Time) to 5:00 pm (Central Time) each Business Day.
- h. **Daily Maximum Speed of Answer.** The Contractor shall answer one hundred percent (100%) of Non-Abandoned Calls within five (5) minutes.
- i. **Daily Abandonment Rate.** The Contractor shall maintain an average daily abandonment rate of five percent (5%) or less, excluding Abandoned Calls before thirty (30) seconds.
- j. **Daily Average Speed of Answer.** The Contractor shall maintain a daily Average Speed of Answer (ASA) of sixty (60) seconds or less. Calls answered in less than sixty (60) seconds but placed on hold within the first sixty (60) seconds of answer do not contribute to this performance standard.
- k. **Blocked Call Rate.** The Contractor shall maintain a Blocked Call Rate of one percent (1%) or less at all times.
- l. **Telephone Measure of Performance.** As measured on a weekly basis, using the average of the daily performances, the Contractor shall meet all four (4) of the telephone SLAs: daily Maximum Speed of Answer, daily Abandonment Rate, daily Average Speed of Answer, and Blocked Call rate. See Contract Attachment B.
- m. **Telephone Language and Communication Assistance Services.** The Contractor shall provide culturally and linguistically appropriate Phone Interpreter Services to Individuals with LEP or their representatives who call the ER Call Center in accordance with the following:
1. The Contractor shall provide and maintain access to Phone Interpreter Services for callers with LEP including, but not limited to, the following languages: Arabic, Chinese, Korean, French, Amharic, Gujarati, Laotian, German, Tagalog, Hindi, Serbo-Croatian, Russian, Nepali, Persian, Kurdish, Somali, and Vietnamese.
 2. The Phone Interpreter Services shall be available during hours of operation as specified in Contract Section A.9.g;
 3. The Phone systems shall be capable of permitting three-way conference calls to include the Contractor's staff member, the interpreter, and the caller; and
 4. The Contractor shall obtain Telecommunications Relay Services (TRS) to effectively communicate with individuals with hearing and/or speech disabilities. These services shall be provided free of charge to individuals with disabilities and at no additional cost to the State.

- n. **Outside Source for Telephone Language and Communication Assistance Services.** If the Contractor utilizes an outside source (or third party) in providing Phone Interpreter Services, this outside source shall be considered a subcontractor and shall comply with the subcontractor requirements as specified in Contract Section D.7. as well as the following requirements:
1. The subcontractor shall ensure interpreters are trained according to professional and ethical standards, including confidentiality and HIPAA privacy and security requirements;
 2. terminology and the ability to utilize TennCare program terminology and reference materials; and
 3. The subcontractor shall have measurable quality control standards in place to ensure effective communication with individuals during the provision of interpretation services.

A.10. Processing Estate Recovery Cases.

- a. **Prior to Date of Death.** Prior to a Member's death, the Contractor's duties shall be limited to creating and maintaining Cases. The majority of Contractor's duties shall begin when the member dies and may be broken down into the following categories.
- b. **Condolence Letters, Requests for Release, and Informational Letters.** The Contractor shall utilize the ERCMS Template File to mail a TennCare approved condolence letter, request for release form, and Estate Recovery Informational Letter to the decedent's estate representative, if known, or another appropriate individual as directed by TennCare. If the decedent's estate representative is not known and TennCare fails to specify an appropriate individual, then the Contractor shall ensure that the documents required in this Contractor subsection A.10.b. shall be mailed to the decedent's last known mailing address as it is reflected in TennCare's MMIS. The Contractor shall mail these documents within sixty (60) calendar days of the TennCare Notification Date of Death.

- c. **MMIS Queries and Production of Claim Itemizations.** The Contractor shall produce an Estate Recovery Claim Itemization as explained in Contract Section A.7.j. The Contractor shall save the Estate Recovery Claim Itemization to the Member's Case and populate the Claim Amount field in the ERCMS. The Contractor shall complete this task within one hundred and fifty (150) calendar days of the member's date of death. If the TennCare Notification of Death date is more than one hundred and fifty (150) calendar days past the Member's date of death, then Contractor shall produce the itemization within forty-five (45) calendar days of the TennCare Notification of Death.
- d. **Claims Less Than Ten Thousand Dollars (\$10,000).** If the Claim Amount is ten thousand dollars (\$10,000.00) or less, the Contractor shall populate the Date Closed field and cease processing the Case. If the decedent's estate representative is known, then the Contractor shall create a release and save it to the ERCMS. The Contractor shall mail the release to the decedent's estate representative, or another appropriate individual as directed by TennCare. However, in the event that Contractor learns of a probate case for these members, the Contractor shall mail the release to the applicable court. The Contractor shall complete this task within sixty (60) calendar days of the TennCare Notification of Death or within five (5) calendar days of a request by TennCare, whichever is sooner. If the Contractor releases a Case because the Contractor erroneously determines that the claim is less than ten thousand dollars (\$10,000.00), then the Contractor is responsible for pursuing the claim at its expense and shall be liable to TennCare for the actual amount of the loss.
- e. **Check for Open Probate.** The Contractor shall develop a plan, to check for probate cases, that have been opened for deceased Members that received LTSS. For each deceased Member, the Contractor shall telephone (or review the Court's online filing system if available) the probate court in the county of the last known residence according to the MMIS. The probate check shall occur no sooner than the one hundredth (100th) calendar day after the date of death and no later than the one hundred seventieth (170th) calendar day from the date of death. If the TennCare Notification of Death is more than one hundred seventy (170) calendar days after death, then Contractor shall make a probate check within ten (10) calendar days from the TennCare Notification of Death. The Contractor shall add a Notation of the date and time of the Contractor's phone call to the probate court and the probate court contacted, or a Notation to the appropriate Case of when (date and time) the Contractor reviewed the court's online filing system.

If the Contractor locates a Tennessee real estate asset that is in a different county from the county of last known residence according to MMIS, then the Contractor shall telephone, or review the Court's online filing system if available, the probate court located in the same county as the realty and inquire whether probate has been opened. The Contractor shall ensure that the probate check occurs no sooner than the one hundredth (100th) day after the member's death and no later than the one hundred seventieth (170th) day after death. If the TennCare Notification of Death is more than one hundred seventy (170) calendar days after death, then the Contractor should make a probate check within ten (10) calendar days from the TennCare Notification of Death. The Contractor shall record the date and time of the phone call (or review of the Court's online filing system) to the probate court in the ERCMS. The Contractor shall notate the County that is contacted in the appropriate Case.

If, for any reason, open probate is found by the Contractor, the Contractor shall request from the court the "Petition to Open Probate" and upload it to the applicable ERCMS Case within thirty (30) calendar days. TennCare may request that the Contractor provide other documents from the court's file as well. If the probate court charges a fee to produce these documents, TennCare will reimburse Contractor for these charges on the monthly invoice.

- f. **Asset Search.** The Contractor shall complete an asset search on each deceased Member. The Contractor shall review TennCare's records including MMIS, the Tennessee Eligibility Determination System (TEDS), and other systems to determine if the Member reported any assets to TennCare. The Contractor, at its own expense, shall utilize Thomson Reuters, Lexis-Nexis, or a similar asset search company to complete an asset search on each deceased Member. Before using an asset search company, the company and chosen asset

search plan shall be approved by TennCare. The Contractor shall complete the asset search within forty-five (45) calendar days from the TennCare Notification of Death, or within five (5) calendar days of a request by TennCare, whichever is sooner.

The Contractor must develop a Batch Upload Process for asset searches that uploads asset reports to multiple Cases at the same time from csv., .xlsx, .dat, .txt, or similar files. When any asset is created within the ERCMS, the Contractor shall ensure that the ERCMS automatically creates a task for the Contractor to order a title search within the timeframes in Contract Section A.10.g. below.

- g. **Title Search.** The Contractor, at its own expense with no reimbursement from TennCare, shall conduct and provide title searches to TennCare.

The title search requirement shall apply when the Contractor's asset search identifies Tennessee real estate that may be owned or have been owned by a deceased Member. The title search requirement shall apply to any Tennessee real estate for which TennCare requests a title search from Contractor.

The Contractor shall ensure that the title searches are uploaded to the applicable Case within the ERCMS no later than fifty-five (55) calendar days after the TennCare Notification of Death, or no later than fifteen (15) calendar days after the date that TennCare requests that Contractor produce a title search, whichever is sooner.

The Contractor shall ensure that title searches cover either: (1) the twenty (20) years immediately preceding the deceased Member's death; or (2) the last three (3) property owners, whichever is longer. The Contractor shall supply the title searches on a form approved by TennCare. The Contractor shall ensure that the form lists the minimum requirements to be included in the title search and will be stored in ERCMS Template File. The Contractor shall ensure that the title search notes all property transactions during the applicable time period. The Contractor shall attach all documents registered during the applicable time period. The Contractor must develop a Batch Upload Process so that any title searches can be uploaded at once to multiple ERCMS Cases at a time.

The Contractor shall, at no cost to the State, provide TennCare with login credentials to the following websites: titlesearcher.com, and ustitlesearch.net. For each website, the Contractor shall supply two (2) login credentials to TennCare. For the website TitleSearcher.Com, the credentials shall allow TennCare employees unlimited access to every Tennessee county available on TitleSearcher.com. For ustitlesearch.com, the Contractor shall ensure that the login credentials allows TennCare employees access to all counties available on ustitlesearch.com with unlimited index searching and two thousand five hundred (2500) document downloads per month.

The Contractor, and any subcontractors conducting title searches, shall upload all title searches with TennCare's required coversheet as page one (1) and with all requisite information completed.

- h. **Probate Court Claims.** The Contractor shall file probate court claims with the appropriate court. The Contractor shall use claim forms stored in the ERCMS Template File for filings. The Contractor shall transmit, in a manner that complies with the applicable court's local rules, the claim form(s) along with an itemization of charges, a TennCare informational letter, filing fee, and self-addressed postage prepaid envelope to the court. The Contractor shall transmit the claim within ten (10) calendar days of learning that a probate case has been opened or within one (1) Business Day as requested by TennCare. On the day of the filing or transmittal to the court, the Contractor shall calendar a follow-up calendar task for its employees to review the Case and to confirm that the stamped "filed" claim was received in return mail from the court. The Contractor shall ensure and establish that the follow-up calendar task is fourteen (14) calendar days from the filing or transmittal date to the court. If the stamped "filed" claim has not been saved to the ERCMS by the follow-up calendar task date, Contractor shall telephone the appropriate clerk of court to determine if the claim has

been filed. Once the Contractor receives the stamped claim from the Court, the Contractor shall save the stamped claim to the ERCMS, enter the date the claim was stamped filed into the ERCMS, and transmit the file stamped claim to TennCare.

- i. **Referring a Probate Case.** Contractor shall Refer a Probate Case(s) to TennCare within ten (10) calendar days of learning that probate was opened. In the event that Contractor learns of probate being opened in a Case that was previously referred to TennCare for any reason, the Contractor shall notify TennCare of the probate case within ten (10) calendar days of learning that probate was opened.

If probate has not been opened within one hundred eighty (180) calendar days of the death of the Member, the Contractor shall refer the Case to TennCare. The Contractor shall ensure that the referral is made no sooner than the one hundred eightieth (180th) calendar day after the date of the Member's death and no later than the one hundred ninetieth (190th) day after the Member's death. If the TennCare Notification of Death is more than one hundred ninety (190) calendar days after the Member's death, then the Contractor shall refer the case to TennCare within sixty (60) calendar days of the TennCare Notification of Death date.

If the Contractor receives any documents regarding a Case that has been referred (or otherwise transferred) to TennCare, the Contractor shall save the document(s) to the ERCMS and transmit the document(s) to TennCare on the same Business Day that the document(s) was/were received by the Contractor.

- j. **Review of Payment Deposits.** The Contractor shall keep track of all payments received on a Case. The Contractor shall deduct all payments received from the Claim Amount to produce the Net Claim Amount. The Contractor shall ensure that the Net Claim Amount accurately reflects the current total amount outstanding on the Case. If payment is received by the Contractor, the Contractor shall post the payment to the Case within one (1) Business Day. On a monthly basis, TennCare shall provide the Contractor with a list of all payments received by TennCare and the Contractor shall update the payment record on each individual Case within one (1) Business Day.
- k. **Sampling.** For any performance measures, TennCare may review a statistically valid sample and project the sample findings to the entire population sampled so long as the population size is at least fifty (50). The population shall be determined by selecting either the number of times that the task was performed during the period measured or the number of times that the task should have been performed during the period measured. The sample size shall be calculated with a ninety-five percent (95%) confidence interval and a five percent (5%) +/- margin of error. Once the sample size is determined, TennCare will use a random number generator to determine which occurrences in the population shall constitute the sample group.

A.11. Performance Guarantees.

- a. Up to twenty percent (20%) of the total monthly fee due to the Contractor shall be based on the Contractor's ability to meet specific performance guarantees selected by TennCare. Attachment A to this Contract contains the initial performance selected by TennCare. After providing thirty (30) calendar days written notice, TennCare may choose any other deliverables as performance guarantees and may assign or modify the weight of any performance guarantee. In any month, the total number of performance guarantees shall not exceed five (5), and the total cumulative weight of the performance guarantees shall not exceed twenty percent (20%). TennCare will use the Control Memorandum Process established in Contract Section A.12. to implement any changes and clarifications to the performance guarantees.
- b. Monthly, the Contractor shall review the performance guarantees for the prior calendar month and shall determine whether the Contractor complied with each performance guarantee. The Contractor shall provide TennCare with a written review of the performance guarantees. If

Contractor failed to meet one or more performance guarantees, then the Contractor shall deduct the appropriate amount from its invoice for each failed performance guarantee.

- c. For each unsuccessful performance guarantee, the Contractor shall supply a list of Cases which were measured to determine compliance and designate each Case as either 'Pass' or 'Fail'. For performance guarantees that are aggregate in nature, such as call response times, the performance guarantee shall include the monthly metric being reported (i.e., the daily Average Speed of Answer for each day of the month).
- d. If a Case was deemed a 'fail' and that Case was a component of a failed performance guarantee, then TennCare shall not assess liquidated damages for the acts or omissions that occurred during the measured month that caused the Case to be deemed a 'fail'. TennCare may assess liquidated damages if the act or omission is not remedied within thirty (30) calendar days ("Cure Period"). The 30-day Cure Period will begin on the day Contractor submits the monthly invoice and report designating the 'fail.'
- e. Monthly, the Contractor shall calculate the fee portion of its invoice as if the Contractor successfully completed each of the performance guarantees (the Invoice Base Amount). The Contractor shall then deduct the applicable percentage from the Invoice Base Amount for each failed performance guarantee. For example, if the Contractor's Invoice Base Amount was \$100,000.00 and the Contractor failed to meet two (2) performance guarantees, each weighing 4%, then the Contractor would deduct 8% of the Invoice Base Amount, or \$8,000, and bill TennCare \$92,000.00 plus any reimbursements due under the Contract.

A.12. Control Memorandum Process.

- a. The Control Memorandum ("CM") process shall be utilized by the State to clarify Contract requirements 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, and to manage the Performance Guarantee metrics and applicable withholds. However, the State may also issue written instructions to the Contractor outside the Control Memorandum Process. 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 (ORR) – a request directing the Contractor to provide information by the time and date set out in the CM.
 - (2) Control Directive (CD) – instructions that require the Contractor to complete, within a designated timeframe, one (1) or more deliverables or to perform any other request from the State that is within the scope of the Contract. However, the State may also issue written instructions to the Contractor outside the Control Memorandum Process. 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 amount of potential damages that the State is contemplating assessing against the Contractor. NPDs and NPCDs may be issued consecutively or simultaneously.
- (5) Notice of Intent to Assess Damages (Actual or Liquidated) (NIAD) – notification to the Contractor that the State is assessing damages and specifying whether the damages, due to a performance or compliance failure, are actual damages or Liquidated Damages and setting out the performance or compliance failure underlying each intended damage assessment. The NIAD shall identify the NPD and NCPD upon which it is based. The NIAD shall specify the total amount at issue, whether actual or liquidated damages, 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.9., 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 an NPD, or calculation of an 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, NCPD, within ten (10) Business Days of receipt of a CM which includes a NPD, 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) calendar days of the receipt of the appeal from contractor. Upon appeal or escalation, the State shall not increase the amount of the potential damages.
- A.13. End of Contract Transition Plan. If applicable, as part of the transition of this Contract to a new contractor, when this Contract ends, the Contractor shall develop and provide to the State a Transition Plan no later than one hundred and eighty (180) calendar days prior to the Contract termination date. The Transition Plan shall contain the information, including but not limited to the transfer of ERCMS, requested by TennCare via a Control Memorandum issued to the Contractor.
- A.14. Transition Requirements. If applicable, prior to the end of the Contract Term, or renewal or extension of the Contract Term, or in the event of Contract termination pursuant to Contract Sections D.5. or D.6., or Partial Takeover pursuant to Contract Sections and E.10., the State may contract with a successor contractor ("Successor Contractor") to assume the Contractor's duties and requirements upon 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, for Successor Contractor and the Contractor, specified by the State. The Contractor shall be required to participate as directed by the State, at no additional cost to State, in assisting with the transition by providing information relating to the Contractor's duties and attending meetings with the State and/or Successor Contractor. The Contractor shall help the State and/or the Successor Contractor develop a comprehensive Transition Plan covering both the Contractor's and the Successor Contractor's duties and responsibilities to ensure a smooth transition of responsibilities. The Contractor shall, at all times, act in good faith toward the

State and/or Successor Contractor to facilitate as smooth a transition as possible. The State will use the Control Memorandum process (as described in Contract Section A.12) to specify deliverables required of the Contractor in aid of the transition. Failure to fully and timely cooperate with the State's request or provide the requested deliverables may result in liquidated damages as specified in this Contract or in the applicable Control Memorandum. The State shall not be liable to the Contractor for any costs and expenses relating to these deliverables or to the services provided by the Contractor during the transition period, other than as set forth in Contract Section C.3.

- A.15. Use of Artificial Intelligence. The Contractor shall only utilize, Generative AI (Gen AI) as part of any aspect of this ER at the State's sole discretion. Contractor shall submit a formal request to utilize Gen AI solutions to TennCare as detailed in TennCare policy, and prior written approval from TennCare must be received before any such solution is utilized. Contractor shall follow all applicable TennCare and statewide policies governing Artificial Intelligence (AI) and Gen AI including, but not limited to, the State Enterprise Artificial Intelligence Policy 200-POL-007. TennCare reserves the right to direct that Contractor stop usage of any Gen AI tool or solution.

Upon request by TennCare, Contractor shall provide an accounting of all AI and Gen AI solutions that are used by Contractor to fulfill services under this Contract and attest to compliance with these provisions.

- A.16. The Contractor shall adhere to all documents located in Attachment E, TennCare Standards, Policies, and Documents, including any updated version of such documents that may occur during the Term, as directed by TennCare.
- (a) The Contractor shall comply with any Center for Medicare and Medicaid Services (CMS) updated security and privacy standards, including the replacement of Minimum Acceptable Risk Standards for Exchanges (MARS-E) framework with the Acceptable Risk Controls for ACA, Medicaid, and Partner Entities (ARC-AMPE) framework. The State is currently updating applicable documents located in Contract Attachment E – TennCare Standards, Policies, and Documents to be in alignment with these CMS required standards and which shall be followed by the Contractor in accordance with Contract Section A.16. The Contractor shall maintain compliance with MARS-E while working towards compliance with ARC-AMPE. The Contractor shall be fully compliant with ARC-AMPE no later than March 4, 2026. For purposes of this Contract, any references to "MARS-E and ARC-AMPE" shall mean the most recent version of MARS-E or ARC-AMPE that has been published by CMS throughout the Term.

B. TERM OF CONTRACT:

- B.1 This Contract shall be effective on December 1, 2025 (“Effective Date”) and extend for a period of Forty-Four (44) 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-eight (68) months.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Fourteen Million, Four Hundred Nineteen Thousand, Eight Hundred Eighty-Two Dollars (\$14,419,882.00) (“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 completed goods or services authorized by and to the satisfaction of the State in a total amount as set forth in Contract Section C.1.
- a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services and the performance guarantee set forth in Contract Section A.11, Attachment A, and Control Memorandum as applicable.
 - b. The period December 1, 2025, through July 31, 2026, shall be an uncompensated transition period (see Contract Section A.6) whereby payments begin on the eleventh month of the Contract.
 - c. The Contractor shall be compensated based upon the following payment methodology:

Goods or Services Description	Amount (per compensable increment)
*Reimbursement of Court Cost and Filing Fees	Actual Filing Fees Incurred
Uncompensated Transition Period (December 1, 2025, through July 31, 2026)	Uncompensated - \$0
Base Years 1-3	
Flat Monthly Fee ¹ (includes licensing and storage costs) <i>* determined by each Member that Dies during the Term and is Subject to an LTSS Claim.</i>	\$351.92/Member
Option Year 4	
Flat Monthly Fee ¹ (includes licensing and storage costs)	\$358.08/Member

* determined by each Member that Dies during the Term and is Subject to an LTSS Claim.	
Option Year 5	
Flat Monthly Fee ¹ (includes licensing and storage costs) * determined by each Member that Dies during the Term and is Subject to an LTSS Claim.	\$364.35/Member
**Amounts are subject to the requirements set forth in Section A.11 (Performance Guarantees).	

* Each month, the Contractor shall include a line item in its invoices for the total amount of reimbursement requested.

** Up to twenty percent (20%) of the total monthly fee due to the Contractor shall be based on the Contractor's ability to meet specific performance guarantees. (See Contract Section A.11, A.12, and Attachment A)

*** The monthly gross percentage shall include any licensing and storage fees.

1. Notwithstanding Contract Section C.2., TennCare may, in its sole discretion, utilize alternative purchasing methods for the purchase of licenses, third-party software, and storage, in whole or in part.

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 37228

- 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:

Ryan Farrell, CFE - Principal
 Myers and Stauffer LC
 2 Maryland Farms, Suite 350
 Brentwood, TN 37027
RFarrell@mslc.com
 Telephone # 855-252-3177
 FAX # 614-514-6741

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. The State's exercise of a valid Renewal Option or Term Extension does not constitute an amendment so long as there are no other changes to the Contract's terms and conditions.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for

damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.

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

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

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

D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination. In addition, the Contractor shall comply with the provisions of Contract Section E.24 (Nondiscrimination Compliance Requirements) and this Contract Section D.9 shall not be deemed to limit or abridge any requirement set forth in Section E.24.

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

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

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

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

- d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
- e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of ten (10) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless from any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal

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

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

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

- D.20. HIPAA Compliance. As applicable, 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. The 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. The 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) Business 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:
 - i.Attachment A (Performance Guarantees);
 - ii.Attachment B (Liquidated Damages);
 - iii.Attachment C (Personnel Attestation);
 - iv.Attachment D (Business Associate Agreement);
 - v.Attachment E (TennCare Standards, Policies, and Documents) including the following:
 - a. TennCare Policies and Required Forms
 - i.Nondiscrimination Rights and Responsibilities
 - ii.TennCare Records Disposition Authorization (RDA) List
 - iii.Software License Supplemental Excel Template
 - iv.Cloud Fax Solution Technical Specifications
 - v.Cloud Security Questionnaire
 - vi.TennCare Access Control Policy
 - vii.TennCare Audited Accountability Policy
 - viii.TennCare AUP
 - ix.TennCare Awareness and Training Policy
 - x.TennCare Configuration Management Policy
 - xi.TennCare Contingency Planning
 - xii.TennCare Identification and Authentication Policy
 - xiii.TennCare Incident Response Policy
 - xiv.TennCare Maintenance Policy
 - xv.TennCare Media Protection Policy

- xvi.TennCare Password Policy
- xvii.TennCare Personnel Security Policy
- xviii.TennCare Physical and Environmental Protection Policy
- xix.TennCare Planning Policy
- xx.TennCare Program Management Policy
- xxi.TennCare Risk Assessment Policy
- xxii.TennCare Security Assessment and Authorization Policy
- xxiii.TennCare Security System and Information Integrity Policy
- xxiv.TennCare Security Systems and Communications Policy
- xxv.TennCare System and Services Acquisition Policy

- b. TennCare Enterprise Standards:
 - i.TennCare Cloud Governance Standard
 - ii.TennCare Data Conversion Standard
 - iii.TennCare Data Governance Data Issues Resolution Process Guide
 - iv.TennCare Data Naming Standard
 - v.TennCare Data Policies and Standards
 - vi.TennCare Enterprise Application Integration Standard
 - vii.TennCare Log Data Retention Policy
 - viii.TennCare Requirements Management Standards
 - ix.TennCare Solution Implementation Lifecycle (SILC) Standard
 - x.State Enterprise Artificial Intelligence Policy 200-POL-007
- 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), professional liability (errors and omissions) insurance, and crime insurance. All policies, other than crime insurance, must contain an endorsement for a waiver of subrogation in favor of the State. To the extent that Contractor is unable to obtain insurance coverage containing such a waiver, Contractor agrees to indemnify and hold harmless the State as well as its officers, agents, and employees from and against any and all subrogation claims, liabilities, losses, and causes of action which may arise, accrue, or result to any insurer who provides insurance coverage carried by Contractor, regardless of negligence. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit; however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give

notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106. 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 and employer liability insurance in the amounts required by appropriate state statutes.
- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
 - i. The Contractor employs fewer than five (5) employees;
 - ii. The Contractor is a sole proprietor;
 - iii. The Contractor is in the construction business or trades with no employees;
 - iv. The Contractor is in the coal mining industry with no employees;
 - v. The Contractor is a state or local government; or
 - vi. The Contractor self-insures its workers’ compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

c. Automobile Liability Insurance

- 1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).
- 2) The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars (\$1,000,000) per occurrence or combined single limit.

d. Professional Liability Insurance

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

- ii. 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
 - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date on or prior to the Contract Effective Date, the Contractor must purchase “extended reporting” or “tail coverage” for a minimum of five (5) full years from the date of the final Contract payment.
- 2) Any professional liability insurance policy shall have a limit not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the aggregate; and
 - 3) If the Contract involves the provision of services by medical professionals, a policy limit not less than three million (\$3,000,000) per claim and three million dollars (\$3,000,000) in the aggregate for medical malpractice insurance.
- e. Cyber Liability Insurance

- 1) The Contractor shall maintain cyber liability insurance in an amount not less than five million dollars (\$5,000,000) per occurrence or claim and ten million dollars (\$10,000,000) annual aggregate. Such insurance shall be sufficiently broad to respond to the Contractor’s duties and obligations under this Contract, and shall include coverage for 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 five million dollars (\$5,000,000) and payable whether incurred by the State or Contractor, including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services and expenses in the performance of services for the State or on behalf of the State hereunder.

f. Crime Insurance

- 1) The Contractor shall maintain crime insurance, which shall be written on a “loss sustained form” or “loss discovered form” providing coverage for third party fidelity, including cyber theft and extortion. The policy must allow for reporting of circumstances or incidents that may give rise to future claims, include an extended reporting period of no less than two (2) years with respect to events which occurred but were not reported during the term of the policy, and not contain a condition requiring an arrest or conviction. The State shall be included as a loss payee in such policy.
- 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 Social Engineering Fraud coverage with a limit of not less than two hundred and fifty thousand dollars (\$250,000). This insurance may be written on a claims-made basis, but in the

event that coverage is cancelled or non-renewed, the Contractor shall purchase an extended reporting or "tail coverage" of at least two (2) years after the Term.

- D.33. Major Procurement Contract Sales and Use Tax. Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Contractor and the Contractor's subcontractors shall remit sales and use taxes on the sales of goods or services that are made by the Contractor or the Contractor's subcontractors and that are subject to tax.
- D.34. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. The Contractor shall only use Confidential information for activities pursuant to and related to the performance of the Contract. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

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

- 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.
- D.36. Prohibited Contract Terms. The prohibited contract terms and conditions enumerated in Tenn. Code Ann. § 12-3-515, shall be a material provision of this Contract. The Contractor acknowledges, understands, and agrees that the inclusion of a term or condition prohibited by Tenn. Code Ann. § 12-3-515, shall be null and void and the Contract shall be enforceable as if the Contract did not contain such term or condition.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.
- E.2. State Ownership of Goods. The State shall have ownership, right, title, and interest in all goods provided by Contractor under this Contract including full rights to use the goods and transfer title in the goods to any third parties.
- E.3. Software License Warranty. Contractor grants a license to the State to use all software provided under this Contract in the course of the State's business and purposes.
- E.4. Reserved.
- E.5. Intellectual Property Indemnity. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall

not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.

E.6. Information Technology Security Requirements (State Data, Audit, and Other Requirements).

a. The Contractor shall protect State Data as follows:

- (1) The Contractor shall ensure that all State Data is housed in the continental United States, inclusive of backup data. All State data must remain in the United States, regardless of whether the data is processed, stored, in-transit, or at rest. Access to State data shall be limited to US-based (onshore) resources only.

All system and application administration must be performed in the continental United States. Configuration or development of software and code is permitted outside of the United States at the discretion, and approval of TennCare pursuant to Contract Section A.12. However, software applications designed, developed, manufactured, or supplied by persons owned or controlled by, or subject to the jurisdiction or direction of, a foreign adversary, which the U.S. Secretary of Commerce acting pursuant to 15 CFR 7 has defined to include the People's Republic of China, among others are prohibited. Any testing of code outside of the United States must use fake data. A copy of production data may not be transmitted or used outside the United States.

- (2) The Contractor shall encrypt Confidential State Data at rest and in transit using the current version of Federal Information Processing Standard ("FIPS") 140-2 or 140-3 (or current applicable version) validated encryption technologies. The Contractor shall adhere to the National Institute of Standards and Technology (NIST) and the Center for Internet Security (CIS) for cybersecurity best practices to protect the encryption keys, information systems, and data. The contractor must follow NIST SP 800-57 which is considered the most secure method for data encryption and is widely accepted across industries. NIST 800-57 provides comprehensive guidance on key management practices, including key generation, storage, rotation, and access controls. Upon request, the Contractor shall provide the State with a copy or set of the Confidential State Data that can be decrypted. The Contractor shall provide installation and maintenance support at no cost to the State.
- (3) The Contractor and Contractor's processing environment and information technology structure containing Confidential State Data shall be in accordance with the National Institute of Standards and Technology, NIST 800-53 Rev. 5. Recipient and Recipient's shall implement and maintain privacy and security controls that follow the guidelines set forth in NIST 800-53, "Security and Privacy Controls for Federal Information Systems and Organizations," as amended from time to time. Recipient and Recipient's shall meet annually, or as otherwise agreed, with the State to review the implementation of this Section. A "System Security Plan (SSP)" is required. The State agency may request and conduct NIST compliance audits upon reasonable notice and at any reasonable time, using a standardized approach to security assessment, authorization, and continuous monitoring for cloud products and services, and may validate that the Recipient and Recipient's meets NIST standards. Information technology "Infrastructure" shall mean the Recipient and Recipient's entire collection of hardware, software, networks, data centers, facilities, and related equipment used to develop, test, operate, monitor, manage, and/or support information technology services. No additional funding shall be allocated for these certifications, authorizations, or audits as these are included in the Maximum Liability of this Contract/agreement.
- (4) Contractor shall meet all applicable requirements of the most current version of Internal Revenue Service Publication 1075 as applicable with the instance of any Federal Tax Information (FTI) and inform the State in writing in advance of any possibility of FTI being in scope of the project.

- (5) The Contractor shall annually assist the State in performing Penetration Tests and Vulnerability Assessments of the Processing Environment. The "Processing Environment" refers to the integrated combination of software and hardware components on which the Application or Solution operates. The "Application" is defined as the computer code that supports and fulfills the State's requirements as outlined in this Contract. "Penetration Tests" shall consist of controlled attempts to exploit vulnerabilities in the Contractor's systems, with the objective of identifying potential security weaknesses that could provide unauthorized access to the Processing Environment's functions or data. The "Vulnerability Assessment" shall be conducted to systematically identify, classify, and evaluate security vulnerabilities within the Processing Environment. The Contractor shall also permit the State, at its sole discretion, to independently conduct Penetration Tests and Vulnerability Assessments on the Processing Environment. The Contractor shall provide reasonable cooperation, access, and support to facilitate such activities by the State.
- (6) In the event of an unauthorized disclosure or unauthorized access to State data, the State Strategic Technology Solutions (STS) Security Incident Response Team (SIRT) must be notified and engaged by calling the State Customer Care Center (CCC) at 615-741-1001. Any such event must be reported by the Contractor within twenty-four (24) hours after the unauthorized disclosure has come to the attention of the Contractor.
- (7) If a breach has been confirmed a fully un-modified third-party forensics report must be supplied to the State and through the STS SIRT. This report must include indicators of compromise (IOCs) as well as plan of actions for remediation and restoration. Contractor shall take all necessary measures to halt any further Unauthorized Disclosures.
- (8) Upon State request, the Contractor shall provide a copy of all Confidential State Data it holds. The Contractor shall provide such data on media and in a format determined by the State.
- (9) Contractor shall meet the requirements of the current version of Minimum Acceptable Risk Standards for Exchanges ("MARS-E") controls and Minimum Acceptable Risk Standards for Exchanges or Acceptable Risk Controls for ACA, Medicaid and Partner Entities ("ARC-AMPE") as applicable, determined by the State, to the contractor's scope of work.
- (10) Upon termination of this Contract and in consultation with the State, the Contractor shall destroy, and ensure all subcontractors shall destroy, all Confidential State Data it holds (including any copies such as backups) in accordance with the current version of National Institute of Standards and Technology ("NIST") Special Publication 800-88. The Contractor shall provide a written confirmation of destruction to the State within ten (10) Business Days after destruction.

b. Minimum Requirements

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

- (3) If the Application requires middleware or database software, Contractor shall maintain middleware and database software versions that are always fully compatible with current versions of the Operating System and Application to ensure that security vulnerabilities are not introduced.
 - (4) In the event of drive/media failure, if the drive/media is replaced, it remains with the State and it is the State's responsibility to destroy the drive/media, or the Contractor shall provide written confirmation of the sanitization/destruction of data according to NIST 800-88.
- c. Business Continuity Requirements. The Contractor shall maintain set(s) of documents, instructions, and procedures which enable the Contractor to respond to accidents, disasters, emergencies, or threats without any stoppage or hindrance in its key operations ("Business Continuity Requirements"). Business Continuity Requirements shall include:
- (1) "Disaster Recovery Capabilities" refer to the actions the Contractor takes to meet the Recovery Point and Recovery Time Objectives defined below. Disaster Recovery Capabilities shall meet the following objectives:
 - i. Recovery Point Objective ("RPO"). The RPO is defined as the maximum targeted period in which data might be lost from an IT service due to a major incident: Fifteen (15) Minutes.
 - ii. Recovery Time Objective ("RTO"). The RTO is defined as the targeted duration of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity: Four (4) Hours.
 - (2) The Contractor and the Subcontractor(s) shall maintain a documented Disaster Recovery plan and shall share this document with the State when requested. The Contractor and the Subcontractor(s) shall perform at least one Disaster Recovery Test every three hundred sixty-five (365) days. A "Disaster Recovery Test" shall mean the process of verifying the success of the restoration procedures that are executed after a critical IT failure or disruption occurs. The Disaster Recovery Test shall use actual State Data Sets that mirror production data, and success shall be defined as the Contractor verifying that the Contractor can meet the State's RPO and RTO requirements. A "Data Set" is defined as a collection of related sets of information that is composed of separate elements but can be manipulated as a unit by a computer. The Contractor shall provide written confirmation to the State after each Disaster Recovery Test that its Disaster Recovery Capabilities meet the RPO and RTO requirements.

E.7. 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.8. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

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

- b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

- E.9. Liquidated Damages. In the event of a Contract performance or compliance failure by the Contractor, the State may, but is not obligated to address such Contract performance or compliance failure and/or assess damages ("Liquidated Damages") in accordance with Attachment B of the Contract. The State shall notify the Contractor of any amounts to be assessed as Liquidated Damages via the Control Memorandum process specified in Contract Section A.12 The Parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for a Contract performance or compliance failure, as these amounts are likely to be uncertain and not easily proven. Contractor has carefully reviewed the Liquidated Damages contained in Contract Attachment B and agrees that these amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of a Contract performance or compliance failure, are a reasonable estimate of the damages that would occur from a Contract performance or compliance failure, and are not punitive. The Parties agree that although the Liquidated Damages represent the reasonable estimate of the damages and injuries sustained by the State due to the Contract performance or compliance failure, they do not include any injury or damage sustained by a third party. The Contractor agrees that the Liquidated Damages are in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or any other sections of this Contract.

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

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

- E.10. Partial Takeover of Contract. The State may, at its convenience and without cause, exercise a partial takeover of any service that the Contractor is obligated to perform under this Contract, including any service which is the subject of a subcontract between Contractor and a third party (a "Partial Takeover"). A Partial Takeover of this Contract by the State shall not be deemed a breach of contract. The Contractor shall be given at least thirty (30) days prior written notice of a Partial Takeover. The notice shall specify the areas of service the State will assume and the date the State will be assuming. The State's exercise of a Partial Takeover shall not alter the Contractor's other duties and responsibilities under this Contract. The State reserves the right to withhold from the Contractor any amounts the Contractor would have been paid but for the State's exercise of a Partial Takeover. The amounts shall be withheld effective as of the date the State exercises its right to a Partial Takeover. The State's exercise of its right to a Partial

Takeover of this Contract shall not entitle the Contractor to any actual, general, special, incidental, consequential, or any other damages irrespective of any description or amount.

- E.11. 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.12. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify or ensure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

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

- E.13. 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 Unique Entity Identifier (UEI) number and maintain its UEI number for the term of this Contract. More information about obtaining a UEI Number can be found at: the System for Award Management (SAM.gov).

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. 14. 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. 15. Applicable Legal Authority. The Contractor agrees to comply with all applicable legal authority, including federal and State laws, rules, regulations, policies, sub-regulatory guidance, executive orders, TennCare waivers, the State Medicaid Manual, and all current, modified, or future Court decrees, orders, or judgments applicable to the State's TennCare program. Such compliance shall be performed at no additional cost to the State.
- E. 16. 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. 17. 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. 18. Social Security Administration (SSA) Required Provisions for Data Security.
- a. Definitions.
 1. "SSA-supplied data" or "data" as used in this section means an individual's personally identifiable information (e.g., name, social security number, income), supplied by the Social Security Administration to TennCare to determine entitlement or eligibility for federally-funded programs pursuant to a Computer Matching and Privacy Protection Act Agreement and Information Exchange Agreement between SSA and the State of Tennessee.
 - b. The Contractor shall comply with limitations on use, treatment, and safeguarding of data under the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, related Office of Management and Budget guidelines, the Federal Information Security Management Act of 2002 (44 U.S.C. §3541, et seq.), and related National Institute of Standards and Technology guidelines, which provide the requirements that the SSA stipulates that the Contractor must follow with regard to use, treatment, and safeguarding data in the event data is exchanged with a federal information system. In addition, the Contractor shall have in place administrative, physical, and technical safeguards for data. The Contractor shall also comply with Section 1106(a) of the Act (42 U.S.C. 1306) and the regulations promulgated pursuant to that section (20 C.F.R. Part 401).

- c. The Contractor shall specify in its agreements with any agent or subcontractor that will have access to data that such agent or subcontractor agrees to be bound by the same restrictions, terms and conditions that apply to the Contractor pursuant to this Section;
- d. The Contractor shall not duplicate in a separate file or disseminate, without prior written permission from TennCare, the data governed by the Contract for any purpose other than that set forth in this Contract for the administration of the TennCare program. Should the Contractor propose a redisclosure of said data, the Contractor must specify in writing to TennCare the data the Contractor proposes to redisclose, to whom, and the reasons that justify the redisclosure. TennCare will not give permission for such redisclosure unless the redisclosure is required by law or essential to the administration of the TennCare program.
- e. The Contractor agrees to abide by all relevant federal laws, restrictions on access, use, and disclosure, and security requirements in this Contract.
- f. The Contractor shall maintain a current list of the employees of such contractor with access to SSA data and provide such lists to TennCare upon request and at any time there are changes.
- g. The Contractor shall restrict access to the data obtained from TennCare to only those authorized employees who need such data to perform their official duties in connection with purposes identified in this Contract. The Contractor shall not further duplicate, disseminate, or disclose such data without obtaining TennCare's prior written approval.
- h. The Contractor shall ensure that its employees:
 - 1. Properly safeguard SSA-supplied data furnished by TennCare under this Contract from loss, theft, or inadvertent disclosure;
 - 2. Receive regular, relevant, and sufficient SSA data-related training, including use, access, and disclosure safeguards and information regarding penalties for misuse of information;
 - 3. Understand and acknowledge that they are responsible for safeguarding this information at all times, regardless of whether or not the Contractor employee is at his or her regular duty station;
 - 4. Ensure that laptops and other electronic devices/ media containing SSA-supplied data are encrypted and/or password-protected;
 - 5. Send emails containing SSA-supplied data only if the information is encrypted or if the transmittal is secure; and,
 - 6. Limit disclosure of the information and details relating to an SSA-supplied data loss only to those with a need to know.
- i. Contractor employees who access, use, or disclose TennCare or TennCare SSA-supplied data in a manner or purpose not authorized by this Contract may be subject to civil and criminal sanctions pursuant to applicable federal statutes.
- j. Loss or Suspected Loss of Data - If an employee of the Contractor becomes aware of suspected or actual loss of SSA-supplied data, the Contractor must notify TennCare immediately upon becoming aware to report the actual or suspected loss. The Contractor must provide TennCare with timely updates as any additional information about the loss of SSA-supplied data becomes available. If the Contractor experiences a loss or breach of said data, TennCare will determine whether or not notice to individuals whose data has been lost or breached shall be provided and the Contractor shall bear any costs associated with the notice or any mitigation.
- k. TennCare may immediately and unilaterally suspend the data flow under this Contract, or terminate this Contract, if TennCare, in its sole discretion, determines that the Contractor has: (1) made an unauthorized use or disclosure of TennCare SSA-supplied data; or (2) otherwise violated or failed to follow the terms and conditions of this Contract.

E.19. Internal Revenue Service (IRS) Safeguarding of Return Information.

- a) Performance. In performance of this Contract, the Contractor shall comply with, and assume responsibility for its officers' and employees' compliance with, the requirements outlined in Contract Section E.19. IRS Safeguard of Return Information. All cited regulations, statutes, publications, or IRS authority cited or referenced apply as they are in effect, or as subsequently amended or revised after the Effective Date of the Contract or any Amendment.
- 1) Contract Section E.19. IRS Safeguard of Return Information shall only apply if Contractor receives or delivers information under this Contract that is or includes "federal tax returns" or "federal return information" as defined by IRS Publication 1075 and IRC 6103.
 - 2) All work will be performed under the supervision of the Contractor. The Contractor and Contractor's officers or employees to be authorized access to FTI must meet background check requirements defined in IRS Publication 1075. The Contractor will maintain a list of officers or employees authorized access to FTI. Such list will be provided to TennCare and, upon request, to the IRS.
 - 3) FTI in hardcopy or electronic format shall be used only for the purpose of carrying out the provisions of this Contract. FTI in any format shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Inspection or disclosure of FTI to anyone other than the Contractor or the Contractor's officers or employees authorized is prohibited
 - 4) FTI will be accounted for upon receipt and properly stored before, during, and after processing. In addition, any related output and products require the same level of protection as required for the source material.
 - 5) The Contractor will certify that FTI processed during the performance of this Contract will be completely purged from all physical and electronic data storage with no output to be retained by the Contractor at the time the work is completed. If immediate purging of physical and electronic data storage is not possible, the Contractor will certify that any FTI in physical or electronic storage will remain safeguarded to prevent unauthorized disclosures.
 - 6) Any spoilage or any intermediate hard copy printout that may result during the processing of FTI will be given to TennCare. When this is not possible, the Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts and will provide TennCare with a statement containing the date of destruction, description of material destroyed, and the destruction method.
 - 7) All computer systems receiving, processing, storing, or transmitting FTI must meet the requirements in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to FTI.
 - 8) No work involving FTI furnished under this Contract will be subcontracted without the prior written approval of the IRS.
 - 9) Contractor will ensure that the terms of FTI safeguards described herein are included, without modification, in any approved subcontract for work involving FTI.
 - 10) To the extent the terms, provisions, duties, requirements, and obligations of this Contract apply to performing services with FTI, the Contractor shall assume toward any subcontractor all obligations, duties and responsibilities that TennCare under this Contract assumes toward the Contractor, and any subcontractor, shall assume toward the Contractor all the same obligations, duties and responsibilities which the Contractor assumes toward the TennCare under this Contract.

- 11) In addition to any subcontractor's obligations and duties under an approved subcontract, the terms and conditions of this Contract apply to all subcontractors, and all subcontractors are bound and obligated to the Contractor hereunder by the same terms and conditions by which the Contractor is bound and obligated to TennCare under this Contract.
 - 12) For purposes of this Contract, the term "Contractor" includes any officer or employee of the Contractor with access to or who uses FTI, and the term "subcontractor" includes any officer or employee of the subcontractor with access to or who uses FTI.
 - 13) TennCare will have the right to void the Contract if the Contractor fails to meet the terms of FTI safeguards described herein.
- b) Criminal/Civil Sanctions.
- 1) Each officer or employee of the Contractor to whom FTI is or may be disclosed shall be notified in writing that FTI disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any FTI for a purpose not authorized herein constitutes a felony punishable upon conviction by a fine of as much as five thousand dollars (\$5,000) or imprisonment for as long as five (5) years, or both, together with the costs of prosecution.
 - 2) Each officer or employee of the Contractor to whom FTI is or may be accessible shall be notified in writing that FTI accessible to such officer or employee may be accessed only for a purpose and to the extent authorized herein, and that access/inspection of FTI without an official need-to-know for a purpose not authorized herein constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as one thousand dollars (\$1,000) or imprisonment for as long as one (1) year, or both, together with the costs of prosecution.
 - 3) Each officer or employee of the Contractor to whom FTI is or may be disclosed shall be notified in writing that any such unauthorized access, inspection or disclosure of FTI may also result in an award of civil damages to the IRS against the officer or employee in an amount equal to the sum of the greater of one thousand dollars (\$1,000) for each unauthorized access, inspection, or disclosure, or the sum of actual damages sustained as a result of such unauthorized access, inspection, or disclosure, plus in the case of a willful unauthorized access, inspection, or disclosure or an unauthorized access/inspection or disclosure which is the result of gross negligence, punitive damages, plus the cost of the action. These penalties are prescribed by IRC sections 7213, 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1. In addition to the civil damages outlined above, TennCare may pursue any potential remedy under this Contract, including but not limited to any Liquidated Damages Attachment or Exhibit, or at law or equity for Contract performance failures resulting or arising from Contractor's noncompliance with this Contract Section on IRS Safeguard of Return Information.
 - 4) Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to IRS and/or TennCare records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than five thousand dollars (\$5,000).
 - 5) Granting the Contractor access to FTI must be preceded by certifying that each officer or employee understands TennCare's security policy and procedures for safeguarding FTI. The Contractor and each officer or employee must maintain their authorization to access FTI through annual recertification of their understanding of TennCare's security policy and procedures for safeguarding FTI. The initial certification and recertifications must be documented and placed in TennCare's files for review. As part of the

certification and at least annually afterwards, the Contractor and each officer or employee must be advised of the provisions of IRC sections 7213, 7213A, and 7431. (See Publication 1075 Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure). The training on TennCare's security policy and procedures provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Publication 1075 Section 10). For the initial certification and the annual recertifications, the Contractor and each officer or employee must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

- c) Inspection. The IRS and TennCare, with 24-hour notice, shall have the right to send its inspectors into the offices and plants of the Contractor to inspect facilities and operations performing any work with FTI under this Contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology ("IT") assets that access, store, process or transmit FTI. Based on the inspection, corrective actions may be required in cases where the Contractor is found to be noncompliant with FTI safeguard requirements.
- E.20. Medicaid and CHIP. The Contractor must provide safeguards that restrict the use or disclosure of information concerning Medicaid and Children's Health Insurance Plan (CHIP) applicants and beneficiaries to purposes directly connected with the administration of the plan,
- a. Purposes directly related to the administration of Medicaid and CHIP include:
 1. establishing eligibility;
 2. determining the amount of medical assistance;
 3. providing services for beneficiaries; and,
 4. conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to Medicaid or CHIP administration.
 - b. The Contractor must have adequate safeguards to assure that:
 1. Information is made available only to the extent necessary to assist in the valid administrative purposes of those receiving the 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; and .
 8. The Contractor shall not request or release information to other parties to verify income, eligibility, and the amount of assistance under Medicaid or CHIP, prior to express approval from TennCare.
- E.21. Employees Excluded from Medicare, Medicaid, or CHIP. The Contractor does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly employ, in the performance of this Contract, employees who have been excluded from participation in the Medicare, Medicaid, and/or CHIP programs pursuant to the Social Security Act, Section 1128 (Exclusion of Certain Individuals and Entities from Participation in Medicare and State Health Care Programs).
- E.22. Offer of Gratuities. By signing this Contract, the Contractor signifies that no member of or a delegate of Congress, nor any elected or appointed official or employee of the State of Tennessee, the federal General Accounting Office, federal Department of Health and Human Services, the CMS, or any other state or federal agency has or will benefit financially or materially from this Contract. This Contract may be terminated by TennCare as provided in Section D.6, if it is determined that gratuities of any kind were offered to or received by any of the aforementioned officials or employees from the Contractor, its agent, or employees.
- E.23. Discovery and Litigation. TennCare is frequently involved in litigation as either a party or a non-party with relevant information. If any such litigation should arise, the Contractor shall cooperate fully and timely with any State attorneys or paralegals at no additional cost to the State, which shall include the following responsibilities:
- a. **Litigation Support.** The Contractor shall make its personnel available to testify in Tennessee, whether in person before a tribunal or by deposition. The Contractor agrees to waive any objections to any subpoena issued by a Tennessee tribunal, in any case relating to this Contract.

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

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

- E.24. **Nondiscrimination Compliance Requirements.** No person on the grounds of disability, age, race, color, religion, sex, national origin, or any other classifications protected under federal or state civil rights laws shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor. The Contractor agrees to cooperate with the Division of TennCare's Office of Civil Rights ("OCRC") in carrying out its federal and state nondiscrimination compliance obligations, which include and are not limited to: the Title VI of the Civil Rights Act of 1964, Section 504 and 508 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, and 42 U.S.C. § 18116 (codified at 45 C.F.R. pt. 92) and Section D.9 of this Contract. The Contractor shall provide OCRC with the name and contact information for a staff member who will work with OCRC to fulfill the nondiscrimination compliance activities related to the terms of this Contract.

- a. *Policies and Procedures and Training.* The Contractor shall be interacting with individuals from diverse cultural backgrounds including, individuals with Limited English Proficiency ("LEP"), individuals with low literacy, individuals with disabilities, including individuals with vision, cognitive, hearing, and speech disabilities, therefore, the Contractor shall have policies and procedures for providing services in a nondiscriminatory and cultural competent manner, providing free language and communication assistance services to individuals, providing individuals with reasonable accommodations, discrimination complaint procedures, and for regularly inspecting assessment methods and decision support tools like algorithms to promote equity and eliminate bias with generating results. The Contractor's staff members carrying out the terms of this Contract shall receive annual training on these policies and procedures and the Contractor's new hires carrying out the terms of this Contract shall receive this training within thirty (30) days of joining the Contractor's workforce.
- b. *Electronic and Information Technology Accessibility Requirements.* To the extent that the Contractor is using electronic and information communication technology to fulfill its obligations under this Contract, the Contractor agrees to comply with the electronic and information technology accessibility requirements under the federal civil rights laws including Section 504 and Section 508 of the Rehabilitation Act of 1973 ("Section 508"), the Americans with Disabilities Act, and 45 C.F.R. pt. 92 (or any subsequent standard adopted by an oversight administrative body, including the Federal Accessibility Board). To comply with the accessibility requirements for Web content and non-Web electronic documents and software, the Contractor shall use the most current W3C's Web Content Accessibility Guidelines ("WCAG") level AA or higher with a goal to transition to WCAG 3 level silver (For the W3C's guidelines see: <https://www.w3.org/WAI/standards-guidelines/> and Section 508 standards: <https://www.access-board.gov/ict/>). Additionally, the Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, by adding a system function that allows users to translate the content into a language other than English. This requirement may be satisfied by the provision of a link to a machine translate tool, using TennCare approved technology solutions, or translating the page into non-English languages as directed by TennCare.
- c. *Discrimination Complaints and Assistance.* The Contractor shall provide any discrimination complaint received relating to this Contract's services and activities within in two (2) days of receipt to OCRC at HCFA.Fairment@tn.gov. The Contractor agrees to cooperate with

OCRC and other federal and state authorities during discrimination complaint investigations and to assist individuals in obtaining information on how they can report a complaint or get assistance for a disability related need that involves TennCare's services or activities by contacting OCRC. To satisfy this obligation the Contractor may direct the individual to OCRC's webpage at: <https://www.tn.gov/tenncare/members-applicants/civil-rights-compliance.html> or to call TennCare Connect at 855-259-0701 if they need assistance with filing a complaint.

- d. *Readiness Review.* Prior to the contract start date, the Contractor's designated staff member shall participate in a nondiscrimination/civil rights readiness review phase. This process is to assist the Contractor with implementing the Contract's nondiscrimination requirements.
 - e. *Nondiscrimination Compliance Reports.* The Contractor shall submit the following nondiscrimination compliance deliverables to OCRC using TennCare's Office of Compliance Management Oversight Processing System ("TOPS") as follows:
 - i. *Annual Compliance Questionnaire.* On an annual basis, using TOPS, OCRC shall provide the Contractor with a Nondiscrimination Compliance Questionnaire. The Contractor shall answer the applicable questions and submit the completed questionnaire to OCRC within sixty (60) days of receipt of the questionnaire with any requested documentation, which shall include, the Contractor's: Assurance of Nondiscrimination, nondiscrimination policies, data capturing the amount of language and communication assistance services provided to individuals, and a civil rights and cultural compliance training report.
 - ii. *Quarterly Compliance Reports.* The Contractor shall submit a quarterly Non-discrimination Compliance Report which shall include the following:
 - a. A civil rights and cultural compliance training report;
 - b. A listing of all discrimination claims that are reported to the Contractor that are claimed to be related to the provision of and/or access to the services provided under the scope of this Contract.
 - c. The language and communication assistance report shall capture a summary listing of language and communication assistance services that were requested by members and/or participants (i.e. Arabic; large print; Sign Language) and the methods used to provide those services.
 - f. *Nondiscrimination Notice and Taglines.* Should the Contractor create materials (flyers, emails, text messages), the Contractor shall ensure that communications critical to obtaining services and vital documents that are targeted to participants, enrollees, applicants, and members of the public shall be printed with the notice of nondiscrimination and taglines required by TennCare. Written materials specific to TennCare program members shall be approved by TennCare prior to the materials being sent to these individuals and at a minimum vital documents shall be translated and available in the Spanish and Arabic languages.
- E.25. Extraneous Terms and Conditions. Contractor shall fill all orders submitted by the State under this Contract. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this Contract shall contain any terms or conditions other than as set forth in the Contract. Any such extraneous terms and conditions shall be void, invalid and unenforceable against the State. Any refusal by Contractor to supply any goods or services under this Contract conditioned upon the State submitting to any extraneous terms and conditions shall be a material breach of the Contract and constitute an act of bad faith by Contractor.
- E.26. Transfer of Ownership of Custom Software Developed for the State.
- a. Definitions.

- (1) "Contractor-Owned Software," shall mean commercially available software the rights to which are owned by Contractor, including but not limited to commercial "off-the-shelf" software which is not developed using State's money or resources.
- (2) "Custom-Developed Application Software," shall mean customized application software developed by Contractor for the State under this Contract intended to function with the Contractor-Owned Software or any Work Product provided under this Contract.
- (3) "Rights Transfer Application Software," shall mean any pre-existing application software and documentation owned or supplied by Contractor or a third party necessary for the use, functioning, support, or maintenance of the Contractor-Owned Software, the Custom-Developed Application Software, Third Party Software, and any Work Product provided to State.
- (4) "Third-Party Software," shall mean software supplied by Contractor under this Contract or necessary for the functioning of any Work Product not owned by the State or the Contractor.
- (5) "Work Product," shall mean all deliverables such as software, software source code, documentation, planning, etc., that are created, designed, developed, or documented by the Contractor for the State under this Contract. Work Product shall include Rights Transfer Application Software.

b. Rights and Title to the Software

- (1) All right, title and interest in and to the Contractor-Owned Software shall at all times remain with Contractor, subject to any license or transfer of rights or ownership granted under this Contract. Contractor grants the State a perpetual non-exclusive license to the Contractor-Owned Software to be used solely with the Custom-Developed Application Software and the Work Product.
- (2) Contractor shall provide the source code in the Custom-Developed Application Software, Work Product and the Contractor-Owned Software, with all subsequent modifications, enhancements, bug-fixes or any other changes in the source code of the Work Product and the Contractor-Owned Software and all other code and documentation necessary for the Custom-Developed Application Software to be installed and function as intended and as set forth in this Contract, to the State.
- (3) Contractor may lease or sell the Custom-Developed Application Software to third parties with the written permission of the State, which permission may be conditioned on the State receiving royalties from such sales or licenses.
- (4) All right, title and interest in and to the Custom-Developed Application Software, and to modifications thereof made by State, including without limitation all copyrights, patents, trade secrets and other intellectual property and other proprietary rights embodied by and arising out of the Custom-Developed Application Software, shall belong to State. To the extent such rights do not automatically belong to State, Contractor hereby assigns, transfers, and conveys all right, title and interest in and to the Custom-Developed Application Software, including without limitation the copyrights, patents, trade secrets, and other intellectual property rights arising out of or embodied by the Custom-Developed Application Software. Contractor and its employees, agents, contractors or representatives shall execute any other documents that State or its counsel deem necessary or desirable to document this transfer or allow State to register its claims and rights to such intellectual property rights or enforce them against third parties.

(5) All right, title and interest in and to the Third-Party Software shall at all times remain with the third party, subject to any license or other rights granted to the State under this Contract or otherwise.

c. The Contractor may use for its own purposes the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of performing under this Contract. The Contractor may develop for itself, or for others, materials which are similar to or competitive with those that are produced under this Contract.

E.27. Comptroller Audit Requirements.

When requested by the State or the Comptroller of the Treasury, the Contractor must provide the State or the Comptroller of the Treasury with a detailed written description of the Contractor's information technology control environment, including a description of general controls and application controls. The Contractor must also assist the State or the Comptroller of the Treasury with obtaining a detailed written description of the information technology control environment for any third or fourth parties, or Subcontractors, used by the Contractor to process State data and/or provide services under this Contract.

Contractor will maintain and cause its Subcontractors to maintain a complete audit trail of all transactions and activities in connection with this Contract, including all information technology logging and scanning conducted within the Contractor's and Subcontractor's information technology control environment. Upon reasonable notice and at any reasonable time, the Contractor grants the State or the Comptroller of the Treasury with the right to audit the Contractor's information technology control environment, including general controls and application controls. The audit may include testing the general and application controls within the Contractor's information technology control environment and may also include testing general and application controls for any third or fourth parties, or Subcontractors, used by the Contractor to process State data and/or provide services under this Contract. The audit may include the Contractor's and Subcontractor's compliance with the State's Enterprise Information Security Policy and all applicable requirements, laws, regulations, or policies.

Upon reasonable notice and at any reasonable time, the Contractor and Subcontractor(s) agree to allow the State, the Comptroller of the Treasury, or their duly appointed representatives to perform information technology control audits of the Contractor and all Subcontractors used by the Contractor. Contractor will provide to the State, the Comptroller of the Treasury, or their duly appointed representatives access to Contractor and Subcontractor(s) personnel for the purpose of performing the information technology control audit. The audit may include interviews with technical and management personnel, physical or virtual inspection of controls, and review of paper or electronic documentation.


The Contractor must have a process for correcting control deficiencies that were identified in the State's or Comptroller of the Treasury's information technology audit. For any audit issues identified, the Contractor and Subcontractor(s) shall submit a corrective action plan to the State or the Comptroller of the Treasury which addresses the actions taken, or to be taken, and the anticipated completion date in response to each of the audit issues and related recommendations of the State or the Comptroller of the Treasury. The corrective action plan shall be provided to the State or the Comptroller of the Treasury upon request from the State or Comptroller of the Treasury and within 30 days from the issuance of the audit report or communication of the audit issues and recommendations. Upon request from the State or Comptroller of the Treasury, the Contractor and Subcontractor(s) shall provide documentation and evidence that the audit issues were corrected.

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

IN WITNESS WHEREOF,

MYERS AND STAUFFER LC:

Ryan M.
Farrell


Digitally signed by Ryan M. Farrell
Date: 2025.11.06 09:39:59 -06'00'

November 6, 2025

CONTRACTOR SIGNATURE

DATE

Ryan M. Farrell, Principal

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

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


JIM BRYSON, COMMISSIONER

11/6/2025

DATE

ATTACHMENT A

PERFORMANCE GUARANTEES

Pursuant to Contract Section A.11.a., the initial performance guarantees listed below shall be effective on the Implementation Date.

Contract Section A.10.f. Asset Searches: Contractor shall ensure that ninety percent (90%) of all Asset Searches are completed and saved to the ERCMS within the timeframe indicated in this Contract section. If the Contractor fails to comply with this Performance Guarantee during a calendar month, then Contractor shall reduce its total invoice for that calendar month by five percent (5%).

Contract Section A.10.g. Title Searches: Contractor shall ensure that at least ninety percent (90%) of all Title Searches are completed and saved to the ERCMS within the timeframe indicated in this Contract section. If the Contractor fails to comply with this Performance Guarantee during a calendar month, then Contractor shall reduce its total invoice for that calendar month by five percent (5%).

Contract Searches A.10.i. Probate Case Referrals: Contractor shall refer one hundred percent (100%) of all Probate Case Referral cases within the timeframe indicated in this Contract section. If the Contractor fails to comply with this Performance Guarantee during a calendar month, then Contractor shall reduce its total invoice for that calendar month by ten percent (10%).

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 One Thousand Dollars (\$1,000) for any single Contract performance or compliance failure.

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

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

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

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

	<u>PROGRAM ISSUES</u>	<u>DAMAGE</u>
1.	The Contractor failed to substantially complete a timeline component within the timeline agreed upon by the Parties under Contract Section A.6. the ERCMS by the Implementation Date. For purposes of this LD 1., "Substantially complete" means that the remaining work is minor and that 75% of the requirement is met as determined by TennCare.	Ten thousand dollars (\$10,000) per Calendar Day until said performance or compliance has been resolved.
2.	The Contractor failed to complete the ERCMS by the Implementation Date as required under Contract Section A.6.	Twenty-five thousand dollars (\$25,000) per Calendar Day until said performance or compliance has been resolved.
3.	The Contractor failed to timely deliver a check or make an electronic payment to pay filing fees and court costs as set forth in Contract Section A.4.	One hundred fifty dollars (\$150) per Calendar Day for each check that is late, until said performance or compliance has been resolved.
4.	The Contractor failed to create an ERCMS Case set forth in Contract Sections A.7.a.1 through A.7.a.5.	Two hundred fifty dollars (\$250) per Calendar Day late for each Case, until said performance or compliance has been resolved.
5.	The Contractor failed to timely or properly create or modify, as applicable, the required fields for an ERCMS Case, as set forth in Contract Section A.7.b.	One thousand dollars (\$1,000) per Calendar Day for each day late for each field, until said performance or compliance has been resolved.
6.	The Contractor failed to comply with ERCMS Record Retention requirements, as set forth in Contract Section A.7.e. Failing to properly store a phone call recording to ERCMS only applies to LD #7.	Two hundred fifty dollars (\$250) per Calendar Day for each field or document that is late, until said performance or compliance has been resolved.
7.	The Contractor failed to store a phone call recording to an ERCMS as set forth in Contract Section A.9.f.	Two hundred fifty dollars (\$250) per Calendar Day for each call recording that is posted late, until said performance or compliance has been resolved.
8.	The Contractor failed to update, add, or remove a template in the Template File, as set forth in Contract Section A.7.f.	One thousand dollars (\$1,000) per Calendar Day per occurrence, until said performance or compliance has been resolved.
9.	The Contractor failed to use the most recent version of a TennCare approved template in its communications, as set forth in Contract Section A.7.f.	One thousand dollars (\$1,000) per occurrence, until said performance or compliance has been resolved.
10.	The Contractor failed to update the payment record on a Case as set forth in Contract Section A.10.j.	Two hundred fifty dollars (\$250) per Calendar Day for each posting that is late, until said performance or compliance has been resolved.
11.	The Contractor failed to make updates to the ERCMS, as applicable, in real-time, as set forth in Contract Section A.7.i.	Two hundred fifty dollars (\$250) per occurrence, until said performance or compliance has been resolved.
12.	The Contractor failed to create, modify, or remove a report template within the specified time period as set forth in Contract Section A.8.b.	Five hundred dollars (\$500) per Calendar Day per occurrence, until said performance or compliance has been resolved.

	<u>PROGRAM ISSUES</u>	<u>DAMAGE</u>
13.	The Contractor failed to timely submit a Monthly Report to TennCare, as set forth in Contract Section A.8.d.	Two thousand (\$2,000) per Calendar Day for each report that is late, until said performance or compliance has been resolved.
14.	The Contractor failed to comply with a Telephone Service Metric, as set forth in Contract Section A.9.	Five thousand (\$5,000) per week for each call metric that is deficient during that week, until said performance or compliance has been resolved.
15.	The Contractor failed to timely mail a Condolence Letter, as set forth in Contract Section A.10.b.	Two hundred fifty dollars (\$250) per Calendar Day for each letter that is late, until said performance or compliance has been resolved.
16.	The Contractor failed to timely comply with requirements relating to MMIS Queries and Production of Claim Itemizations, as set forth in Contract Section A.10.c.	Five hundred dollars (\$500) per Calendar Day per occurrence, until said performance or compliance has been resolved.
17.	The Contractor failed to timely release a claim that is under \$10,000, as set forth in Contract Section A.10.d.	Two hundred fifty dollars (\$250) per Calendar Day for each release that is late, until said performance or compliance has been resolved.
18.	The Contractor failed to properly check for open probate, as set forth in Contract Section A.10.e.	Two hundred fifty dollars (\$250) per Calendar Day for each probate check that is early. Five hundred dollars (\$500) per Calendar Day for each probate check that is late, until said performance or compliance has been resolved.
19.	The Contractor failed to timely complete an asset search, as set forth in Contract Section A.10.f.	Two hundred fifty dollars (\$250) per Calendar Day for asset search that is late, until said performance or compliance has been resolved.
20.	The Contractor failed to timely attach a completed title search to an ERCMS Case, as set forth in Contract Section A.10.g.	Two hundred fifty dollars (\$250) per Calendar Day for each title search that is late, until said performance or compliance has been resolved.
21.	The Contractor failed to timely mail a claim, review a claim for return, or transmit a filed claim, as set forth in Contract Section A.10.h.	One thousand dollars (\$1,000) per Calendar Day for each mailing, review and transmittal that is late, until said performance or compliance has been resolved.
22.	The Contractor failed to timely Refer a Probate Case to TennCare, as set forth in Contract Section A.10.i.	Two hundred fifty dollars (\$250) per Calendar Day for each probate referral that is late, until said performance or compliance has been resolved.
23.	The Contractor failed to timely refer a non-probate Case to TennCare, as set forth in Contract Section A.10.i.	Two hundred fifty dollars (\$250) per Calendar Day for each non probate referral that is early or late, until said performance or compliance has been resolved.
24.	The Contractor failed to timely or properly save a document to the ERCMS or failed to	Two hundred fifty dollars (\$250) per Calendar Day for each document that is


	<u>PROGRAM ISSUES</u>	<u>DAMAGE</u>
	transmit a document to TennCare, as set forth in Contract Section A.10.i.	late, until said performance or compliance has been resolved.
25.	Contractor failed to resolve a simple technical issue as required by Contract Section A.3.a.1.	One hundred (\$100) per Calendar Day for each day that the issue remains unresolved or until said performance or compliance has been resolved
26.	TennCare staff were not able to access the ERCMS as set forth in Contract Section A.7.l.	Ten thousand dollars (\$10,000) per Calendar Day for each day that the issue remains unresolved or until said performance or compliance has been resolved
27.	Contractor allowed storage space to exceed the limits set forth in Contract Section A.7.k.	Ten thousand dollars (\$10,000) per Calendar Day for each day that the issue remains unresolved or until said performance or compliance has been resolved
28.	The Contractor failed to timely request the petition to open or other court documents, as set forth in Contract Section A.10.e.	One hundred dollars (\$100) per Calendar Day that is late, until said performance or compliance has been resolved.
29.	The Contractor failed to meet the requirements of Contract Section E.17.	One thousand dollars (\$1,000) per hour after forty-eight (48) hours between Privacy Incident and written Report of the breach to the TennCare Privacy Officer.

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	31865-00657
CONTRACTOR LEGAL ENTITY NAME:	Myers and Stauffer LC
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.

Ryan M.
Farrell

 Digitally signed by Ryan M. Farrell
Date: 2025.11.06 09:40:46 -06'00'

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.

Ryan M. Farrell, Principal

PRINTED NAME AND TITLE OF SIGNATORY

November 6, 2025

DATE OF ATTESTATION

HIPAA Business Associate Agreement

THIS HIPAA BUSINESS ASSOCIATE AGREEMENT (“Agreement”) is between The State of Tennessee, Division of TennCare (“TennCare” or “Covered Entity”), located at 310 Great Circle Road, Nashville, TN 37228 and Myers and Stauffer LC

_____, (“Business Associate”), located at 2 Maryland Farms; Suite 350; Brentwood, TN 37027 _____, 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:

Estate Recovery Services - 31865-00657

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 forty-eight (48) 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 forty-eight (48) 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.

3.5 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.

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

BUSINESS ASSOCIATE:
Ryan M. Farrell, Principal

Myers and Stauffer LC

2 Maryland Farms; Suite 350

Brentwood, TN 37027

rfarrell@mslc.com

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.

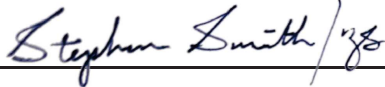
7.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee except to the extent that Tennessee law has been pre-empted by HIPAA and HITECH and without giving effect to principles of conflicts of law.

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) referenced 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: 11/6/2025

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

BUSINESS ASSOCIATE

By: Ryan M. Farrell
Digitally signed by Ryan M. Farrell
Date: 2025.11.06 09:41:54 -06:00
Ryan M. Farrell
Date: November 6, 2025

Myers and Stauffer LC
2 Maryland Farms; Suite 350
Brentwood, TN 37027
rfarrell@mslc.com

Procurement Library