



**STATE OF TENNESSEE**  
**Department of Finance and Administration**  
**Division of TennCare**

**REQUEST FOR PROPOSALS**  
**FOR**

**PHARMACY REIMBURSEMENT SERVICES**

**RFP # 31865-00632**

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## 1. INTRODUCTION

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The State of Tennessee, Department of Finance and Administration, Division of TennCare, hereinafter referred to as "the State" or "TennCare" issues this Request for Proposals (RFP) to define minimum contract requirements; solicit responses; detail response requirements; and outline the State's process for evaluating responses and selecting a contractor to provide the needed goods or services.

Through this RFP, the State seeks to procure necessary goods or services at the most favorable, competitive prices and to give ALL qualified respondents, including those that are owned by minorities, women, service-disabled veterans, persons with disabilities and small business enterprises, an opportunity to do business with the state as contractors, subcontractors or suppliers.

### 1.1 Statement of Procurement Purpose

This RFP is being issued to select a contractor able to maintain the CMS (Centers for Medicare and Medicaid Services) -required pharmacy reimbursement methodology which includes average actual acquisition cost-based ingredient pricing and professional dispensing fees rates for single-source and multi-source legend, Over the Counter (OTC) drugs, specialty, clotting factor and other products paid for via the TennCare pharmacy benefit; and to provide 340B technical (i.e., Estimated Ceiling Price File) and reporting services.

Pursuant to 42 C.F.R. §447.518, TennCare considers two (2) components when proposing changes to the pharmacy reimbursement methodology set forth in its State Plan. The first component is a reasonable Professional Dispensing Fee (PDF) defined in 42 C.F.R. §447.502 as being determined by a Cost of Dispensing (COD) Survey that takes an accounting of those pharmacy costs associated with ensuring that possession of the appropriate covered outpatient drug is transferred to a Medicaid beneficiary, including, but not limited to, reasonable costs associated with a pharmacist's time in checking the computer for information about an individual's coverage, performing drug utilization review and preferred drug list review activities, measurement or mixing of the covered outpatient drug, filling the container, beneficiary counseling, physically providing the completed prescription to the Medicaid beneficiary, and delivery, special packaging, and overhead associated with maintaining the facility and equipment necessary to operate the pharmacy. The second component is the Average Actual Acquisition Cost (AAAC) of TennCare's pharmaceutical ingredients. Both components (PDF and AAAC) are required to ensure that the total reimbursement to the TennCare pharmacy provider is in accordance with the requirements of section 1902(a)(30)(A) of the Social Security Act: to assure that the payments are consistent with efficiency, economy and quality of care and are sufficient to enlist enough providers so that care and services are available under the State Plan to at least the extent that such care and services are available to the general population in the geographic area.

To remain compliant with the Covered Outpatient Rule, TennCare is required to submit a State Plan Amendment (SPA) to CMS outlining pharmacy provider reimbursement methodology and any updates. CMS reviewed and approved TennCare's proposed methodology setting forth the proposed AAAC and PDF for pharmacy reimbursement on two separate occasions. Once at the outset of the rule compliance deadline, and again in 2020.

The goals in implementing and maintaining a PDF and AAAC based reimbursement approach inclusive of 340B claims are fourfold: 1) to evaluate actual cost of dispensing for pharmacies in the state of Tennessee; 2) to establish more accurate, cost-effective, and predictable rates for all claim types including claims from 340B entities, while remaining within the guidelines established by CMS; 3) to comply with CMS' Final Rule mandating that State agencies reimburse pharmacy providers using AAAC plus a PDF, and 4) to ensure accuracy, efficiency and the overall timeliness of pricing and reimbursement for Medicaid pharmacy services including 340B pricing.

- 1.1.2. The maximum liability in RFP Attachment 6.6, Section C.1, will be populated based on the Cost Proposal rates and associated volumes as projected to complete the scope of work in the *pro forma* contract. There is no way to accurately project the amount of this project until the cost proposals are received. However, TennCare anticipates expenditures to be between \$600,000.00 to \$670,000.00 annually.

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

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

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

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

## 1.3. Nondiscrimination

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

## 1.4. RFP Communications

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

**RFP # 31865-00632**

- 1.4.2. **Unauthorized contact about this RFP with employees or officials of the State of Tennessee except as detailed below may result in disqualification from consideration under this procurement process.**

- 1.4.2.1. Prospective Respondents must direct communications concerning this RFP to the following person designated as the Solicitation Coordinator:

Donovan Morgan, Assistant Director of Contracts  
 Department of Finance and Administration  
 Division of TennCare  
 310 Great Circle Road  
 Nashville, TN 37243  
 (615) 741-0041  
[Donovan.Morgan2@tn.gov](mailto:Donovan.Morgan2@tn.gov)

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

- a. staff of the Governor's Office of Diversity Business Enterprise for assistance available to minority-owned, woman-owned, service-disabled veteran-owned, businesses owned by persons with disabilities, and small businesses as well as general, public information relating to this RFP (visit <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo->

[/governor-s-office-of-diversity-business-enterprise--godbe--/godbe-general-contacts.html](#) for contact information); and

- b. the following individual designated by the State to coordinate compliance with the nondiscrimination requirements of the State of Tennessee, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and associated federal regulations:

Talley A. Olson, Esq.  
 Division of TennCare, Office of Civil Rights Compliance  
 310 Great Circle Road, Nashville, TN 37228  
 (615) 507-6841  
[Talley.A.Olson@tn.gov](mailto:Talley.A.Olson@tn.gov)

- 1.4.3. Only the State's official, written responses and communications with Respondents are binding with regard to this RFP. Oral communications between a State official and one or more Respondents are unofficial and non-binding.
- 1.4.4. Potential Respondents must ensure that the State receives all written questions and comments, including questions and requests for clarification, no later than the Written Questions & Comments Deadline detailed in the RFP Section 2, Schedule of Events.
- 1.4.5. Respondents must assume the risk of the method of dispatching any communication or response to the State. The State assumes no responsibility for delays or delivery failures resulting from the Respondent's method of dispatch. Actual or digital "postmarking" of a communication or response to the State by a specified deadline is not a substitute for the State's actual receipt of a communication or response. It is encouraged for Respondents to submit bids digitally.
- 1.4.6. The State will convey all official responses and communications related to this RFP to the prospective Respondents from whom the State has received a Notice of Intent to Respond (refer to RFP Section 1.8).
- 1.4.7. The State reserves the right to determine, at its sole discretion, the method of conveying official, written responses and communications related to this RFP. Such written communications may be transmitted by mail, hand-delivery, facsimile, electronic mail, Internet posting, or any other means deemed reasonable by the State. For internet posting, please refer to the following website: <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo--supplier-information/request-for-proposals--rfp--opportunities1.html>.
- 1.4.8. The State reserves the right to determine, at its sole discretion, the appropriateness and adequacy of responses to written comments, questions, and requests related to this RFP. The State's official, written responses will constitute an amendment of this RFP.
- 1.4.9. Any data or factual information provided by the State (in this RFP, an RFP amendment or any other communication relating to this RFP) is for informational purposes only. The State will make reasonable efforts to ensure the accuracy of such data or information, however it is the Respondent's obligation to independently verify any data or information provided by the State. The State expressly disclaims the accuracy or adequacy of any information or data that it provides to prospective Respondents.

#### 1.5. **Assistance to Respondents With a Handicap or Disability**

Prospective Respondents with a handicap or disability may receive accommodation relating to the communication of this RFP and participating in the RFP process. Prospective Respondents may contact

the Solicitation Coordinator to request such reasonable accommodation no later than the Disability Accommodation Request Deadline detailed in the RFP Section 2, Schedule of Events.

#### 1.6. Respondent Required Review & Waiver of Objections

- 1.6.1. Each prospective Respondent must carefully review this RFP, including but not limited to, attachments, the RFP Attachment 6.6., *Pro Forma* Contract, and any amendments, for questions, comments, defects, objections, or any other matter requiring clarification or correction (collectively called “questions and comments”).
- 1.6.2. Any prospective Respondent having questions and comments concerning this RFP must provide them in writing to the State no later than the Written Questions & Comments Deadline detailed in the RFP Section 2, Schedule of Events.
- 1.6.3. Protests based on any objection to the RFP shall be considered waived and invalid if the objection has not been brought to the attention of the State, in writing, by the Written Questions & Comments Deadline.

#### 1.7. Pre-Response Conference

A Pre-response Conference will be held at the time and date detailed in the RFP Section 2, Schedule of Events. Pre-response Conference attendance is not mandatory, and prospective Respondents may be limited to a maximum number of attendees depending upon overall attendance and space limitations.

The conference will be held at:

Division of TennCare  
TennCare Building  
310 Great Circle Road  
Nashville, TN 37243

The purpose of the conference is to discuss the RFP scope of goods or services. The State will entertain questions, however prospective Respondents must understand that the State’s oral response to any question at the Pre-response Conference shall be unofficial and non-binding. Prospective Respondents must submit all questions, comments, or other concerns regarding the RFP in writing prior to the Written Questions & Comments Deadline date detailed in the RFP Section 2, Schedule of Events. The State will send the official response to these questions and comments to prospective Respondents from whom the State has received a Notice of Intent to respond as indicated in RFP Section 1.8 and on the date detailed in the RFP Section 2, Schedule of Events.

#### 1.8. Notice of Intent to Respond

Before the Notice of Intent to Respond Deadline detailed in the RFP Section 2, Schedule of Events, prospective Respondents should submit to the Solicitation Coordinator a Notice of Intent to Respond (in the form of a simple e-mail or other written communication). Such notice should include the following information:

- the business or individual’s name (as appropriate);
- a contact person’s name and title; and
- the contact person’s mailing address, telephone number, facsimile number, and e-mail address.

**A Notice of Intent to Respond creates no obligation and is not a prerequisite for submitting a response, however, it is necessary to ensure receipt of any RFP amendments or other notices and communications relating to this RFP.**

#### 1.9. Response Deadline

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

## 2. RFP SCHEDULE OF EVENTS

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

| EVENT   | TIME<br>(central time zone) | DATE   |
|---|-----------------------------|--|
| 1. RFP Issued   |                             | June 15, 2022                                  |
| 2. Disability Accommodation Request Deadline  | 2:00 p.m.                   | June 20, 2022                                  |
| 3. Pre-response Conference  | 10:00                       | June 24, 2022                                  |
| 4. Notice of Intent to Respond Deadline   | 2:00 p.m.                   | June 27, 2022                                  |
| 5. Written "Questions & Comments" Deadline  | 2:00 p.m.                   | July 11, 2022                                  |
| 6. State Response to Written "Questions & Comments"   |                             | July 29, 2022                                  |
| 7. Response Deadline  | 2:00 p.m.                   | August 12, 2022                                |
| 8. State Completion of Technical Response Evaluations   |                             | August 31, 2022                                |
| 9. State Opening & Scoring of Cost Proposals  | 2:00 p.m.                   | September 2, 2022                              |
| 10. Cost Negotiations (Optional)  |                             | September 6, 2022 through<br>September 8, 2022 |
| 11. State Notice of Intent to Award Released <u>and</u><br>RFP Files Opened for Public Inspection |                             | September 9, 2022                              |
| 12. End of Open File Period   |                             | September 16, 2022                             |
| 13. State sends contract to Contractor for signature  |                             | September 20, 2022                             |
| 14. Contractor Signature Deadline   | 2:00 p.m.                   | September 30, 2022                             |
| 15. Anticipated Contract Start Date   |                             | November 1, 2022                               |

2.2. **The State reserves the right, at its sole discretion, to adjust the RFP Schedule of Events as it deems necessary.** Any adjustment of the Schedule of Events shall constitute an RFP amendment, and the State will communicate such to prospective Respondents from whom the State has received a Notice of Intent to Respond (refer to Section 1.8).

### 3. RESPONSE REQUIREMENTS

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#### 3.1. Response Form

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

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

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

- 3.1.1.1. A Respondent should duplicate and use the RFP Attachment 6.2., Technical Response & Evaluation Guide to organize, reference, and draft the Technical Response by duplicating the attachment, adding appropriate page numbers as required, and using the guide as a table of contents covering the Technical Response.
- 3.1.1.2. A response should be economically prepared, with emphasis on completeness and clarity. A response, as well as any reference material presented, must be written in English and must be written on standard 8 ½" x 11" pages (although oversize exhibits are permissible) and use a 12 point font for text. All response pages must be numbered.
- 3.1.1.3. All information and documentation included in a Technical Response should correspond to or address a specific requirement detailed in the RFP Attachment 6.2., Technical Response & Evaluation Guide. All information must be incorporated into a response to a specific requirement and clearly referenced. Any information not meeting these criteria will be deemed extraneous and will not contribute to evaluations.
- 3.1.1.4. The State may determine a response to be non-responsive and reject it if:
- a. the Respondent fails to organize and properly reference the Technical Response as required by this RFP and the RFP Attachment 6.2., Technical Response & Evaluation Guide; or
  - b. the Technical Response document does not appropriately respond to, address, or meet all of the requirements and response items detailed in the RFP Attachment 6.2., Technical Response & Evaluation Guide.
- 3.1.2. **Cost Proposal.** A Cost Proposal must be recorded on an exact duplicate of the RFP Attachment 6.3., Cost Proposal & Scoring Guide.

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

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



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

### 3.2. Response Delivery

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

#### 3.2.1.1. Digital Media Submission

##### 3.2.2.1.1 Technical Response

The Technical Response document should be in the form of one (1) digital document in "PDF" format properly recorded on its own otherwise blank, standard CD-R recordable disc or USB flash drive and should be clearly identified as the:

**"RFP #31865-00632 TECHNICAL RESPONSE ORIGINAL"**

and five (5) digital copies of the Technical Response each in the form of one (1) digital document in "PDF" format properly recorded on its own otherwise blank, standard CD-R recordable disc or USB flash drive clearly labeled:

**"RFP #31865-00632 TECHNICAL RESPONSE COPY"**

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

##### 3.2.2.1.2 Cost Proposal:

The Cost Proposal should be in the form of one (1) digital document in "PDF" or "XLS" format properly recorded on a separate, otherwise blank, standard CD-R recordable disc or USB flash drive clearly labeled:

**"RFP #31865-00632 COST PROPOSAL"**

An electronic or facsimile signature, as applicable, on the Cost Proposal is acceptable.

#### 3.2.2.2. E-Mail Submission

##### 3.2.2.2.1. Technical Response

The Technical Response document should be in the form of one (1) digital document in "PDF" format or other easily accessible digital format attached to an e-mail to the Solicitation Coordinator. Both the subject and file name should both be clearly identified as follows:

**"RFP # 31865-00632 TECHNICAL RESPONSE"**

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

3.2.2.2.2. Cost Proposal:

The Cost Proposal should be in the form of one (1) digital document in "PDF" or "XLS" format or other easily accessible digital format attached to an e-mail to the Solicitation Coordinator. Both the subject and file name should both be clearly identified as follows:

**"RFP # 31865-00632 COST PROPOSAL"**

An electronic or facsimile signature, as applicable, on the Cost Proposal is acceptable.

3.2.3. For e-mail submissions, the Technical Response and Cost Proposal documents must be dispatched to the Solicitation Coordinator in separate e-mail messages. For digital media submissions, a Respondent must separate, seal, package, and label the documents and copies for delivery as follows:

3.2.3.1. The Technical Response and copies must be placed in a sealed package that is clearly labeled: "DO NOT OPEN... RFP # 31865-00628 TECHNICAL RESPONSE FROM [RESPONDENT LEGAL ENTITY NAME]"

3.2.3.2. The Cost Proposal must be placed in a separate, sealed package that is clearly labeled: "DO NOT OPEN... RFP # 31865-00628 COST PROPOSAL FROM [RESPONDENT LEGAL ENTITY NAME]"

3.2.3.3. The separately, sealed Technical Response and Cost Proposal components may be enclosed in a larger package for mailing or delivery, provided that the outermost package is clearly labeled: "RFP # 31865-00628 SEALED TECHNICAL RESPONSE & SEALED COST PROPOSAL FROM [RESPONDENT LEGAL ENTITY NAME]"

3.2.3.4. Any Respondent wishing to submit a Response in a format other than digital may do so by contacting the Solicitation Coordinator.

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

Donovan Morgan, Assistant Director of Contracts  
Department of Finance and Administration  
Division of TennCare  
310 Great Circle Road  
Nashville, TN 37243  
(615) 741-0041

### 3.3. **Response & Respondent Prohibitions**

3.3.1. A response must not include alternate contract terms and conditions. If a response contains such terms and conditions, the State, at its sole discretion, may determine the response to be a non-responsive counteroffer and reject it.

3.3.2. A response must not restrict the rights of the State or otherwise qualify either the offer to deliver goods or provide services as required by this RFP or the Cost Proposal. If a response restricts

the rights of the State or otherwise qualifies either the offer to deliver goods or provide services as required by this RFP or the Cost Proposal, the State, at its sole discretion, may determine the response to be a non-responsive counteroffer and reject it.

- 3.3.3. A response must not propose alternative goods or services (*i.e.*, offer services different from those requested and required by this RFP) unless expressly requested in this RFP. The State may consider a response of alternative goods or services to be non-responsive and reject it.
- 3.3.4. A Cost Proposal must be prepared and arrived at independently and must not involve any collusion between Respondents. The State will reject any Cost Proposal that involves collusion, consultation, communication, or agreement between Respondents. Regardless of the time of detection, the State will consider any such actions to be grounds for response rejection or contract termination.
- 3.3.5. A Respondent must not provide, for consideration in this RFP process or subsequent contract negotiations, any information that the Respondent knew or should have known was materially incorrect. If the State determines that a Respondent has provided such incorrect information, the State will deem the Response non-responsive and reject it.
- 3.3.6. A Respondent must not submit more than one Technical Response and one Cost Proposal in response to this RFP, except as expressly requested by the State in this RFP. If a Respondent submits more than one Technical Response or more than one Cost Proposal, the State will deem all of the responses non-responsive and reject them.
- 3.3.7. A Respondent must not submit a response as a prime contractor while also permitting one or more other Respondents to offer the Respondent as a subcontractor in their own responses. Such may result in the disqualification of all Respondents knowingly involved. This restriction does not, however, prohibit different Respondents from offering the same subcontractor as a part of their responses (provided that the subcontractor does not also submit a response as a prime contractor).
- 3.3.8. The State shall not consider a response from an individual who is, or within the past six (6) months has been, a State employee. For purposes of this RFP:
  - 3.3.8.1. An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;
  - 3.3.8.2. A contract with or a response from a company, corporation, or any other contracting entity in which a controlling interest is held by any State employee shall be considered to be a contract with or proposal from the employee; and
  - 3.3.8.3. A contract with or a response from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six (6) months has been, a State employee shall not be considered a contract with or a proposal from the employee and shall not constitute a prohibited conflict of interest.
- 3.3.9. This RFP is also subject to Tenn. Code Ann. § 12-4-101—105.

#### 3.4. **Response Errors & Revisions**

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

#### 3.5. **Response Withdrawal**

A Respondent may withdraw a submitted response at any time before the Response Deadline time and date detailed in the RFP Section 2, Schedule of Events by submitting a written request signed by an

authorized Respondent representative. After withdrawing a response, a Respondent may submit another response at any time before the Response Deadline. After the Response Deadline, a Respondent may only withdraw all or a portion of a response where the enforcement of the response would impose an unconscionable hardship on the Respondent.

### 3.6. **Additional Services**

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

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

### 3.7. **Response Preparation Costs**

The State will not pay any costs associated with the preparation, submittal, or presentation of any response.

## 4. GENERAL CONTRACTING INFORMATION & REQUIREMENTS

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### 4.1. RFP Amendment

The State at its sole discretion may amend this RFP, in writing, at any time prior to contract award. However, prior to any such amendment, the State will consider whether it would negatively impact the ability of potential Respondents to meet the response deadline and revise the RFP Schedule of Events if deemed appropriate. If an RFP amendment is issued, the State will convey it to potential Respondents who submitted a Notice of Intent to Respond (refer to RFP Section 1.8). A response must address the final RFP (including its attachments) as amended.

### 4.2. RFP Cancellation

The State reserves the right, at its sole discretion, to cancel the RFP or to cancel and reissue this RFP in accordance with applicable laws and regulations.

### 4.3. State Right of Rejection

4.3.1. Subject to applicable laws and regulations, the State reserves the right to reject, at its sole discretion, any and all responses.

4.3.2. The State may deem as non-responsive and reject any response that does not comply with all terms, conditions, and performance requirements of this RFP. Notwithstanding the foregoing, the State reserves the right to waive, at its sole discretion, minor variances from full compliance with this RFP. If the State waives variances in a response, such waiver shall not modify the RFP requirements or excuse the Respondent from full compliance, and the State may hold any resulting Contractor to strict compliance with this RFP.

### 4.4. Assignment & Subcontracting

4.4.1. The Contractor may not subcontract, transfer, or assign any portion of the Contract awarded as a result of this RFP without prior approval of the State. The State reserves the right to refuse approval, at its sole discretion, of any subcontract, transfer, or assignment.

4.4.2. If a Respondent intends to use subcontractors, the response to this RFP must specifically identify the scope and portions of the work each subcontractor will perform (refer to RFP Attachment 6.2., Section B, General Qualifications & Experience Item B.14.).

4.4.3. Subcontractors identified within a response to this RFP will be deemed as approved by the State unless the State expressly disapproves one or more of the proposed subcontractors prior to signing the Contract.

4.4.4. After contract award, a Contractor may only substitute an approved subcontractor at the discretion of the State and with the State's prior, written approval.

4.4.5. Notwithstanding any State approval relating to subcontracts, the Respondent who is awarded a contract pursuant to this RFP will be the prime contractor and will be responsible for all work under the Contract.

### 4.5. Right to Refuse Personnel or Subcontractors

The State reserves the right to refuse, at its sole discretion and notwithstanding any prior approval, any personnel of the prime contractor or a subcontractor providing goods or services in the performance of a contract resulting from this RFP. The State will document in writing the reason(s) for any rejection of personnel.

#### 4.6. **Insurance**

The State will require the awarded Contractor to provide a Certificate of Insurance issued by an insurance company licensed or authorized to provide insurance in the State of Tennessee. Each Certificate of Insurance shall indicate current insurance coverages meeting minimum requirements as may be specified by this RFP. A failure to provide a current, Certificate of Insurance will be considered a material breach and grounds for contract termination.

#### 4.7. **Professional Licensure and Department of Revenue Registration**

4.7.1. All persons, agencies, firms, or other entities that provide legal or financial opinions, which a Respondent provides for consideration and evaluation by the State as a part of a response to this RFP, shall be properly licensed to render such opinions.

4.7.2. Before the Contract resulting from this RFP is signed, the apparent successful Respondent (and Respondent employees and subcontractors, as applicable) must hold all necessary or appropriate business or professional licenses to provide the goods or services as required by the contract. The State may require any Respondent to submit evidence of proper licensure.

4.7.3. Before the Contract resulting from this RFP is signed, the apparent successful Respondent must be registered with the Tennessee Department of Revenue for the collection of Tennessee sales and use tax. The State shall not award a contract unless the Respondent provides proof of such registration or provides documentation from the Department of Revenue that the Contractor is exempt from this registration requirement. The foregoing is a mandatory requirement of an award of a contract pursuant to this solicitation. To register, please visit the Department of Revenue's Tennessee Taxpayer Access Point (TNTAP) website for Online Registration and the Vendor Contract Questionnaire. These resources are available at the following:  
<https://tntap.tn.gov/eservices/#1>

#### 4.8. **Disclosure of Response Contents**

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

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

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

#### 4.9. **Contract Approval and Contract Payments**

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

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

4.9.3. No payment will be obligated or made until the relevant Contract is approved as required by applicable statutes and rules of the State of Tennessee.

- 4.9.3.1. The State shall not be liable for payment of any type associated with the Contract resulting from this RFP (or any amendment thereof) or responsible for any goods delivered or services rendered by the Contractor, even goods delivered or services rendered in good faith and even if the Contractor is orally directed to proceed with the delivery of goods or the rendering of services, if it occurs before the Contract Effective Date or after the Contract Term.
- 4.9.3.2. All payments relating to this procurement will be made in accordance with the Payment Terms and Conditions of the Contract resulting from this RFP (refer to RFP Attachment 6.6., *Pro Forma Contract*, Section C).
- 4.9.3.3. If any provision of the Contract provides direct funding or reimbursement for the competitive purchase of goods or services as a component of contract performance or otherwise provides for the reimbursement of specified, actual costs, the State will employ all reasonable means and will require all such documentation that it deems necessary to ensure that such purchases were competitive and costs were reasonable, necessary, and actual. The Contractor shall provide reasonable assistance and access related to such review. Further, the State shall not remit, as funding or reimbursement pursuant to such provisions, any amounts that it determines do not represent reasonable, necessary, and actual costs.

#### 4.10. **Contractor Performance**

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

#### 4.11. **Contract Amendment**

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

#### 4.12. **Severability**

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

#### 4.13. **Next Ranked Respondent**

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

## 5. EVALUATION & CONTRACT AWARD

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### 5.1. Evaluation Categories & Maximum Points

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

| EVALUATION CATEGORY   | MAXIMUM POINTS POSSIBLE |
|---|-------------------------|
| <b>General Qualifications &amp; Experience</b><br>(refer to RFP Attachment 6.2., Section B)             | <b>5</b>                |
| <b>Technical Qualifications, Experience &amp; Approach</b><br>(refer to RFP Attachment 6.2., Section C) | <b>65</b>               |
| <b>Cost Proposal</b><br>(refer to RFP Attachment 6.3.)  | <b>30</b>               |

### 5.2. Evaluation Process

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

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

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

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

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

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



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

- 5.2.1.4. For each response evaluated, the Solicitation Coordinator will calculate the average of the Proposal Evaluation Team member scores for RFP Attachment 6.2., Technical Response & Evaluation Guide, and record each average as the response score for the respective Technical Response section.
- 5.2.1.5. Before Cost Proposals are opened, the Proposal Evaluation Team will review the Technical Response Evaluation record and any other available information pertinent to whether or not each Respondent is responsive and responsible. If the Proposal Evaluation Team identifies any Respondent that does not meet the responsive and responsible thresholds such that the team would not recommend the Respondent for Cost Proposal Evaluation and potential contract award, the team members will fully document the determination.
- 5.2.2. **Cost Proposal Evaluation.** The Solicitation Coordinator will open for evaluation the Cost Proposal of each Respondent deemed by the State to be responsive and responsible and calculate and record each Cost Proposal score in accordance with the RFP Attachment 6.3., Cost Proposal & Scoring Guide.
- 5.2.3. Clarifications and Negotiations: The State reserves the right to award a contract on the basis of initial responses received, therefore, each response shall contain the Respondent's best terms and conditions from a technical and cost standpoint. The State reserves the right to conduct clarifications or negotiations with one or more Respondents. All communications, clarifications, and negotiations shall be conducted in a manner that supports fairness in response improvement.
  - 5.2.3.1. Clarifications: The State may identify areas of a response that may require further clarification or areas in which it is apparent that there may have been miscommunications or misunderstandings as to the State's specifications or requirements. The State may seek to clarify those issues identified during one or multiple clarification rounds. Each clarification sought by the State may be unique to an individual Respondent, provided that the process is conducted in a manner that supports fairness in response improvement.
  - 5.2.3.2. Negotiations: The State may elect to negotiate with one or more Respondents by requesting revised responses, negotiating costs, or finalizing contract terms and conditions. The State reserves the right to conduct multiple negotiation rounds or no negotiations at all.
  - 5.2.3.3. Cost Negotiations: All Respondents, selected for negotiation by the State, will be given equivalent information with respect to cost negotiations. All cost negotiations will be documented for the procurement file. Additionally, the State may conduct target pricing and other goods or services level negotiations. Target pricing may be based on considerations such as current pricing, market considerations, benchmarks, budget availability, or other methods that do not reveal individual Respondent pricing. During target price negotiations, Respondents are not obligated to reduce their pricing to target prices, but no Respondent is allowed to increase prices.
  - 5.2.3.4. If the State determines that it is unable to successfully negotiate terms and conditions of a contract with the apparent best evaluated Respondent, the State reserves the right to bypass the apparent best evaluated Respondent and enter into terms and conditions contract negotiations with the next apparent best evaluated Respondent.

- 5.2.4. **Total Response Score.** The Solicitation Coordinator will calculate the sum of the Technical Response section scores and the Cost Proposal score and record the resulting number as the total score for the subject Response (refer to RFP Attachment 6.5., Score Summary Matrix).

### 5.3. Contract Award Process

- 5.3.1 The Solicitation Coordinator will submit the Proposal Evaluation Team determinations and scores to the head of the procuring agency for consideration along with any other relevant information that might be available and pertinent to contract award.
- 5.3.2. The procuring agency head will determine the apparent best-evaluated Response. To effect a contract award to a Respondent other than the one receiving the highest evaluation process score, the head of the procuring agency must provide written justification and obtain the written approval of the Chief Procurement Officer and the Comptroller of the Treasury.
- 5.3.3. The State will issue a Notice of Intent to Award identifying the apparent best-evaluated response and make the RFP files available for public inspection at the time and date specified in the RFP Section 2, Schedule of Events.

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

- 5.3.4. The Respondent identified as offering the apparent best-evaluated response must sign a contract drawn by the State pursuant to this RFP. The Contract shall be substantially the same as the RFP Attachment 6.6., *Pro Forma* Contract. The Respondent must sign the contract by the Contractor Signature Deadline detailed in the RFP Section 2, Schedule of Events. If the Respondent fails to provide the signed Contract by this deadline, the State may determine that the Respondent is non-responsive to this RFP and reject the response.
- 5.3.5. Notwithstanding the foregoing, the State may, at its sole discretion, entertain limited terms and conditions or pricing negotiations prior to Contract signing and, as a result, revise the *pro forma* contract terms and conditions or performance requirements in the State's best interests, PROVIDED THAT such revision of terms and conditions or performance requirements shall NOT materially affect the basis of response evaluations or negatively impact the competitive nature of the RFP and contractor selection process.
- 5.3.6. If the State determines that a response is non-responsive and rejects it after opening Cost Proposals, the Solicitation Coordinator will re-calculate scores for each remaining responsive Cost Proposal to determine (or re-determine) the apparent best-evaluated response.

**RFP ATTACHMENT 6.1.****RFP # 31865-00632 STATEMENT OF CERTIFICATIONS AND ASSURANCES**

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

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

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

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

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

**SIGNATURE:**

\_\_\_\_\_

**PRINTED NAME & TITLE:**

\_\_\_\_\_

**DATE:**

\_\_\_\_\_

**RESPONDENT LEGAL ENTITY  
NAME:**

\_\_\_\_\_

## RFP ATTACHMENT 6.2. — Section A

## TECHNICAL RESPONSE &amp; EVALUATION GUIDE

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

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

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

| <b>RESPONDENT LEGAL ENTITY NAME:</b>  |                  |  |                  |
|---|------------------|--|------------------|
| <b>Response Page # (Respondent completes)</b>                                   | <b>Item Ref.</b> | <b>Section A— Mandatory Requirement Items</b>  | <b>Pass/Fail</b> |
|   |                  | number without the full report is insufficient and will not be considered responsive.)   |                  |
|   | <b>A.5.</b>      | Provide written attestation that the Respondent does 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 Sections 1128 of the Social Security Act. |                  |
| <i>State Use – Solicitation Coordinator Signature, Printed Name &amp; Date:</i> |                  |  |                  |

**RFP ATTACHMENT 6.2. — SECTION B****TECHNICAL RESPONSE & EVALUATION GUIDE**

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

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

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

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

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

| RESPONDENT LEGAL ENTITY NAME:             |           |  |
|---|-----------|--|
| Response Page #<br>(Respondent completes) | Item Ref. | Section B— General Qualifications & Experience Items   |
|   |           | <p>(iii) names and ownership characteristics (i.e., ethnicity, gender, service-disabled veterans, or disability) of anticipated subcontractors and supply contractors.</p> <p>NOTE: In order to claim status as a Diversity Business Enterprise under this contract, businesses must be certified by the Governor's Office of Diversity Business Enterprise (Go-DBE). Please visit the Go-DBE website at <a href="https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&amp;XID=9810">https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&amp;XID=9810</a> for more information.</p> <p>(d) <u>Workforce</u>. Provide the percentage of the Respondent's total current employees by ethnicity and gender.</p> <p>NOTE: Respondents that demonstrate a commitment to diversity will advance State efforts to expand opportunity to do business with the State as contractors and subcontractors. Response evaluations will recognize the positive qualifications and experience of a Respondent that does business with enterprises owned by minorities, women, service-disabled veterans, persons with disabilities, and small business enterprises and who offer a diverse workforce.</p> |
|   | B.16.     | <p>Provide a statement of whether or not the Respondent has any current contracts with the State of Tennessee or has completed any contracts with the State of Tennessee within the previous five (5) year period. If so, provide the following information for all of the current and completed contracts:</p> <p>(a) the name, title, telephone number and e-mail address of the State contact knowledgeable about the contract;</p> <p>(b) the procuring State agency name;</p> <p>(c) a brief description of the contract's scope of services;</p> <p>(d) the contract period; and</p> <p>(e) the contract number.</p>   |
|   | B.17.     | <p>Provide a statement and any relevant details addressing whether the Respondent is any of the following:</p> <p>(a) is presently debarred, suspended, proposed for debarment, or voluntarily excluded from covered transactions by any federal or state department or agency;</p> <p>(b) has within the past three (3) years, been convicted of, or had a civil judgment rendered against the contracting party from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;</p> <p>(c) is presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed above; and</p> <p>(d) has within a three (3) year period preceding the contract had one or more public transactions (federal, state, or local) terminated for cause or default.</p>                            |
|   |           | <p><b>SCORE (for all Section B—Qualifications &amp; Experience Items above):</b><br/>(maximum possible score = 5)</p>  |



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

|   |                      |   |
|---|----------------------|---|
| <b>RESPONDENT LEGAL ENTITY<br/>NAME:</b>                  |                      |   |
| <b>Response<br/>Page #<br/>(Respondent<br/>completes)</b> | <b>Item<br/>Ref.</b> | <b>Section B— General Qualifications &amp; Experience Items</b> |
| <i>State Use – Evaluator Identification:</i>              |                      |   |

## RFP ATTACHMENT 6.2. — SECTION C

## TECHNICAL RESPONSE &amp; EVALUATION GUIDE

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

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

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

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

| RESPONDENT LEGAL ENTITY NAME:             |           |  |            |                   |                    |
|---|-----------|--|------------|-------------------|--------------------|
| Response Page #<br>(Respondent completes) | Item Ref. | Section C— Technical Qualifications, Experience & Approach Items   | Item Score | Evaluation Factor | Raw Weighted Score |
|   | C.1.      | Provide a narrative that illustrates how the Respondent will manage the project, ensure delivery of specified goods or completion of the scope of services, and accomplish required objectives within the State's project schedule.  |            | 10                |                    |
|   | C.2.      | Provide a narrative detailing the Respondent's experience delivering services similar to the scope described in this solicitation to other state Medicaid agencies.  |            | 15                |                    |
|   | C.3.      | Has respondent provided AAAC and COD reimbursement calculation services for other state Medicaid agencies? If so, please list those agencies.  |            | 8                 |                    |
|   | C.4.      | Describe, in detail, your methodology for calculating an Average Actual Acquisition Cost for specialty drugs. Please describe how you ensure that the invoices that are submitted by specialty pharmacies contain the actual amounts paid by pharmacies.   |            | 5                 |                    |
|   | C.5       | Describe, in detail, your methodology for calculating an Average Actual Acquisition Cost for OTC products that are covered by TennCare. Please include specifics for diabetic supplies, blood glucose test strips, Insulin needles and syringes, lancets, and alcohol swabs.   |            | 5                 |                    |
|   | C.6       | Describe, in detail, your methodology for calculating an Average Actual Acquisition Cost for covered API products used for compounded prescriptions that are covered by TennCare. Please describe how you ensure that the invoices that are submitted by compounding pharmacies contain the actual amounts paid by pharmacies for API ingredients. |            | 5                 |                    |

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

|  |       |   |   |    |  |
|--|-------|---|---|----|--|
|  | C.7.  | Describe in detail how the Respondent proposes to verify self-reported data for validity after the submission of COD surveys. Include all methods for verification, documentation, and any other necessary components to ensure that the study will contain valid, useful information.      |   | 15 |  |
|  | C.8.  | The State currently has different PDFs for retail (Ambulatory) pharmacies based on volume. Please describe your experience with other States that have a single PDF for all retail pharmacies Would you recommend that TennCare move to a different methodology and please explain why?     |   | 3  |  |
|  | C.9.  | For pharmacy cost categories that are optional vs. mandatory to include in the COD survey, which optional categories do you recommend being included, if any, and why?  |   | 5  |  |
|  | C.10. | Please describe your experience with 340B pricing for both pharmacy and physician-administered drug medical claims, and your approach creating a 340B Estimated Ceiling Price file with CMS' AMP and URA data.  |   | 5  |  |
|  | C.11. | Please describe how you would ensure that TennCare is billed actual acquisition cost from 340B covered entities, including both pharmacy and physician-administered drug medical claims.  |   | 5  |  |
|  | C.12. | Describe how TennCare should reimburse claims that are labeled by the pharmacy or 340B covered entity as purchased via the 340B program, when the product is not listed on CMS' DDR, and AMP/URA does not exist.  |   | 5  |  |
|  | C.13. | Describe your ability to provide Help Desk support for both pharmacy and 340B covered entity disputes about discrepancies between the calculated, estimated 340B ceiling price and what the provider has actually paid for the product.   |   | 5  |  |
|  | C.14. | Describe how Respondent will assist TennCare in providing all documentation required by CMS in the State Amendment Plan (SPA) submission process, including state plan language, and federal budget impact by fiscal year and the potential impact to enrollee access to pharmacy services. |   | 5  |  |
| <i>The Solicitation Coordinator will use this sum and the formula below to calculate the section score. All calculations will use and result in numbers rounded to two (2) places to the right of the decimal point.</i> |       |   | <b>Total Raw Weighted Score:</b><br><i>(sum of Raw Weighted Scores above)</i> |    |  |
| <b>Total Raw Weighted Score</b>  |       |   | <b>= SCORE:</b>   |    |  |

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

**Maximum Possible Raw Weighted Score**  
*(i.e., 5 x the sum of item weights above)*

**X 65** *(maximum possible score)*

|  |
|--|
|  |
|--|

*State Use – Evaluator Identification:*

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

**RFP ATTACHMENT 6.3.****COST PROPOSAL & SCORING GUIDE****NOTICE: THIS COST PROPOSAL MUST BE COMPLETED EXACTLY AS REQUIRED**

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

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

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

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

|  |                      |                          |  |
|--|----------------------|--------------------------|--|
| <b>RESPONDENT SIGNATURE:</b>   |                      |                          |  |
| <b>PRINTED NAME &amp; TITLE:</b>                                       |                      |                          |  |
| <b>DATE:</b>   |                      |                          |  |
| <b>RESPONDENT LEGAL ENTITY NAME:</b>                                   |                      |                          |  |
| <b>Cost Item Description</b>   | <b>Proposed Cost</b> | <b>State Use Only</b>    |  |
|  |                      | <b>Evaluation Factor</b> | <b>Evaluation Cost<br/>(cost x factor)</b> |
| <b>November 1, 2022 – October 31, 2025<br/>(Initial 36-Month Term)</b> |                      |                          |  |
| Completion of Milestone #1<br>Pro Forma Section A.6.a.                 | \$ _____ /EA         | 1                        |  |
| Completion of Milestone #2<br>Pro Forma Section A.6.b.                 | \$ _____ /EA         | 1                        |  |
| Completion of Milestone #3<br>Pro Forma Section A.6.c.                 | \$ _____ /EA         | 1                        |  |

**RFP ATTACHMENT 6.3. (continued)**

| <b>RESPONDENT LEGAL ENTITY NAME:</b>   |                      |                                     |  |
|--|----------------------|-------------------------------------|--|
| <b>Cost Item Description</b>   | <b>Proposed Cost</b> | <b>State Use Only</b>               |  |
|  |                      | <b>Evaluation Factor</b>            | <b>Evaluation Cost<br/>(cost x factor)</b> |
| Proprietary Average Actual Acquisition Cost for all possible covered National Drug Codes (NDCs), First Data Bank Clinical Formulation ID (GSNs), and MediSpan Generic Product ID (GPIs) for all Provider Types – Pro Forma Section A.10.   | \$ _____/Month       | 36                                  |  |
| 340B Help Desk Support – Pro Forma Section A.26.   | \$ _____/Month       | 36                                  |  |
| 340B Monthly Ceiling Price File – Pro Forma Section A.26.  | \$ _____/Month       | 36                                  |  |
| <b>November 1, 2025 – October 31, 2027<br/>(Pursuant to Contract Term Extension)</b>   |                      |                                     |  |
| Proprietary Average Actual Acquisition Cost for all possible covered National Drug Codes (NDCs), First Data Bank Clinical Formulation ID (GSNs), and MediSpan Generic Product ID (GPIs) for all Provider Types – Pro Forma Section A.10.   | \$ _____/Month       | 24                                  |  |
| 340B Help Desk Support – Pro Forma Section A.26.   | \$ _____/Month       | 24                                  |  |
| 340B Monthly Ceiling Price File – Pro Forma Section A.26.  | \$ _____/Month       | 24                                  |  |
| <b>EVALUATION COST AMOUNT</b> (sum of evaluation costs above):<br>The Solicitation Coordinator will use this sum and the formula below to calculate the Cost Proposal Score.<br>Numbers rounded to two (2) places to the right of the decimal point will be standard for calculations. |                      |                                     |  |
| $\frac{\text{lowest evaluation cost amount from all proposals}}{\text{evaluation cost amount being evaluated}}$  |                      | $\times 30$ (maximum section score) | =<br><b>SCORE:</b>                         |
| <i>State Use – Solicitation Coordinator Signature, Printed Name &amp; Date:</i>  |                      |                                     |  |

## REFERENCE QUESTIONNAIRE

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

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

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

References from at least three (3) different individuals are required to satisfy the requirements above, e.g., an individual may provide a reference about a completed project and another reference about a currently serviced account. The individual contact reference provided for each contract or project shall not be a current State employee of the procuring State agency. Procuring State agencies that accept references from another State agency shall document, in writing, a plan to ensure that no contact is made between the procuring State agency and a referring State agency. The standard reference questionnaire, should be used and completed, and is provided on the next page of this RFP Attachment 6.4.

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

Written:

- (a) Add the Respondent's name to the standard reference questionnaire at RFP Attachment 6.4. and make a copy for each reference.
- (b) Send a reference questionnaire and new, standard #10 envelope to each reference.
- (c) Instruct the reference to:
  - (i) complete the reference questionnaire;
  - (ii) sign and date the completed reference questionnaire;
  - (iii) seal the completed, signed, and dated reference questionnaire within the envelope provided;
  - (iv) sign his or her name in ink across the sealed portion of the envelope; and
  - (v) return the sealed envelope directly to the Respondent (the Respondent may wish to give each reference a deadline, such that the Respondent will be able to collect all required references in time to include them within the sealed Technical Response).
- (d) Do NOT open the sealed references upon receipt.
- (e) Enclose all sealed reference envelopes within a larger, labeled envelope for inclusion in the Technical Response as required.

Email:

- (a) Add the Respondent's name to the standard reference questionnaire at RFP Attachment 6.4. and make a copy for each reference.
- (b) E-mail a reference questionnaire to each reference.
- (c) Instruct the reference to:
  - (i) complete the reference questionnaire;
  - (ii) sign and date the completed reference questionnaire;
  - (iii) E-mail the reference directly to the Solicitation Coordinator by the RFP Technical Response Deadline with the Subject line of the e-mail as "[Respondent's Name] Reference for RFP # 31865-00632".

NOTES:

- The State will not accept late references or references submitted by any means other than the two which are described above, and each reference questionnaire submitted must be completed as required.

- The State will not review more than the number of required references indicated above.
- While the State will base its reference check on the contents of the reference e-mails or sealed reference envelopes included in the Technical Response package, the State reserves the right to confirm and clarify information detailed in the completed reference questionnaires, and may consider clarification responses in the evaluation of references.
- The State is under no obligation to clarify any reference information.



**RFP # 31865-00632 REFERENCE QUESTIONNAIRE****REFERENCE SUBJECT:** RESPONDENT NAME (completed by Respondent before reference is requested)

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

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

- complete this questionnaire (either using the form provided or an exact duplicate of this document);
- sign and date the completed questionnaire and follow either process outlined below;

**Physical:**

- seal the completed, signed, and dated questionnaire in a new standard #10 envelope;
- sign in ink across the sealed portion of the envelope; and
- return the sealed envelope containing the completed questionnaire directly to the reference subject.

**E-Mail:**

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

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

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

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

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

- (4) **If the goods or services that the reference subject provided to your company or organization are completed, were the goods or services provided in compliance with the terms of the contract, on time, and within budget? If not, please explain.**
  
- (5) **If the reference subject is still providing goods or services to your company or organization, are these goods or services being provided in compliance with the terms of the contract, on time, and within budget? If not, please explain.**
  
- (6) **How satisfied are you with the reference subject's ability to perform based on your expectations and according to the contractual arrangements?**

**REFERENCE SIGNATURE:**

(by the individual completing this request for reference information)

---

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

**DATE:**

---

**RFP ATTACHMENT 6.5.**

**SCORE SUMMARY MATRIX**

|   | <i>RESPONDENT NAME</i> |  | <i>RESPONDENT NAME</i> |  | <i>RESPONDENT NAME</i> |  |
|---|------------------------|--|------------------------|--|------------------------|--|
| <b>GENERAL QUALIFICATIONS &amp; EXPERIENCE</b><br>(maximum: 5)              |                        |  |                        |  |                        |  |
| <i>EVALUATOR NAME</i>   |                        |  |                        |  |                        |  |
| <i>EVALUATOR NAME</i>   |                        |  |                        |  |                        |  |
| <i>REPEAT AS NECESSARY</i>  |                        |  |                        |  |                        |  |
|   | <b>AVERAGE:</b>        |  | <b>AVERAGE:</b>        |  | <b>AVERAGE:</b>        |  |
| <b>TECHNICAL QUALIFICATIONS, EXPERIENCE &amp; APPROACH</b><br>(maximum: 65) |                        |  |                        |  |                        |  |
| <i>EVALUATOR NAME</i>   |                        |  |                        |  |                        |  |
| <i>EVALUATOR NAME</i>   |                        |  |                        |  |                        |  |
| <i>REPEAT AS NECESSARY</i>  |                        |  |                        |  |                        |  |
|   | <b>AVERAGE:</b>        |  | <b>AVERAGE:</b>        |  | <b>AVERAGE:</b>        |  |
| <b>COST PROPOSAL</b><br>(maximum: 30)                                       | <b>SCORE:</b>          |  | <b>SCORE:</b>          |  | <b>SCORE:</b>          |  |
| <b>TOTAL RESPONSE EVALUATION SCORE:</b><br>(maximum: 100)                   |                        |  |                        |  |                        |  |
| <i>Solicitation Coordinator Signature, Printed Name &amp; Date:</i>         |                        |  |                        |  |                        |  |

**RFP # 31865-00632 *PRO FORMA* CONTRACT**

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

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

This Contract, by and between the State of Tennessee, Department of Finance and Administration, Division of TennCare, hereinafter referred to as the "State" or "TennCare," and **Contractor Legal Entity Name** ("Contractor"), is for the provision of establishing and maintaining Average Actual Acquisition Cost-based ingredient pricing and Professional Dispensing Fee rates for single-source and multi-source legend and Over the Counter (OTC) drugs, specialty, clotting factor, and other products paid for via the TennCare pharmacy benefit, and for 340B technical and reporting 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/an Individual, For-Profit Corporation, Non-Profit Corporation, Special Purpose Corporation Or Association, Partnership, Joint Venture, Or Limited Liability Company**.

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

**A. SCOPE:**

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

A.2. Definitions. For purposes of this Contract, definitions shall be as follows and as set forth in the Contract:

- a. **340B Drug Pricing Program-** Administered by U.S. Health Resources & Services Administration (HRSA), was created in 1992 and requires drug manufacturers to provide outpatient drugs to eligible health care organizations, also known as covered entities, at significantly reduced prices.
- b. **340B Ceiling Price-** The maximum price drug manufacturers can charge for a 340B-purchased drug. 340B Ceiling Price equals:

For Generic Drugs: AMP – URA

For Brand Drugs:

AMP – (AMP – best price) (if lower than AMP – URA)

If AMP increases faster than the rate of inflation, an additional discount is owed:

AMP current – (CPI-U current/CPI-U baseline) × AMP baseline

URAs:

Brand-name drugs ([single source] and [innovator]) = 23.1%

Generic drugs (non-innovator multiple source drugs [N]) = 13%

Hemophilia and pediatric drugs = 17.1%

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

- d. **Average Actual Acquisition Cost (AAAC)**- TennCare's Actual Acquisition Cost is calculated based on a survey of pharmacies in Tennessee to determine the average invoice acquisition cost submitted for each drug.
- e. **Average Manufacturer Price (AMP)**- the average unit price paid in the U.S. to the manufacturer by wholesalers for drugs distributed to the retail pharmacy class of trade, after deducting customary prompt-pay discounts (excluding direct sales to hospitals and Health Maintenance Organizations, and to wholesalers where the drug is relabeled under the distributor's National Drug Code (NDC) number.
- f. **Centers for Medicare and Medicaid Services (CMS)**- a federal agency within the United States Department of Health and Human Services (HHS) that administers the Medicare program and works in partnership with state governments to administer Medicaid, the Children's Health Insurance Program (CHIP), and health insurance portability standards.
- g. **Consumer Price Index for All Urban Consumers (CPI-U)**- a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods.
- h. **Cost of Dispensing Survey**- a process that requires all providers to submit details of financial, demographic, physical and utilization data from their pharmacy to be totaled and analyzed with statistical and accounting methods to determine the actual cost of dispensing a prescription.
- i. **First Data Bank (FDB) and Medi-Span**- two of the most widely utilized drug compendia publishers. Both publishers include drug attributes and pricing values. Each publisher also has a unique, proprietary drug identifier that groups products with the same active ingredient, strength, route, and dosage form.
- j. **Generic Sequence Number (GSN)**- derives from FDB, is 6-digits in length and can be used to group products with the same active ingredient, strength, route, and dosage form.
- k. **Generic Product Identifier (GPI)**- derives from Medi-Span, is 14-digits made up of 7 couplets to group both products and drug categories.
- l. **National Council for Prescription Drug Programs (NCPDP)**- a non-profit organization whose purpose is to standardize the exchange of health care information in order to improve outcomes, while also decreasing costs.
- m. **National Provider Identifier (NPI)**- The National Provider Identifier (NPI) is a Health Insurance Portability and Accountability Act (HIPAA) Administrative Simplification Standard and is a unique identification number for covered health care providers.
- n. **Over-The-Counter Drug (OTC)**- Drug products that can be purchased without a prescription in the U.S.
- o. **Professional Dispensing Fee (PDF)**- as defined in 42 C.F.R. §447.502.
- p. **Specialty Medication**- A medication or a pharmaceutical product which has been prescribed for an eligible TennCare enrollee by an authorized prescriber, is not listed on CMS' National Actual Drug Acquisition Cost list (NADAC), and meets at least two (2) of the following:
  - 1) The cost of the medication equals or exceeds \$500 for a thirty (30) day supply;
  - 2) The medication is only approved to treat limited patient populations, indications, or conditions;
  - 3) The medication is typically injected, infused, or requires close monitoring by a physician or clinically trained individual;

- 4) The medication has limited availability, special dispensing, and delivery requirements, and/or requires additional patient support – any or all of which make such drugs difficult to obtain through traditional pharmacies.
- q. **State Plan or State Plan Amendment (SPA)**- an agreement between a state and the Federal government describing how that state administers its Medicaid and CHIP programs. It gives an assurance that a state will abide by Federal rules and may claim Federal matching funds for its program activities. The state plan sets out groups of individuals to be covered, services to be provided, methodologies for providers to be reimbursed and the administrative activities that are underway in the state.
- r. **Unit Rebate Amount (URA)**- CMS computes this amount and state Medicaid programs apply utilization information to it in order to invoice drug manufacturers for rebates.
- A.3. **Pharmacy Cost of Dispensing.** The Contractor shall conduct a Cost of Dispensing (COD) Survey to determine the proposed PDF and shall assist TennCare as requested, with the submission to CMS of the COD Survey, SPA and related data and documentation, including assisting with any revisions or adjustments to the COD Survey, SPA, or proposed PDF required to obtain CMS approval of the SPA. The COD Survey shall determine the actual cost of dispensing a TennCare pharmaceutical prescription by surveying the entire TennCare pharmacy provider network (“Providers” or “Provider”), consisting of approximately fifteen hundred (1500) pharmacies located in Tennessee, as well as some out-of-state specialty pharmacies.
- A.4. The descriptions of Contractor deliverables in this Contract do not include every possible duty, task, or intermediate deliverable necessary to achieve success on this Contract. The Contractor understands and agrees that any perceived lack of detail in a specific area does not indicate that the Contractor will have no duties in that area. The Contractor shall fulfill the State's Contract goals and requirements in a cost-effective manner. This includes all intermediate steps, deliverables, or processes reasonably necessary to achieve the desired outcome described in each Section of the Contract. Intermediate steps, processes or deliverables may, at the State's discretion, be described in greater detail in a Control Memorandum, developed by the parties at the inception of each phase of the Contract, using the Control Memorandum process described below. Many objectives described here only describe the end result, thus allowing Contractor flexibility in proposing the details in a Control Memorandum of how their solution meets the State's goals.
- A.5. The Contractor shall perform the COD Survey in compliance with the requirements contained herein, and in compliance with the State Plan requirements, findings and assurances set forth in 42 C F R. § 447.502, the definition of PDF and the appropriate costs to be included in the PDF calculation described in 42 C.F.R. § 447.518, the guidance regarding PDFs set forth in section 1902(a)(30)(A) of the Social Security Act, and all other applicable state and federal laws and regulations.
- A.6. **Deliverable Milestones.** The services to be performed by the Contractor and the deliverables required to be provided to TennCare are divided into the separate phases as described below, with payment for each such phase contingent upon Contractor providing timely and acceptable services and deliverables in compliance with the Contract requirements. The successful completion, as determined in the State's sole discretion, of each phase and its associated deliverables, is identified as a deliverable milestone (Deliverable Milestone) which triggers partial payment to the Contractor as set forth in contract Section C.3 of this Contract. Each phase of the services the Contractor is to provide, and the associated deliverables shall be identified by its corresponding Deliverable Milestone designation described below:
- a. Milestone 1: Pre-Survey Submission Services. This phase of the Contract includes the following services and deliverables:
1. Development by Contractor for approval by TennCare of the COD Survey to be sent to each Provider covering that Provider's most recently completed fiscal

year. For the various types of pharmacy practices identified in Section A.6.a.1.(b) below, the survey questions shall be designed to recommend: (i) a sufficient PDF provider reimbursement to encourage statewide access to prescribed medications by TennCare members, (ii) to ensure that the pharmacy provider reimbursements are based upon reasonable and accurate prescription dispensing costs, and (iii) whether separate reimbursement methodologies are desirable for different types of pharmacy providers. The Contractor is encouraged to include cost-finding methods and procedures in the COD Survey that yield fair and reasonable allocations to pharmacy dispensing functions.

The Contractor shall adequately justify any such methods or procedure that deviate from generally accepted accounting principles and obtain approval from TennCare before including these in the COD Survey. The COD Survey shall be developed by the Contractor, with assistance from TennCare, and shall be designed to elicit responses relating to all applicable topics, information, and elements necessary to determine the appropriate PDF, and may include but not limited to the following:

- (a) Questions covering the operations, professional services, expenses, overhead and profit areas of each pharmacy operation, including, but not limited to, the following:
  - (1) Sales and Floor Space
    - (i) Sales- prescription drug sales and total sales,
    - (ii) Cost of goods sold - prescription drugs and total cost of goods sold, and
    - (iii) Floor space - prescription drug department and total floor space.
  - (2) Allowable expenses and fixed and variable overhead (prorated where appropriate between prescription sales and nonprescription sales)
  - (3) Depreciation
  - (4) Taxes
    - (i) Personal property taxes,
    - (ii) Real estate taxes,
    - (iii) Payroll taxes,
    - (iv) Sales taxes,
    - (v) State Franchise Tax (Corporations), and
    - (vi) Other taxes, as applicable.
  - (5) Rent or mortgage
    - (i) Building rent
    - (ii) Equipment rent, and
    - (iii) Mortgage expenses.
  - (6) Repairs
  - (7) Insurance
    - (i) Worker's compensation,
    - (ii) Employee medical premiums, and
    - (iii) Other, as applicable.
  - (8) Interest- General (no interest on prescription drug purchases)



- (9) Legal and professional fee (excluding litigation or litigation-type costs and fees)
  - (10) Dues and publications
    - (i) Prescription department, and
    - (ii) Other, as applicable.
  - (11) Bad debts (most recent, complete fiscal year only)
  - (12) Charitable contributions (must be directly related to the operation of the pharmacy)
  - (13) Telephone/Internet/Telehealth
  - (14) Utilities
    - (i) Heating,
    - (ii) Water/wastewater,
    - (iii) Electricity,
    - (iv) Garbage disposal, and
    - (v) Other, as applicable
  - (15) Operating and office supplies:
    - (i) Advertising (only to convey participation in the TennCare Program),
    - (ii) Prescription computer expenses,
    - (iii) Prescription delivery expenses,
    - (iv) Claim transmission charges,
    - (v) Prescription containers and labels, and
    - (vi) Other, as applicable.
  - (16) Personnel costs
    - (i) Salaries and percent of time spent by areas of responsibility for sole proprietors, partners, or stockholders,
    - (ii) Salaries and percent of time spent by areas of responsibility for employee and relief pharmacists,
    - (iii) Salaries and percent of time spent by areas of responsibility for interns,
    - (iv) Salaries and percent of time spent by areas of responsibility for prescription delivery persons and prescription technicians, and
    - (v) Salaries and percent of time spent by areas of responsibility for other employees
- (b) Questions requesting information regarding each of the following types of pharmacy operations designed to identify differences affecting PDF for each pharmacy type:
- (1) Retail chain pharmacies (defined as 4 or more pharmacy locations with corporate or common ownership),
  - (2) Independent pharmacies (identified as 1-3 pharmacy locations),
  - (3) Urban pharmacies,
  - (4) Rural pharmacies,

- (5) Long term care (LTC) pharmacies (including those providing less than 28-day supplies of medications and those providing equal to or greater than 28-day supplies of medications),
  - (6) Specialty pharmacies,
  - (7) 340B pharmacies,
  - (8) Pharmacies providing compounded prescriptions (including dispensing fee based on Levels of Effort 1-3 determined by approximate time and technical requirements for compounding), and
- (c) For each of the types of pharmacy operations identified in Section A.6.a.1.(b) above, request the Provider include the following information, as applicable, in its response:
- (1) Actual cost of dispensing each of the following
    - (i) Brand prescriptions,
    - (ii) Generic prescriptions,
    - (iii) Provision of unit dose dispensing services
    - (iv) Less than 28-day supply of LTC prescriptions,
    - (v) LTC prescriptions equal to or greater than 28-day supply,
    - (vi) Specialty medications,
    - (vii) 340B pharmacy medications.
    - (viii) Compounded prescriptions, including Levels of Effort 1-3 charges,
    - (ix) Blood factor products dispensed at Ambulatory or Specialty Pharmacies,
  - (2) Provider's Medicaid prescription volume (both total prescription volume and as a percentage of pharmacy's total prescription volume)
  - (3) Provider's LTC prescription volume (both total prescription volume and as a percentage of pharmacy's total prescription volume)
  - (4) Number of prescriptions dispensed by Provider during the indicated time period, including new prescriptions, refill prescriptions, and total prescriptions.
  - (5) Type of ownership of Provider's pharmacy (such as sole proprietor, partnership, limited partnership, corporation, or other)
  - (6) Pharmacy type (based on the various types of pharmacies identified in Section A.6.a.1.(b).
  - (7) Building ownership (such as owned by unrelated third-party, self-owned or owned by a related party)
  - (8) Prescriptions hand delivered to TennCare enrollees' and other customers' residences (show both total prescriptions delivered and Medicaid prescriptions delivered)
  - (9) Prescriptions dispensed for Home IV or infusion therapies
  - (10) Specialty prescriptions shipped or otherwise distributed or Dispensed
  - (11) Hours per week Provider is open for business
  - (12) Number of years pharmacy operated at this location

- (13) Prescriptions dispensed to residents in LTC facilities, and
  - (14) Whether the Provider offers 24-hour emergency service for pharmaceuticals.
- (d) Any additional requests for information from the Providers deemed necessary by the Contractor to be able to make a reasonable and fair determination of the appropriate PDF to be included in TennCare's pharmacy reimbursement methodology.
2. Development by the Contractor for approval by TennCare of Contractor's proposed deliverables and procedures to prepare for and conduct the COD Survey, analyze COD Survey results to determine a proposed PDF, provide all documentation required by CMS to be included with the SPA submission, and assist TennCare with the CMS submission process, including, as requested, providing proposed SPA language, calculating the federal budget impact by federal fiscal year, and determining the potential impact on TennCare enrollee access to pharmacy services. These deliverables and procedures shall include, but are not limited to, the following:
- (a) The Contractor shall submit for TennCare approval, a comprehensive calendar of proposed deliverable due dates and implementation activities dates (Deliverable and Implementation Calendar) which shall, at a minimum, include:
    - (1) Date for submission of proposed COD Survey questionnaire to TennCare,
    - (2) Date for submission of proposal to TennCare regarding database, system and/or other tools identified in Section A.6.a.3 below
    - (3) Date for completion of TennCare-approved Section A.6.a.3 Deliverables, including any necessary testing of such deliverables.
    - (4) Dates proposed for training TennCare staff regarding use of Section A.6.a.3 Deliverables and for providing TennCare unrestricted access to such deliverables
    - (5) Date for submission of Contractor's proposed COD Survey procedures (Contractor Procedures) for TennCare approval, covering, at a minimum, the following topics:
      - (i) Procedures for communicating with Providers and providing instructions and assistance to Providers with completing COD Surveys, informational and education procedures and materials to be used with Providers, pharmacy associations and other stakeholders regarding the COD Survey, which may be done through phone/conference calls, memos, letters, or face-to-face meetings. All presentations and written information shared with Providers, pharmacy associations, and other stakeholders shall be submitted to and approved by TennCare prior to use.
      - (ii) Method of distribution of COD Surveys, including providing prepaid return envelope to facilitate response by Providers, and method of verification of receipt of COD Survey by each Provider,
      - (iii) Required steps Contractor is to follow to ensure an adequate Provider response to the COD Survey to be able to provide statistical validity for the PDF to be included in TennCare SPA,
      - (iv) Procedures for verification of the validity of self-reported

- data contained in COD Survey response from each Provider, including desk reviews and all other methods for verification of Provider documentation, including, but not limited to, on-site field work to be performed at no less than twenty (20) pharmacies to verify the data in Providers' COD Survey responses and to assess the effectiveness of the Contractor's desk review procedures, and any other actions the Contractor deems necessary to ensure that each COD Survey contains valid information,
- (v) Providing TennCare unrestricted access to all Contractor communications with Providers, including COD Survey responses and related documentation, as well as access to all Contractor's workpapers, calculation methods, and all other material related to this COD Survey and the services to be performed under this Contract.
  - (vi) Procedures to assist TennCare in providing all documentation required by CMS to be included with SPA submission to support proposed PDF and revised pharmacy reimbursement methodology, and assistance with other aspects of the CMS submission process, including providing proposed SPA language, calculating the federal budget impact by federal fiscal year, and determining the potential impact on TennCare enrollee access to pharmacy services.
- (6) Date for distribution of the TennCare-approved COD Survey to the Providers
  - (7) Date(s) for outreach and education of Providers, pharmacy associations and other stakeholders regarding COD Survey
  - (8) Date(s) for follow up with Providers to ensure enough COD Survey responses are received by Contractor to provide a statistically valid PDF determination
  - (9) Dates for on-site field work at no less than twenty (20) pharmacies to verify data in Providers' COD Survey responses and the validity of Contractor's desk review procedures
  - (10) Date for completion of verification of all information provided in Providers' COD Survey responses
  - (11) Date for delivery to TennCare of the final COD Survey results, Final Report, as defined in Section below, and the proposed PDF amount for use in SPA pursuant to Contract Section A.5, shall be determined by TennCare on or before initial distribution of the TennCare-approved Survey to Providers and shall be documented in a Control Memorandum to Contractor.
- (b) Submission by Contractor for TennCare approval of Contractor Procedures, and revision of such procedures, if requested by TennCare.
  - (c) Submission by Contractor for TennCare approval of all proposed COD Survey instructions, outreach, and educational materials and other anticipated communications to be used with Providers, pharmacy associations and other stakeholders
3. Development by Contractor for approval by TennCare of an acceptable Database system and/or other tool(s) (collectively, the "Section A.6.a.3 Deliverables") that shall allow the State to have access to all rate review submissions by Providers and the results of those reviews.
  4. Providing adequate training to TennCare staff regarding the use of the Section A.6.a.3 Deliverables, and providing TennCare unrestricted access to such

## Section A.6.a.3 Deliverables.

- b. Milestone 2: Distribution of Approved Survey to Providers, Provider Follow-up and Verification of COD Survey Responses, Evaluation of Completed COD Survey Results, Determination of Proposed PDF, and SPA Preparation. This phase of the Contract includes the following services and deliverables, which shall comply with all requirements of this Contract, the Contractor Procedures approved by TennCare, and shall be performed in compliance with the approved Deliverable and Implementation Calendar:
1. Distribute the approved COD Survey to each Provider with complete instructions to obtain the necessary dispensing cost data.
  2. Provide outreach and education regarding the COD Survey and assistance for Providers requiring assistance to complete the survey forms.
  3. Contact and assist those Providers who have not submitted COD Survey responses, and Providers who have submitted inaccurate or incomplete forms. The Contractor acknowledges that it is responsible for obtaining completed and acceptable COD Survey responses to ensure statistical validity of the COD Survey findings, and that this requirement constitutes a deliverable under this Contract.
  4. Perform quality control measures, including desk review audits and other forms of verification of Provider COD Survey responses to check for consistency and completeness and to ensure an accurate data base from which all analyses are derived.
  5. Perform on-site field work procedures at no less than twenty (20 pharmacies to verify the data on submitted COD survey responses. The field work procedures will be designed to assess the effectiveness of the Contractor's desk review procedures.
  6. Complete COD Survey database required in Section A.6.a.3 Deliverables using Providers' responses, and provide a file description of the database and an electronic copy of the database to TennCare in a mutually agreed format.
  7. Develop COD Survey findings and make appropriate recommendations to TennCare concerning the reasonableness of the Contractor's proposed PDF and its impact on TennCare's pharmacy reimbursement methodology.
  8. If requested, perform targeted analysis of specialty pharmacy cost of dispensing.
  9. If requested, perform targeted analysis of 340B pharmacy cost of dispensing.
  10. Prepare the Contractor's final report containing the proposed PDF based on its analysis of the COD Survey responses (Final Report) and submit it to TennCare for approval. The Final Report shall contain, at a minimum, the following sections:
    - (a) An executive summary providing an overview of the survey and its findings and conclusions.
    - (b) A dispensing cost survey section containing a description of the survey participants, the survey instrument, the data collection, and processing techniques, the cost-finding methods and procedures used to assign and allocate costs to prescription dispensing functions including any and all statistical and analytical techniques utilized, and the detailed findings and conclusions of the analysis of the costs of dispensing prescriptions. This section shall also include the Contractor's analysis and recommendations concerning the reasonableness of the current prescription dispensing fee vis-a-vis the costs incurred by surveyed pharmacies.
    - (c) A section of appendices containing detailed data upon which findings and conclusions for the survey were drawn.
  11. The Contractor shall be available, as requested by TennCare, to make a formal presentation of the Final Report and its findings, in a format acceptable to TennCare. The Contractor shall also be available for clarification and/or justification of the Final Report results.

12. The Contractor shall be available, as requested by TennCare, to contact TennCare's Pharmacy Network via mail announcing a formal presentation of the Final Report and its findings, via Webinar. If requested by TennCare the Contractor shall also send a post-Webinar notification to TennCare's Pharmacy Network listing final results of new Professional Dispensing Fees calculated as a result of the COD Survey.
- c. Milestone 3: Submission of TennCare SPA to CMS and Approval of SPA by CMS. This phase of the Contract includes the following services and deliverables which shall be performed in compliance with the Contractor Procedures and approval from TennCare:
1. Assist TennCare with providing all documentation required by CMS to be included with SPA submission to support proposed PDF and revised pharmacy reimbursement methodology.
  2. Provide assistance in preparing TennCare SPA, including providing proposed language, as requested by TennCare.
  3. Provide assistance with calculating the federal budget impact by federal fiscal year, and determining the potential impact on TennCare enrollee access to pharmacy services.
  4. The Contractor shall be available, as requested by TennCare, to make a formal presentation of the Final Report and its findings to CMS, which shall include, as needed, clarification and/or justification of the Final Report results to CMS. Any follow up or revisions to the Final Report required by TennCare and/or CMS in order to obtain approval of the TennCare SPA containing the PDF and revised pharmacy reimbursement methodology, shall be promptly completed by Contractor, at no additional cost to TennCare.
  5. Provide assistance with all other aspects of the CMS submission process, including preparing responses to CMS questions, and revising SPA language, the Final Report, COD Survey results and the proposed PDF, as needed to obtain CMS approval.
  6. Contractor's Milestone 3 services and deliverables shall be deemed to be satisfactorily completed upon TennCare's receipt of unconditional, written approval of the TennCare SPA by CMS, with a copy of such approval to be provided with Contractor's invoice for payment of its Milestone 3 services.
- A.7. Coordination and Collaboration Responsibilities. The Contractor shall, as directed by the State and at no additional cost to the State, coordinate with, facilitate the prompt exchange of information between, and work collaboratively with any and all other State Contractors, Providers and CMS as required to complete the COD Survey and obtain final unconditional approval from CMS of the SPA revising the TennCare pharmacy reimbursement methodology. If required in order for the Contractor to proceed with any part of the Scope of Services which involves sharing or obtaining information of a confidential, proprietary, or otherwise valuable nature with or from another State contractor or a Provider, the Contractor may be requested, should the need arise, to sign mutually agreeable documents, including but not limited to Non-Disclosure Agreements (Non-Disclosure Documents), which are reasonably necessary to maintain cooperation and collaboration among and with such other State contractor and Providers in the performance of the Contract. A Non-Disclosure Agreement shall only be signed at the request of the State.
- A.8. TennCare shall provide Contractor with the following information and assistance with the COD Survey and related services:
- a. The following Provider demographic information for the then-current Tennessee pharmacy provider network will be provided to Contractor in electronic format no later than five (5) business days following the Effective Date of the Contract:
    1. The names of all in-state and out-of-state Providers
    2. Each Provider's identification number (NPI and NCPDP)
    3. Records of each Provider's volume of Medicaid prescriptions and Medicaid reimbursements covering the last twelve (12) months including:

- (a) Total payments to provider during specified calendar year
  - (b) Total number of prescriptions paid during specified calendar year
  - (c) Each Provider's complete street address and telephone number (if available)
  - (d) For each Provider, any internally maintained pharmacy demographics that identify any of the following:
    - (1) Chain affiliation of the pharmacy
    - (2) Institutional pharmacies (e.g., LTC)
    - (3) Exclusive dispensing of intravenous/ home infusion products
    - (4) Specialty pharmacy
    - (5) Closed date of pharmacy, if applicable
- b. TennCare Pharmacy Provider data provided by TennCare shall be provided in a text, MS-Excel format. Preferable media is a PC format such as email, floppy disk, compressed if necessary or CD-ROM, including a data file layout.
- c. TennCare shall provide the Contractor with a Pharmacy Claims File from the past twelve (12) months, including:
- 1. Prescription Number
  - 2. Pharmacy Provider Number
  - 3. Enrollee Age and Gender
  - 4. NDC
  - 5. Quantity Dispensed and Days' Supply
  - 6. Paid Date
  - 7. Dispense Date
  - 8. Amount Billed
  - 9. Amount Paid
  - 10. Co-pay Amount
  - 11. TPL Amount
  - 12. Dispensing Fee
  - 13. Other fields relevant for claims adjudication
  - 14. Data dictionary of pharmacy claims file to define what information the fields contains.
- d. TennCare shall provide the Contractor a draft letter to be sent with the COD Survey forms when distributed to the Providers explaining the purpose of the survey and that completion of the survey is required by TennCare to meet federal regulations and to obtain CMS approval of the new PDF pharmacy reimbursement component in Tennessee. Sample letters may be requested of the Contractor that were utilized by the Contractor in previous states.
- e. TennCare will review the progress of the project on a regular basis through meetings, phone, and/or email with the Contractor and will review the acceptability of the draft and final reports. TennCare shall also ascertain availability of the Contractor for resolutions of post-survey issues or requests by documenting such requests and outcomes.
- A.9. **Optional Services. Optional Second COD Survey.** At the option of the State, the Contractor shall provide a second COD Survey (Second COD Survey) to be performed prior to the end of the term of this Contract. If the State exercises this option, then the Contractor shall (unless otherwise directed in writing by the State) provide for the Second COD Survey, the initial COD Survey and related services described in this Contract and used by the Contractor to provide the initial COD Survey. The State has sole discretion in determining whether to implement this Section A.9. or any part thereof, and the State's decision shall not be subject to appeal. This determination will result in an amendment to add additional funding for Second COD Survey. Compensation for the optional Second COD Survey, if requested by TennCare, shall be paid under the same methodology as compensation for the initial COD Survey, and is shown in Contract Section C.3.

A.10. **Average Actual Acquisition**

The Contractor shall provide Average Actual Acquisition Cost (AAAC) pricing for Single-Source and Multi-Source Legend and OTC Drugs. TennCare requires an AAAC-based pricing approach to maintain reimbursement rates for single-source and multi-source legend, OTC drugs, specialty, and clotting factor products. The Contractor acknowledges the State's goals in implementing and maintaining this approach are threefold:

- a. to maintain accurate, cost-effective, and predictable rates, while remaining within the guidelines established by the Centers for Medicare and Medicaid Services (CMS);
- b. to comply with CMS' Final Rule mandating that State agencies reimburse pharmacy providers using AAAC to calculate pharmacy's cost of the prescription ingredient
- c. to ensure accuracy, efficiency, and the overall timeliness of pricing for the proposed TennCare Average Actual Acquisition Cost Program.

- A.11. The Contractor shall conduct a semi-annual survey of a State-approved sample of TennCare participating pharmacy providers, to collect drug acquisition costs through the gathering of invoice records. This survey shall be approved by TennCare. This survey may include providers in Tennessee and select providers outside of Tennessee as directed by the State.

The Contractor shall compile information from invoice records submitted by pharmacies or their wholesalers twice annually and shall review and scrub the invoice data including the removal of records which are statistical outliers, both low and high. The Contractor shall calculate the AAAC per appropriate drug groupings such as First Databank's GSN or MediSpan's GPI. The Contractor shall also calculate weekly AAAC changes based on price changes found in published pricing sources. The Contractor shall calculate State-approved AAAC reimbursement rates that are based on actual observed provider acquisition costs for covered single-source and multi-source legend (including specialty pharmaceuticals) and OTC drugs.

- A.12. The Contractor shall provide ad hoc, as needed, fiscal impact analyses and modeling to be conducted in response to proposed legislation, specialty drug reimbursement analyses, 340B claims research, etc. as directed by the State. The Contractor shall not invoice the State for any such reporting, and the State shall not be liable to the Contractor for payment of any such reporting services that are in addition to the monthly rates specified in Contract Section C.3.

- A.13. The Contractor shall conduct informational and educational activities for pharmacies and other stakeholders in Tennessee, which may be done via phone/conference calls, memos, letters, etc., or may require face-to-face meetings. All presentations and written information shared with providers, pharmacy associations, and other stakeholders shall be submitted to and approved by TennCare prior to use.

- A.14. The Contractor shall provide Help Desk support by telephone, fax, email, mail, and internet to immediately investigate, respond to, and resolve pharmacy or other stakeholder questions and concerns regarding the AAAC program. Response to provider inquiries shall be made within one (1) business day. Provider inquiries and Contractor's responses thereto shall be tracked in an electronic database, to which TennCare staff shall be given direct and unlimited access via web access or via a software program provided by Contractor at no additional charge to the State to monitor inquiries and resolutions.

- A.15. The Contractor shall provide by January 1, 2023, for the State's review and approval, a draft of a rigorous and timely protocol for the review, update, and maintenance of AAAC rates (AAAC Protocol). This Protocol shall include weekly examination of and comparison to published pricing information, current acquisition cost data, monitoring the marketplace for prescription drug patent expirations, and monitoring for drug shortages, changes, and other state-specific market indicators. Regular updates may also include, but are not limited to, cost changes related to high expenditure drugs, investigations initiated by new cost information, and lists of products that have had an increase in AAAC of greater than twenty percent (20%), as well as any other updates as directed by the State.

- A.16. The Contractor shall be experienced in transmitting rate files, provider lists, claims files, and



notifications for stakeholder engagement activities; and as directed by the State and at no additional cost to the State, coordinate with, and facilitate the prompt exchange of information between, and work collaboratively with any and all other State Contractors and State Agencies. Other than as permitted in Section C.3 of this Contract, Payment Terms and Conditions, the Contractor shall not invoice the State for any such coordination services, and the State shall not be liable to the Contractor for payment of any such coordination services.

- A.17. The Contractor shall supply the State or its designated contractor with files ("Rate Files"), in a manner and on a schedule to be determined by the State, providing AAAC updates, and shall coordinate with other contractors as necessary to update and maintain the Rate Files for claims processing. The Rate Files shall include at a minimum, the NDC, drug name, strength, dosage form, effective date of pricing change, and rate of the pricing change. The Rate Files shall accommodate backdating of AAAC rates as well as the deletion or terminations of existing prices.
- A.18. On a quarterly basis, the Contractor shall coordinate quality assurance processes with the TennCare pharmacy claims processing vendor to ensure the accuracy of AAAC rates for all NDCs within the pharmacy claims processing system. These processes include, but are not limited to, verification of brand or generic assignment, rates, and effective dates. The Contractor shall record all instances where differences in rates or effective dates exist between Contractor and TennCare's pharmacy claims processing vendor, deliverable to the State as a report in Excel format by last day of the calendar month following each quarter.
- A.19. The Contractor shall prepare, and present fiscal savings estimates to the State to be included with the proposed semi-annual AAAC rate adjustments prior to implementation of fee schedule adjustments to model potential costs avoided due to changes in the AAAC program.
- A.20. The Contractor shall prepare, and present measured fiscal savings estimates due to the AAAC program quarterly together with a price verification report.
- A.21. The Contractor shall perform internal quality monitoring functions deemed necessary by the State to assure AAAC program integrity and efficiency. Communications regarding such internal quality monitoring functions shall be made in both oral and written form with the State regularly and throughout all phases of this contract, as directed by the State.
- A.22. The Contractor shall prepare and present monthly program monitoring reports. These reports shall include but are not limited to fiscal savings estimates, help desk status updates, pharmacy marketplace trends, upcoming patent expirations, and other relevant information to assist the State with monitoring and evaluating the MC program. All reports shall be prepared in a format approved by the State.
- A.23. AAAC Website. The Contractor shall develop and maintain an interactive and informative AAAC Website approved by the State. The AAAC Website shall include, but is not limited to, weekly updated AAAC lists, archived AAAC rate listings for a minimum of one (1) year on a rolling twelve (12) months basis, frequently asked questions, opportunities for providers to communicate issues and concerns, relevant reports, and appropriate links to other websites. All AAAC lists developed by Contractor shall be archived and maintained offline for ten (10) years.
- A.24. The Contractor shall assist the State with addressing future State Plan Amendment (SPA) changes relevant to the TennCare pharmacy program.
- A.25. The Contractor shall provide expert testimony when requested by the State.
- A.26. **340B Program**  
The Contractor shall provide the following services for the State and the State's 340B program to ensure compliance and alignment between the Health Resources and Services Administration (HRSA), Affordable Care Act (ACA), and TennCare's State Plan Amendment (SPA) requirements:
- a. Provider Communications: Assist TennCare with provider communications regarding existing and new 340B regulations. Communications are inclusive of, but not limited to, the following:

- (i) Help desk support line, during regular business hours (8:00 AM CST to 4:30 PM CST), available to 340B participating providers as a resource for further education and troubleshooting. 340B participating providers may include both 340B covered entities and 340B covered entity pharmacies.
    - (ii) If requested by TennCare, the Contractor may also provide communications to both 340B covered entities and pharmacies in the form of webinars, pre-webinar announcements, and post-webinar mailings.
  - c. Estimated 340B Ceiling Price File: The Contractor shall compile and calculate an estimated 340B ceiling price for both pharmacy and medical claims at the National Drug Code (NDC) level utilizing Average Manufacturer Price (AMP) and Unit Rebate Amount (URA) data provided quarterly by TennCare. The estimated 340B ceiling price file shall be transmitted to the TennCare claims processor on a quarterly basis. The file will be used to ensure that 340B participating providers submitting 340B claims are reimbursed at an ingredient cost no greater than the estimated ceiling price.
- A.27. Custom Reports: In addition to standard reports, the Contractor shall provide the following additional custom reports: a. Brief, periodic progress reports to the State as requested; and b. TennCare On Request Reports (ORRs) and Ad Hoc Reports. The Contractor shall provide, at no extra cost to the State, ORRs and Ad Hoc Reports which shall be provided in a format agreed to by the State and on a reasonable timetable.
- A.28. Contractor Availability. The Contractor shall meet with TennCare at least once per month to discuss the Monthly Status Report, the Contractor's performance, any necessary changes in the Contractor's practices, and planning. The State may direct that the Contractor participate in such meetings in person, by telephone, via videoconference, or any other means. The Contractor shall ensure that its Key Personnel are available for such meetings and attend in accordance with the State's instructions.
- A.29. Coordination with Other Contractors and State Agencies. The Contractor shall, as directed by the State and at no additional cost to the State, coordinate with, facilitate the prompt exchange of information between, and work collaboratively with, any and all other State contractors and State agencies. If the State requires the Contractor to share with or obtain from another state contractor or state agency any records or information that are not subject to public disclosure under applicable State or federal law, rules, or regulations, the Contractor shall keep the records or information confidential and, at TennCare's request, shall sign any documents including but not limited to, Non-Disclosure Agreements (Non-Disclosure Documents).
- All records or information that the Contractor may receive, have disclosed to it, or otherwise becomes known to Contractor during the performance of this Contract from any other state contractor or state agency, that the state contractor or state agency considers to be proprietary or confidential in nature pursuant to a Non-Disclosure Document entered into between the Contractor and another State contractor or State agency, to the extent permitted by law, shall be governed by such Non-Disclosure Document.
- Nothing in this Section, including failure to negotiate and enter into a Non-Disclosure Document acceptable to Contractor with another State contractor or State agency, shall be construed to relieve the Contractor of its duty to perform any requirements or deliverables under this Contract. Other than as permitted in Section C.3 of this Contract, Payment Terms and Conditions, the Contractor shall not invoice the State for any such coordination services, and the State shall not be liable to the Contractor for payment for any such coordination services.
- A.30. Staffing. The Contractor shall hire and maintain staff and management in accordance with the terms of this Contract.
- a. Workforce Requirements. The Contractor shall provide dedicated staff in sufficient numbers to ensure timely completion of the Contractor's duties under this Contract. In its sole discretion, the State shall have the right to require additional employee staffing levels in order to perform the services required under this Contract.
    - i. The Contractor shall maintain an alphabetical list by last name listing of the titles,

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

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

A.31. Problem Notification. At the point at which the Contractor discovers or reasonably should have known of any problem that is reasonably likely to jeopardize the Contractor's ability to perform any function as specified in this Contract, the Contractor shall notify the State's contact person in Section D.2 of this Contract or other state personnel, as directed by the State, in person, via phone, or by email within one (1) hour if the problem is discovered within the business day and no later than 9:00 a.m. CT the following business day if the problem occurs after close of business.

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

A.32. Control Memorandum Process.

- a. The Control Memorandum ("CM") process shall be utilized by the State to clarify Contract requirements, issue instruction to the Contractor, document action required of the Contractor, or request information from the Contractor. In addition, the CM process shall be used by the State to impose assessments of damages, either Actual or Liquidated. This process will be used to address issues or matters that do not require a contract amendment. Each CM must be in writing and indicate the date on which it was issued. CMs may provide relevant history, background, and other pertinent information regarding the issue(s) being addressed in the CM. Each CM will establish a deadline or timeframe for the Contractor's reply or other action. All CMs submitted to the Contractor must be signed and approved by the State's Project Director (or his/her designee). When the CM pertains to damages, either Actual or Liquidated, the State may issue consecutive CMs, as may be necessary or appropriate.
- b. A CM may include one (1) or more of the following five (5) components of the CM process described below:
  - 1. On Request Report (ORR) – a request directing the Contractor to provide information by the time and date set out in the CM.

2. Control Directive (CD) – instructions that require the Contractor to complete, within a designated timeframe, one (1) or more deliverables or to perform any other request from the State that is within the scope of the Contract. 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 considered to be incorporated into this Contract.
  3. Notice of Potential Damages (Actual or Liquidated) (NPD) – notification to the Contractor that the State has determined that a potential Contract performance or compliance failure exists and that the State is contemplating assessing damages, Actual and/or Liquidated. The NPD shall identify the Contract provision(s) on which the State determination rests.
  4. Notice of Calculation of Potential Damages (Actual or Liquidated) (NCPD) – notification to the Contractor that provides a calculation of the amount of potential damages, Actual and/or Liquidated, that the State is contemplating assessing against the Contractor. NPDs and NCPDs may be issued consecutively or simultaneously.
  5. Notice of Intent to Assess Damages (Actual or Liquidated) (NIAD) – notification to the Contractor that the State is assessing damages and specifying whether the damages are Actual Damages, Liquidated Damages, or both, and setting out the performance or compliance failure underlying each intended damage assessment. The NIAD shall identify the NPD and NCPD upon which it is based. The NIAD shall specify the total amount and type of damages, whether Actual or Liquidated, 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 NCPD. 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 NPD or calculation of NCPD potential damages, either Actual or Liquidated. To do so, the Contractor shall submit to the State's Project Director (or his/her designee) a written response to the NPD and/or NCPD within ten (10) business days of receipt of a CM which includes a NPD or a NCPD. The State's Project Director (or his/her designee) shall review the appeal and provide notice of his/her determination to the Contractor through a CM. If the Contractor disagrees with the State's Project Director's (or his/her designee) initial appeal determination or the State's Project Director (or his/her designee) is unable to resolve the appeal, the Contractor may submit a written request to the State's Project Director (or his/her designee) that the matter be escalated to senior management of the Agency. Contractor shall submit such a request for escalation within ten (10) business days of its receipt of the initial appeal determination from the State's Project Director (or his/her designee) or of notification by the State's Project Director that he/she is unable to resolve the appeal. The State's senior management shall provide written notice of its final determination to the Contractor within (10) days of the receipt of the appeal from the Contractor. Upon appeal or escalation, the State shall not increase the amount of the potential damages.
- A.33. Disaster Recovery. Within thirty (30) days of the start of this Contract's Term, the Contractor shall create a disaster recovery plan that complies with Policy 9 of the Information Systems Council (ISC) and any standards promulgated by the ISC pursuant to T.C.A. § 4-3-5501 et seq. The Contractor shall submit the same to TennCare within thirty (30) days of the start of this Contract's Term for review and approval. Upon TennCare's approval, the Contractor shall adopt the disaster recovery plan. The Contractor shall review the disaster recovery plan annually to ensure that it contains accurate and up-to-date information. If it is necessary to revise the disaster recovery plan, the Contractor shall submit such revisions to TennCare for review and approval.
- a. The plan shall include, but not be limited to:

- i. Checkpoint/restart capabilities;
  - ii. Retention and storage of backup files and software;
  - iii. Hardware/network backup plan for the Contractor's records;
  - iv. Recovery procedures for loss of manual files and hardcopy documents; and
  - v. Annual test of the disaster recovery plan.
- b. The Contractor shall update, test and maintain the disaster recovery plan so as to minimize any disruption to TennCare operations. Any changes or updates to the disaster recovery plan are subject to TennCare review and approval. The disaster recovery plan shall address all processing, files, and software used or maintained by the Contractor.
- c. The disaster recovery plan and procedures shall, at a minimum, provide the following:
- i. Continued processing assuming the loss of the primary processing site.
  - ii. A detailed backup plan and procedures, including the off-site storage of crucial transaction and master files. The plan and procedures shall include a detailed schedule for backing up critical files and their rotation to an off-site storage facility.
  - iii. The maintenance of current system software, including source code, and documentation at an off-site location.

#### A.34. Reporting and Investigating Suspected Fraud and Abuse.

- a. The Contractor shall cooperate with all appropriate state and federal agencies, including the Tennessee Bureau of Investigation Medicaid Fraud Control Division (TBI MFCD) and the Office of the Inspector General for the U.S. Department of Health and Human Services (OIG), in investigating fraud and abuse. In addition, the Contractor shall fully comply with T.C.A. § 71-5-2603 in performance of its obligations under this Contract.
- b. The Contractor shall adopt and implement processes for identification, investigation, and referral of suspected fraud cases.
- c. The Contractor shall notify TBI MFCD and TennCare Office of Program Integrity (OPI) in a timely manner regarding all internal and external tips with potential implications to TennCare providers' billing anomalies and/or safety of TennCare enrollees. Along with a notification, the Contractor shall take steps to triage and/or substantiate these tips and provide simultaneous and timely updates to TBI MFCD and TennCare OPI when the concerns and/or allegations of any tips are authenticated.
- d. The Contractor shall report all tips, confirmed fraud, and suspected fraud and abuse to TennCare and the appropriate agency as follows:
  - i. All tips (any program integrity case opened within the previous two (2) weeks) shall be reported to TennCare OPI and TBI MFCD;
  - ii. Suspected fraud and abuse in the administration of the program shall be reported to TennCare OPI, TBI MFCD and/or OIG;
  - iii. All confirmed or suspected provider fraud and abuse shall immediately be reported to TBI MFCD and TennCare OPI; and
  - iv. All confirmed or suspected enrollee fraud and abuse shall be reported immediately to OIG.

- e. Pursuant to T.C.A. § 71-5-2603(d), the Contractor shall be subject to a civil penalty, to be imposed by the OIG, for willful failure to report fraud and abuse by recipients, enrollees, applicants, or providers to TennCare and OIG or TBI MFCD, as appropriate.
- f. Unless prior written approval is obtained from the agency to whom the incident was reported, after reporting suspected or confirmed fraud or abuse, the Contractor shall not take any of the following actions as they specifically relate to TennCare claims:
  - i. Contact the subject of the investigation about any matters related to the investigation;
  - ii. Enter into or attempt to negotiate any settlement or agreement regarding the incident; or
  - iii. Accept any monetary or other thing of valuable consideration offered by the subject of the investigation in connection with the incident.
- g. The Contractor shall cooperate fully in any further investigation or prosecution by any duly authorized government agency, whether administrative, civil, or criminal. The Contractor shall provide, upon request, information, access to records, and access to interview Contractor's employees, contractors, and subcontractors.
- h. The Contractor shall, upon request and as required by this Contract or state and/or federal law, make available to the TBI MFCD and OIG any and all administrative records, financial records, medical records, and audit work papers relating to the performance of this Contract. The Contractor shall make the records available at no cost to the requesting agency. In addition, the Contractor shall allow TBI MFCD and OIG to access to the Contractor's place of business and access such documents during normal business hours, and at other hours determined by the TBI MFCD and OIG.

A.34. Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

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

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

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

A.35. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

**B. TERM OF CONTRACT:**

- B.1. This Contract shall be effective for the period beginning on November 1, 2022 (“Effective Date”) and ending on October 31, 2025, (“Term”). The State shall have no obligation for goods delivered or services provided by the Contractor prior to the Effective Date.
- B.2. **Renewal Options.** This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to two (2) renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

**C. PAYMENT TERMS AND CONDITIONS:**

- C.1. **Maximum Liability.** In no event shall the maximum liability of the State under this Contract exceed **Written Dollar Amount (\$Number)** (“Maximum Liability”). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.
- C.2. **Compensation Firm.** The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.
- C.3. **Payment Methodology.** The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C. 1.
- a. The Contractor’s compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
  - b. The Contractor shall be compensated based upon the following payment methodology:

| <b>Goods or Services Description</b>   | <b>Amount</b><br>(per compensable increment) |
|--|--|
| <b>November 1, 2022 – October 31, 2025</b><br><b>(Initial 36-Month Term)</b>   |  |
| Completion of Milestone #1<br>(Pro Forma Section A.6.a.  | \$ _____/EA                                  |
| Completion of Milestone #2<br>Pro Forma Section A.6.b.   | \$ _____/EA                                  |
| Completion of Milestone #3<br>Pro Forma Section A.6.c.   | \$ _____/EA                                  |
| Proprietary Average Actual Acquisition Cost for all possible covered National Drug Codes (NDCs), First Data Bank Clinical Formulation ID (GSNs), and MediSpan Generic Product ID (GPIs) for all Provider Types – Pro Forma Section A.10. | \$ _____/Month                               |

|  |                |
|--|----------------|
| 340B Help Desk Support – Pro Forma Section A.26.   | \$ _____/Month |
| 340B Monthly Ceiling Price File – Pro Forma Section A.26.  | \$ _____/Month |
| <b>November 1, 2025 – October 31, 2027<br/>(Pursuant to Contract Term Extension)</b>   |                |
| Proprietary Average Actual Acquisition Cost for all possible covered National Drug Codes (NDCs), First Data Bank Clinical Formulation ID (GSNs), and MediSpan Generic Product ID (GPIs) for all Provider Types – Pro Forma Section A.10. | \$ _____/Month |
| 340B Help Desk Support – Pro Forma Section A.26.   | \$ _____/Month |
| 340B Monthly Ceiling Price File – Pro Forma Section A.26.  | \$ _____/Month |

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

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

Division of TennCare 310  
Great Circle Road  
Nashville. TN 37243

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

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



b. Contractor's invoices shall:

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

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

- C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.
- C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.
- a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
  - b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

**D. MANDATORY TERMS AND CONDITIONS:**

- D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.
- D.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

## The State:

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

## The Contractor:

**Contractor Contact Name & Title Contractor  
 Name  
 Address  
 Email Address Telephone #  
 Number FAX # Number**

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

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials. 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. This Section D.9 shall not be deemed to limit or abridge any requirement set forth in Section E.25.

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

- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
- d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
- e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of

Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.

- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of ten (10) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless from any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death. For clarity, except as otherwise expressly set forth in this Section, Contractor's indemnification obligations and other remedies available under this Contract are subject to the limitations on liability set forth in this Section.

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

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

- D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.
- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules and will comply with all applicable requirements in the course of this Contract.
  - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
  - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
  - d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.
- D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.
- D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees for the affected obligations until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.
- D.25. State and Federal Compliance. The Contractor shall comply with all State and federal laws and regulations applicable to Contractor in the Contractor's performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 408.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement.

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

- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
  - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes Attachment A – Attestation RE Personnel Used in Contract Performance, Attachment B - Liquidated Damages, Attachment C - HIPAA Business Associate Agreement, and Attachment D – Contractor Commitment to Diversity.
  - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
  - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
  - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
  - f. the Contractor's response seeking this Contract.
- D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101, *et seq.*, addressing contracting with persons as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.
- D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible or self-insured retention ("SIR") over fifty thousand dollars (\$50,000) must be approved by the State. The deductible or SIR and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

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

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

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

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

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

a. Commercial General Liability ("CGL") Insurance

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

b. Workers' Compensation and Employer Liability Insurance

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



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

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

- 2) Such coverage shall include data breach response expenses, in an amount not less than ten million dollars (\$10,000,000) and payable whether incurred by the State or Contractor, including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services and expenses in the performance of services for the State or on behalf of the State hereunder.

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 Public Chapter No. 775.

## **E. SPECIAL TERMS AND CONDITIONS:**

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

E.2. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's Response to 31865-00632 (Attachment D) and resulting in this Contract.

The Contractor shall assist the State in monitoring the Contractor's performance of this commitment by providing, as requested, a monthly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, service-disabled veterans, and persons with disabilities. Such reports shall be provided to the State of Tennessee Governor's Office of Diversity Business Enterprise in the TN Diversity Software available online at: <https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810>.

- E.3. State 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.4. 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.5. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible personal property furnished by the State for the Contractor's use under this Contract. Upon termination of this Contract, all property furnished by the State shall be returned to the State in the same condition as when received, less ordinary wear and tear. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the fair market value of the property at the time of loss.
- E.6. Work Papers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis work papers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.
- E.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.31. 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. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State (“PII”). For the purposes of this Contract, “PII” includes “Nonpublic Personal Information” as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time (“GLBA”) and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information (“Privacy Laws”). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor

or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify or ensure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

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

- E.12. Federal Funding Accountability and Transparency Act (FFATA). This Contract requires the Contractor to provide supplies or services that are funded in whole or in part by federal funds that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Contractor provides information to the State as required.

The Contractor shall comply with the following:

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

As defined in 2 C.F.R. § 170.315, "Executive" means officers, managing partners, or any other employees in management positions.
  - (2) Total compensation means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 C.F.R. § 229.402(c)(2)):
    - i. Salary and bonus.

- ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
  - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
  - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
  - v. Above-market earnings on deferred compensation which is not tax qualified.
  - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.
- b. The Contractor must report executive total compensation described above to the State by the end of the month during which this Contract is awarded.
  - c. If this Contract is amended to extend the Term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the term extension becomes effective.
  - d. The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>

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

- E. 13. Survival. The terms, provisions, representations, and warranties contained in this Contract which by their sense and context are intended to survive the performance and termination of this Contract, shall so survive the completion of performance and termination of this Contract.
- E. 14. 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. 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 the terms in the associated Business Associate Agreement (See Attachment C).
- 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. Transmission of Contract Deliverables. All information or data that is necessary for one or more deliverable set forth in this Contract shall be transmitted between TENNCARE and Contractor via the data transfer method specified in advance by TENNCARE. This may include, but shall not be limited to, transfer through the TennCare Secure File Transfer Protocol (SFTP) system. Failure by the Contractor to transmit information or data that is necessary for a deliverable in the manner specified by TENNCARE, may, at the option of TENNCARE, result in liquidated damages as set forth in Contract Attachment B.
- E. 19. 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. In addition, the Contractor shall have in place administrative, physical, and technical safeguards for data.
  - c. The Contractor shall specify in its agreements with any agent or subcontractor that will have access to data that such agent or subcontractor agrees to be bound by the same restrictions, terms and conditions that apply to the Contractor pursuant to this Section;
  - d. The Contractor shall not duplicate in a separate file or disseminate, without prior written permission from TennCare, the data governed by the Contract for any purpose other than that set forth in this Contract for the administration of the TennCare program. Should the Contractor propose a redisclosure of said data, the Contractor must specify in writing to TennCare the data the Contractor proposes to redisclose, to whom, and the reasons that justify the redisclosure. TennCare will not give permission for such redisclosure unless the redisclosure is required by law or essential to the administration of the TennCare program.
  - e. The Contractor agrees to abide by all relevant federal laws, restrictions on access, use, and disclosure, and security requirements in this Contract.
  - f. The Contractor shall maintain a current list of the employees of such contractor with access to SSA data and provide such lists to TennCare upon request and at any time there are changes.
  - g. The Contractor shall restrict access to the data obtained from TennCare to only those authorized employees who need such data to perform their official duties in connection with purposes identified in this Contract. The Contractor shall not further duplicate, disseminate, or disclose such data without obtaining TennCare’s prior written approval.
  - h. The Contractor shall ensure that its employees:
    - 1) Properly safeguard SSA-supplied data furnished by TennCare under this Contract from loss, theft or inadvertent disclosure;
    - 2) Receive regular, relevant and sufficient SSA data related training, including use, access and disclosure safeguards and information regarding penalties for misuse of information;

- 3) Understand and acknowledge that they are responsible for safeguarding this information at all times, regardless of whether or not the Contractor employee is at his or her regular duty station;
  - 4) Ensure that laptops and other electronic devices/ media containing SSA-supplied data are encrypted and/or password protected;
  - 5) Send emails containing SSA-supplied data only if the information is encrypted or if the transmittal is secure; and,
  - 6) Limit disclosure of the information and details relating to a SSA-supplied data loss only to those with a need to know.
- i. Contractor employees who access, use, or disclose TennCare or TennCare SSA-supplied data in a manner or purpose not authorized by this Contract may be subject to civil and criminal sanctions pursuant to applicable federal statutes.
  - j. Loss or Suspected Loss of Data - If an employee of the Contractor becomes aware of suspected or actual loss of SSA-supplied data, the Contractor must notify TennCare immediately upon becoming aware to report the actual or suspected loss. The Contractor must provide TennCare with timely updates as any additional information about the loss of SSA-supplied data becomes available. If the Contractor experiences a loss or breach of said data, TennCare will determine whether or not notice to individuals whose data has been lost or breached shall be provided and the Contractor shall bear any costs associated with the notice or any mitigation.
  - k. TennCare may immediately and unilaterally suspend the data flow under this Contract, or terminate this Contract, if TennCare, in its sole discretion, determines that the Contractor has: (1) made an unauthorized use or disclosure of TennCare SSA-supplied data; or (2) otherwise violated or failed to follow the terms and conditions of this Contract .
  - l. This Section further carries out Section 1106(a) of the Act (42 U.S.C. 1306), the regulations promulgated pursuant to that section (20 C.F.R. Part 401), the Privacy 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 ("OMB") guidelines, the Federal Information Security Management Act of 2002 ("FISMA") (44 U.S.C. 3541 et seq.), and related National Institute of Standards and Technology ("NIST") guidelines, which provide the requirements that the SSA stipulates that the Contractor must follow with regard to use, treatment, and safeguarding data in the event data is exchanged with a federal information system.

E.20. Internal Revenue Service (IRS) Safeguarding of Return Information.

a) Performance.

In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- (1) This provision shall not apply if information received or delivered by the Parties under this Contract is NOT "federal tax returns or return information" as defined by IRS Publication 1075 and IRC 6103.
- (2) All work will be done under the supervision of the Contractor or the Contractor's employees. The contractor and the contractor's employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.
- (3) Any Federal tax returns or return information (hereafter referred to as returns or return information) made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to



any person except as may be necessary in the performance of this Contract. Disclosure to anyone other than an officer or employee of the Contractor will be prohibited.

- (4) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
- (5) The Contractor certifies that the data processed during the performance of this contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the Contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
- (6) Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the TennCare or its designee. When this is not possible, the Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy print-outs and will provide the TennCare or its designee with a statement containing the date of destruction, description of material destroyed, and the method used.
- (7) All computer systems receiving, processing, storing, or transmitting Federal tax information must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal tax information.
- (8) No work involving Federal tax information furnished under this contract will be subcontracted without prior written approval of the IRS.
- (9) The Contractor will maintain a list of employees authorized access. Such list will be provided to the TennCare and, upon request, to the IRS reviewing office.
- (10) TennCare will have the right to void the Contract if the Contractor fails to provide the safeguards described above.

b) Criminal/Civil Sanctions.

- (1) Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC sections 7213 and 7431 and set forth at 26 CFR 301 .6103(n)-1.
- (2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Contract. Inspection by or disclosure to anyone without an official need to know

constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC section 7213A and 7431.

- (3) Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.
- (4) Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, contractors should be advised of the provisions of IRC Sections 7431, 7213, and 7213A. The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. For both the initial certification and the annual certification, the contractor should sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

c) Inspection.

The IRS and TennCare with 24-hour notice, shall have the right to send their officers and employees into the offices and plants of the Contractor for inspection of the facilities and operations provided for the performance of any work with FTI under this contract. The IRS and TennCare's right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, specific measures may be required in cases where the Contractor is found to be noncompliant with Contract safeguards.

E.21. 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 information
  - 2) received under 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) the conditions for release and use of information about applicants and beneficiaries;
  - 2) Access to information concerning applicants or beneficiaries must be restricted to Contractor representatives or other individuals who are subject to standards of confidentiality that are comparable to those of TENNCARE;
  - 3) The Contractor shall not publish names of applicants or beneficiaries;
  - 4) The Contractor shall obtain permission from a family or individual, whenever possible, before responding to a request for information from an outside source, unless the information is to be used to verify income, eligibility and the amount of medical assistance payment to an authorized individual or entity, or if, because of an emergency situation, time does not permit obtaining consent before release, the Contractor shall notify TENNCARE, the family or individual immediately after supplying the information.
  - 5) The Contractor's policies must apply to all requests for information from outside sources, including governmental bodies, the courts, or law enforcement officials.
  - 6) The Contractor shall notify TENNCARE of any requests for information on applicants or beneficiaries by other governmental bodies, the courts or law enforcement officials ten (10) days prior to releasing the requested information.
  - 7) If a court issues a subpoena for a case record or for any Contractor representative to testify concerning an applicant or beneficiary, the Contractor must notify TENNCARE at least ten (10) days prior to the required production date so TENNCARE may inform the court of the applicable statutory provisions, policies, and regulations restricting disclosure of information.
  - 8) The Contractor shall not request or release information to other parties to verify income, eligibility and the amount of assistance under Medicaid or CHIP, prior to express approval from TENNCARE.

E.22. 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.23. Offer of Gratuities. By signing this contract, the Contractor signifies that no member of or a delegate of Congress, nor any elected or appointed official or employee of the State of Tennessee, the federal General Accounting Office, federal Department of Health and Human Services, the Center for Medicare and Medicaid Services, or any other state or federal agency has or will benefit financially or materially from this Contract. This Contract may be terminated by TennCare 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.24. Discovery and Litigation Hold Requirements. TennCare is frequently involved in litigation as either a party or a non-party with relevant information. If any 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.

- E.25. Nondiscrimination Compliance Requirements.
- a. General Requirements. The Contractor shall comply with all applicable federal and state civil rights laws, regulations, rules, and policies and Contract Section D.9 of this Contract.
    1. Nondiscrimination Compliance Coordinator. In order to demonstrate compliance with the applicable federal and State civil rights laws and regulations, which may include, but are not limited to, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, and 42 U.S.C. § 18116 (codified at 45 C.F.R. pt. 92), the Contractor shall designate a Nondiscrimination Compliance Coordinator ("NCC") who shall be responsible for compliance with the nondiscrimination requirements set forth in this Contract. Contractor agrees that its civil rights compliance staff member will work directly with TennCare's Director of Civil Rights Compliance ("DCRC") in order to implement and coordinate nondiscrimination compliance activities.
    2. Readiness Review. Prior to implementation of this Contract, the NCC shall participate in a nondiscrimination/civil rights readiness review phase. The DCRC shall provide the NCC with the nondiscrimination/civil rights protocols and readiness review expectations for this Contract and provide technical assistance to the NCC.
    3. Complaint Forms. The Contractor shall use and have available TennCare's discrimination complaint forms to provide to individuals who want to file a complaint and the Contractor may direct the individual to TennCare's real-time complaint form at <https://www.tn.gov/tenncare/members-applicants/civil-rights-compliance.html>. Upon request, the Contractor shall mail the individual a copy of the TennCare Complaint form and post the forms on the Contractor's website that is specific to the TennCare program. TennCare's discrimination complaint forms are vital documents and must be available at a minimum in the English, Spanish, Arabic languages. The above link to TennCare's discrimination complaint forms may be placed on the Contractor's website, which will direct individuals to TennCare's complaint forms. The Contractor shall provide assistance to individuals that request that the Contractor assist them with filing discrimination complaints with the TennCare program(s) covered under this contract. The Contractor shall inform its employees and its providers and subcontractors that are considered to be recipients of federal financial assistance under this

contract about how to assist individuals with obtaining discrimination complaint forms and assistance with submitting the forms to the DCRC.

4. *Nondiscrimination Notice and Taglines.* Should the Contractor create TennCare materials, the Contractor shall ensure that significant publications and significant communications, including small sized publications and communications that are targeted to beneficiaries, participants, enrollees, applicants, and members of the public shall be printed with the notice of nondiscrimination and LEP taglines as required by TennCare and set forth in TennCare tagline templates and the applicable federal civil rights laws, including 45 C.F.R. pt. 92 and 68 Fed. Reg. 47311-02.
- b. *Nondiscrimination Compliance Reports.* The Contractor shall submit the following nondiscrimination compliance deliverables to TennCare as follows:
1. *Annual Compliance Questionnaire.* Annually, the DCRC shall provide the NCC with a Nondiscrimination Compliance Questionnaire. The NCC shall answer the questions contained in the Compliance Questionnaire and submit the completed Questionnaire to DCRC within sixty (60) days of receipt of the Questionnaire with any requested documentation, which shall include, the Contractor's Assurance of Nondiscrimination. The Nondiscrimination Compliance Questionnaire deliverables shall be in a format specified by TennCare and will gather data on the Contractor's annual compliance activities like the provision of language and communication assistance services and completing the annual civil rights and cultural compliance training requirements.
  2. *Quarterly Compliance Reports.* The NCC shall submit a quarterly Non-discrimination Compliance Report which shall include the following:
    - (i) A summary listing that captures the total number of the Contractor's new hires that have completed civil rights/nondiscrimination training and cultural competency training and the dates the trainings were completed for that quarter;
    - (ii) The NCC shall provide a listing of all discrimination claims that are reported to the Contractor that are claimed to be related to the provision of and/or access to TennCare's covered services provided by the Contractor.
    - (iii) 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; Braille) and the methods used to provide those services.
- c. *Discrimination Complaint Investigations.* All discrimination complaints against the Contractor and its employees and its subcontractors that are considered to be recipients of federal financial assistance under this contract shall be resolved according to the provisions of this Section and TennCare's policies and protocols. When complaints concerning alleged acts of discrimination committed by the Contractor and/or its employees and subcontractors related to the provision of and/or access to one of TennCare's programs are reported to the Contractor, the NCC shall send such complaints within two (2) business days of receipt to the DCRC. The DCRC shall investigate and resolve all alleged acts of discrimination committed by the Contractor and/or its employees and subcontractors. The Contractor and/or its employees and subcontractors shall cooperate with TennCare during the investigation and resolution of such complaints. During the complaint investigation, the NCC shall have the opportunity to provide the DCRC with any information that is relevant to the complaint investigation. The Contractor shall take reasonable methods to keep such documentation and materials confidential and shall not disclose the documentation or materials related to such investigation, to any third party unless otherwise required by law.
- d. *Electronic and Information Technology Accessibility Requirements.*
1. The Contractor shall comply with the civil rights requirements set forth in 42 C.F.R. § 433.112 regarding the design, development, installation or enhancement of mechanized processing and information retrieval systems. In addition, the Contractor shall participate in the State's

effort to comply with the nondiscrimination requirements for acquiring automatic data and processing equipment and services set forth in 45 C.F.R. § 95.633.

2. To the extent that the Contractor is using electronic and information technology to fulfill its obligations under this Contract, the Contractor agrees to comply with the electronic and information technology accessibility requirements under the federal civil rights laws including Section 504 and Section 508 of the Rehabilitation Act of 1973 ("Section 508"), the Americans with Disabilities Act, and 45 C.F.R. pt. 92 (or any subsequent standard adopted by an oversight administrative body, including the Federal Accessibility Board). To comply with the accessibility requirements for Web content and non-Web electronic documents and software, the Contractor shall use the most current W3C's Web Content Accessibility Guidelines ("WCAG") level AA or higher with a goal to transition to WCAG 3 level silver (For the W3C's guidelines see: <https://www.w3.org/WAI/standards-guidelines/>; and for Section 508 standards see: <https://www.access-board.gov/ict/>).
  3. Additionally, the Contractor agrees to comply with Title VI of the Civil Rights Act of 1964. As part of achieving Title VI compliance, the Contractor should add 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 Google translate or other machine translate tool or translating the page into non-English languages as directed by TennCare.
- e. Provider Participation, Reimbursement, or Indemnification.
1. The Contractor shall not discriminate for the participation, reimbursement, or indemnification of any provider who is acting within the scope of his or her license or certification under applicable state law, solely on the basis of that license or certification. The Contractor's ability to credential providers as well as maintain a separate network and not include any willing provider is not considered. The Contractor's written policies and procedures for the selection and retention of providers shall not discriminate against particular providers that service high risk populations or specialize in conditions that require costly treatment.
  2. The Contractor shall not discriminate against providers and entities in accordance with the federal prohibition against discrimination as provided for under the collective "federal health care provider conscience protection statutes," referenced individually as the Church Amendments, 42 U.S.C. § 300a-7, section 245 of the Public Health Service Act, 42 U.S.C. § 238n, and the Weldon Amendment, Consolidated Appropriations Act, 2010, Public Law 111-117, Div. D, Sec. 508(d), 123 Stat. 3034, 3279-80.

E.26. End of Contract Transition Requirements. If applicable, prior to the end of the Contract term or extension of the Contract term, or in the event of a Contract Termination or Partial Takeover as further defined herein, the State may contract with a successor contractor (Successor Contractor) to assume the Contractor's duties and requirements upon the end of the term or termination of this Contract. This may result in a period of transition during which the Contractor continues to provide services while the Successor Contractor prepares to assume those services, with a switch over from the Contractor to the Successor Contractor occurring on an implementation date (Implementation Date) specified by the State. The Implementation Date will typically coincide with the Successor Contractor's Go-Live Date pursuant to its contract with the State. However, the State may elect, in its sole discretion, to have the Contractor continue some portion of its services and systems after the Successor Contractor's Implementation Date, in which case, unless otherwise agreed to in writing by the State and Contractor, the Contractor shall be compensated for such services and systems in accordance with the provisions of Contract Section C.

The Contractor shall be required to participate as directed by the State, at no additional cost, in assisting with the transition by providing specified deliverables, information relating to the Contractor's duties and attending meetings with the State and/or Successor Contractor. The Contractor shall, at no additional cost to the State, work with designated State personnel and/or the Successor Contractor to develop and provide to the State for its review and approval a comprehensive Transition Plan no later than one hundred and eighty (180) days prior to the Contract end date, Termination, or Partial Takeover. The Transition Plan shall cover both the Contractor's and the Successor Contractor's duties and responsibilities to ensure an orderly transition of responsibilities. The Contractor shall, at all times,

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

**IN WITNESS WHEREOF,**

**CONTRACTOR LEGAL ENTITY NAME:**

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**CONTRACTOR SIGNATURE**

**DATE**

---

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

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

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**JIM BRYSON, COMMISSIONER**

**DATE**

**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

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

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

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**CONTRACTOR SIGNATURE**

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

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**PRINTED NAME AND TITLE OF SIGNATORY**

---

**DATE OF ATTESTATION**



**LIQUIDATED DAMAGES**

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

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

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

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

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

|    | <b>PROGRAM ISSUES</b>   | <b>DAMAGE</b>  |
|----|---|--|
| 1. | <p>Failure by the Contractor to meet the standards for privacy, security, and confidentiality of individual data as evidenced by a breach of the security per Sections D.34., Section E.11. and E.17</p>  | <p>The damage that may be assessed shall be one thousand dollars (\$1,000.00) per affected member per occurrence.</p>  |
| 2. | <p>Failure by the Contractor to execute the appropriate agreements to effectuate transfer and exchange of enrollee PHI or TennCare confidential information including, but not limited to, a data use agreement, trading partner agreement, business associate agreement or qualified protective order prior to the use or disclosure of PHI to a third party.</p> <p>(See Sections D.20 and E.16 and Attachment C, Business Associate Agreement between the parties)</p> | <p>The damage that may be assessed shall be one thousand dollars (\$1,000.00) per affected member per occurrence.</p>  |
| 3. | <p>Failure by the Contractor to seek express written approval from TennCare prior to the use or disclosure of enrollee data or TennCare confidential information in any form via any medium with any third party beyond the boundaries and jurisdiction of the United States.</p> <p>(See Section E.11 and Attachment C, Business Associate Agreement between the parties)</p>  | <p>The damage that may be assessed shall be one thousand dollars (\$1,000.00) per affected member per occurrence.</p>  |
| 4. | <p>Failure by the Contractor to timely report violations in the access, use and disclosure of PHI or timely report a security incident or timely make a notification of breach or notification of suspected breach.</p> <p>(See Sections E.11 and E.17 and Attachment C, Business Associate Agreement between the parties)</p>  | <p>The damage that may be assessed shall be one thousand dollars (\$1,000.00) per affected member per occurrence.</p>  |
| 5. | <p>Failure by the Contractor to comply with any approved disaster recovery plan.</p> <p>(See Section A.33)</p>  | <p>The damage that may be assessed, in the State's discretion, shall not exceed ten thousand dollars (\$10,000) per calendar day Contractor is non-compliant with its approved disaster recovery plan.</p> |

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| 6. | <p>Failure by the Contractor to comply with a Control Memorandum and Control Directive (CM/CD) or Corrective Action Plan (CAP).</p> <p>(See Sections E.9 and A.32)</p> | <p>The damage that may be assessed shall not exceed two thousand dollars (\$2,000.00) per calendar day for each separate failure to comply with a CM/CD or CAP until compliance is met.</p> <p>If the Contractor fails to comply with the CM/CD or CAP for more than thirty (30) calendar days from the date of issuance of the CM/CD or CAP, TennCare may assess an additional two thousand dollars (\$2,000) per calendar day until the Contractor complies with the CM/CD or CAP.</p> |
| 7. | <p>Failure by the Contractor to comply with any requirement found in Section A.30.a Workforce Requirements provision of this Contract.</p> <p>(See Section A.30)</p>   | <p>The damage that may be assessed shall be one thousand dollars (\$1,000.00) per calendar day, per occurrence.</p> <p>If the Contractor's deficiency persists for more than thirty (30) days, the damage that may be assessed shall be two thousand (\$2,000.00) per calendar day, per occurrence, beginning on the thirty-first day of the deficiency.</p>   |
| 8. | <p>Failure to comply with any problem notification or corrective action plan requirement as established in Section A.31.</p> <p>(See Section A.31)</p>                 | <p>TennCare may assess damages of up to \$25,000.00 per calendar day per occurrence.</p>   |
| 9  | <p>Failure to timely deliver any report required by the Contract.</p> <p>(See Section A.27 and D.13)</p>   | <p>TennCare may assess damages of \$1,000 for each day on and after the Contractor fails to deliver each report by the deadline specified.</p>   |

**HIPAA Business Associate Agreement**

THIS HIPAA BUSINESS ASSOCIATE AGREEMENT (“Agreement”) is between The State of Tennessee, Division of TennCare (“TennCare” or “Covered Entity”), located at 310 Great Circle Road, Nashville, TN 37243 and \_\_\_\_\_

\_\_\_\_\_ (“Business Associate”), located at \_\_\_\_\_, including all office locations and other business locations at which Business Associate data may be used or maintained. Covered Entity and Business Associate may be referred to herein individually as “Party” or collectively as “Parties.”

**BACKGROUND**

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

**LIST OF AGREEMENTS AFFECTED BY THIS HIPAA BUSINESS ASSOCIATE AGREEMENT:**

\_\_\_\_\_  
\_\_\_\_\_

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

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

**1. DEFINITIONS**

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

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

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

disclosure under the Tennessee Public Records Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (30) days to timely complete the Individual's request.
- (b) If the Covered Entity elects to provide the accounting to the Individual, the Business Associate shall have thirty (30) days from date of Covered Entity's notice of request to provide information for the Accounting to the Covered Entity so that the Covered Entity may timely respond to the Individual within the sixty (60) day period.
- (c) If either of the Parties is unable to complete the response to the request in the times provided above, that Party shall notify the Individual with a written statement of the reasons for the delay and the date by which the Party will complete its action on the request. The Parties may extend the response time once for no more than thirty (30) additional days.
- (d) The accounting of disclosures shall include at least the following information:
- (1) date of the disclosure;
  - (2) name of the third party to whom the PHI was disclosed,
  - (3) if known, the address of the third party;
  - (4) brief description of the disclosed information; and
  - (5) brief explanation of the purpose and basis for such disclosure.
- (e) The Parties shall provide one (1) accounting in any twelve (12) months to the Individual without charge. The Parties may charge a reasonable, cost-based fee, for each subsequent request for an accounting by the same Individual if he/she is provided notice and the opportunity to modify his/her request. Such charges shall not exceed any applicable State statutes or rules.

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

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

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

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

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

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

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

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

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

3.3 Security Provisions in Business Associate Contracts. Business Associate shall ensure that any agent to whom it provides Electronic PHI received from, maintained, or created for Covered Entity or that carries out any duties for the Business Associate involving the use, custody, disclosure, creation of, or access to PHI supplied by Covered Entity, shall execute a bilateral contract (or the appropriate equivalent if the agent is a government entity) with Business Associate, incorporating

substantially similar, but not less stringent restrictions and conditions in this Agreement with Business Associate regarding PHI except for the provision in Section 4.6.

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

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

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

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

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

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

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

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

#### **4. USES AND DISCLOSURES BY BUSINESS ASSOCIATE**

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

4.2 Other Uses of PHI. Except as otherwise limited in this Agreement, Business Associate may use PHI within its Workforce



as required for Business Associate's proper management and administration, not to include Marketing or Commercial Use, or to carry out the legal responsibilities of the Business Associate.

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

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

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

4.6 Prohibition of Offshore Disclosure. Nothing in this Agreement shall permit the Business Associate to share, use or disclose PHI in any form via any medium with any third party beyond the boundaries and jurisdiction of the United States without express written authorization from the Covered Entity.

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

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

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

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

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

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

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

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

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

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

## 6. TERM AND TERMINATION

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

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

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

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

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

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

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

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

6.3.4 Except for Business Associate Agreements in effect prior to April 21, 2005 when the Security Rule became effective, for the renewal or amendment of those same Agreements, or for other unavoidable circumstances, the Parties contemplate that PHI and other confidential information of the Covered Entity shall not be merged or aggregated with data from sources unrelated to that Agreement, or Business Associate's other business data, including for purposes of data backup and disaster recovery, until the parties identify the means of return or destruction of the TennCare data or other confidential information of the Covered Entity at the conclusion of the Service Agreement, or otherwise make an express alternate agreement consistent with the provisions of Section 6.3 and its subsections.

6.3.5 Upon written mutual agreement of the Parties that return or destruction of PHI is unfeasible and upon express

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

## 7. MISCELLANEOUS

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

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

7.3 **Survival.** The respective rights and obligations of Business Associate under Confidentiality and Section 6.3 of this Agreement shall survive the termination or expiration of this Agreement.

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

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

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

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

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

**BUSINESS ASSOCIATE:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

7.8 **Strict Compliance.** No failure by any Party to insist upon strict compliance with any term or provision of this Agreement, to exercise any option, to enforce any right, or to seek any remedy upon any default of any other Party shall affect, or constitute a waiver of, any Party's right to insist upon such strict compliance, exercise that option, enforce that right, or seek that remedy.

with respect to that default or any prior, contemporaneous, or subsequent default. No custom or practice of the Parties at variance with any provision of this Agreement shall affect, or constitute a waiver of, any Party's right to demand strict compliance with all provisions of this Agreement.

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

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

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

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

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

**DIVISION OF TENNCARE:**

**BUSINESS ASSOCIATE:**

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

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

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

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

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SAMPLE LETTER OF DIVERSITY COMMITMENT

(Filled out only by selected Contractor)

SAMPLE LETTER OF DIVERSITY COMMITMENT

(Company Letterhead/Logo)

(Address)

(Date)

(Salutation),

(Company Name) is committed to achieving or surpassing a goal of (numeral) percent spend with certified diversity business enterprise firms on State of Tennessee contract # (Edison document #). Diversity businesses are defined as those that are owned by minority, women, service-disabled veterans, businesses owned by persons with disabilities, and small businesses which are certified by the Governor's Office of Diversity Business Enterprise (Go-DBE).

We confirm our commitment of (percentage) participation on the (Contract) by using the following diversity businesses:

(i) Name and ownership characteristics (i.e., ethnicity, gender, service-disabled veteran, or disability) of anticipated diversity subcontractors and suppliers:

\_\_\_\_\_

(ii) Participation estimates (expressed as a percent of the total contract value to be dedicated to diversity subcontractors and suppliers):

\_\_\_\_\_ %.

(iii) Description of anticipated services to be performed by diversity subcontractors and suppliers:

\_\_\_\_\_

\_\_\_\_\_

We accept that our commitment to diversity advances the State's efforts to expand opportunity of diversity businesses to do business with the State as contractors and sub-contractors.

Further, we commit to:

1. Using applicable reporting tools that allow the State to track and report purchases from businesses owned by minority, women, service-disabled veterans, businesses owned by persons with disabilities, and small businesses.
2. Reporting monthly to the Go-DBE office the dollars spent with certified diversity businesses owned by minority, women, service-disabled verlan, businesses owned by persons with disabilities, and small business accomplished under contract # (Edison number).

businesses owned by minority, women, service-disabled veterans, businesses owned by persons with disabilities, and small business accomplished under contract # (Edison number).

(Company Name) is committed to working with the Go-DBE office to accomplish this goal.

Regards,

(Company authority – signature and title)