

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
TENNESSEE DEPARTMENT OF HUMAN SERVICES
AND
CONTRACTOR NAME**

This Contract, by and between the State of Tennessee, Tennessee Department of Human Services ("State" or "TDHS") and **Contractor Legal Entity Name** ("Contractor"), is for the provision of digital scanning services for the Department of Human 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, the following terms shall have the meaning indicated:

- a. "ANSI" shall refer to the American National Standards Institute, an organization that oversees the creation, promulgation, and use of thousands of norms and guidelines that directly impact businesses in nearly every sector.
- b. "AIIM" refers to the Association for Information and Image Management.
- c. "Best Capture" shall refer to the appropriate bit depth, resolution, tonal dynamic range, color space, color mode, contrast and other settings to provide a best capture image of source media.
- d. "End User" means any user of the services provided under this Contract.
- e. "Image" refers to a single side of a page.
- f. "NAID" refers to the National Association for Information Destruction.
- g. "Mail" as used herein shall refer to letters and packages conveyed by the United States Postal Service or other shipping and mailing service, including without limitation, FedEx[®], UPS, etc.
- h. "PII" shall refer to personally-identifiable information, information that can be used on its own or with other information to identify, contact, or locate a single person, or to identify an individual in context. .
- i. As used in this Contract, "Protected Health Information" (PHI) shall mean health and other personally-identifiable information as defined in 45 CFR 106.103 pursuant to the Health Insurance Portability and Accountability Act (HIPAA), Pub. L. No. 104-191, 110 Stat. 1936 (1996).
- j. "Strategic Technology Solutions (STS)" refers to the division of the Tennessee Department of Finance and Administration which provides information technology services to state of Tennessee agencies.
- m. "Source Media or Document" refers to the TDHS forms and verification documents provided by the customer contained in one piece of mail or otherwise as specified by the End User.

A.3. Contractor shall provide all labor, materials, tools, and equipment required for the scanning, indexing, and imaging of documents in accordance with standards set by the American National Standards Institute (ANSI) and Association for Information and Image Management (AIIM).

A.4. Contractor shall be responsible for the safekeeping of all documents upon receipt from the End User. These documents are irreplaceable and must be safeguarded. Contractor must store the documents in a secure, dry location taking into consideration handling of fragile originals. Contractor must store documents at a minimum of three inches above the ground and away from windows and steam or water pipes, cannot be stored in a box, must be guarded against direct light, and protected against water damage from possible broken water main, and protected against water damage from use of a sprinkler system. Storage must be in a locked location with minimal fluctuation in temperature and humidity, and include areas that are:

- a. Temperature maintained in the 65–70° range.
- b. Humidity maintained at 40% +/- 5%.
- c. Protected from fire by the installation of smoke detectors, water sprinklers, and fire extinguishers.
- d. Free of vermin and insects.
- e. Far from water pipes.
- f. Not in a flood zone or other natural disaster area.

A.5. Contractor Account Manager. The Contractor shall assign, at its own expense, one or more Account Manager(s), to manage the services and deliverables specified in this Contract. Account Manager(s) must meet the same qualifications and be communicated by email to the State within five (5) business days. The Account Manager responsibilities shall include, but not be limited to, the following:

- a. coordinate meetings;
- b. coordinate with End User and develop the Project Implementation Plan and business rules that apply to each project and each document type;
- c. provide End User with copies of Contractor's policy, procedure and operational manuals;
- d. provide End User with proof of HIPAA/PII/FTI Compliance Training for all staff involved in scanning;
- e. coordinate with Contractor's technical personnel, STS, and the State for source media return;
- f. monitor the assignment of tasks to Contractor personnel;
- g. track and report performance and progress of each project;
- h. monitor the quality of services delivered;
- i. address any compliance or personnel issues that arise;
- j. define procedure for notification of unauthorized access to data whether actual or potential risk has occurred;
- k. coordinate invoicing procedures with the State in accordance with specific Agency procedures and invoicing specified within the contract.

A.6. Project Implementation Plan.

At the outset of each project, TDHS and Contractor will create a Project Implementation Plan describing the exact processes for scanning of documents for Contractor. The Project Implementation Plan has been attached for the initial project related to TDHS forms for Shelby and Davidson County (see Attachment D). Within that plan, TDHS has provided Contractor instructions for scanning, indexing, metadata capture, OCR, and SFTP data return.

The Project Implementation Plan must determine the service level agreement and business rules for each project and each document type which Contractor and End Users must follow before commencement of work and throughout each project. The Project Implementation should be updated as needed. The Project Implementation Plan shall include, but not limited to the following:

- a. Project parameters including turnaround times, staffing, locations, etc.;
- b. Transport, receipt and delivery of source media;
- c. Inventory tracking/Chain of Custody;
- d. Defining the business process;
- e. Document Type Identification for batching capabilities;
- f. Document Preparation;
- g. Document Handling;
- h. Document file name;
- i. Indexing;
- j. Interfacing with End User's systems;
- k. Records management;
- l. Shredding parameters (see Section A.17 XXX);
- m. Document storage;
- n. Media return method;
- o. Electronic Media storage.

A.7. Contractor shall test and perform quality assurance checks on a sampling of all document types before services are to be utilized under this contract for each project. Contractor shall ensure all ANSI/AIIM quality requirements are met. Once End User is satisfied with the quality of the scanning process, services can begin.

A.8. Document Retrieval/Special Handling/Exceptions.

Contractor shall accommodate State requests to return specified items in a manner prescribed by the End User as set out in the Project Implementation Plan. At times TDHS customers include within a piece of mail as proof of documentation an original document or items which must be returned to the customer. Contractor shall mail these items to the customer with a TDHS approved letter stating the reason for return of an item. Items should be mailed to the customer within ten (10) business days of receipt.

Examples of items to be returned directly to the customer include, but are not limited to:

- a. Check stubs and/or separation notices
- b. Work IDs
- c. School IDs
- d. Hospital wristbands for newborns
- e. Leases
- f. Utility bills
- g. Banks statements
- h. Tax documents
- i. Shot records
- j. Driver's License
- k. Social Security Cards
- l. Birth Certificates
- m. Death Certificates
- n. Insurance Cards
- o. Ultrasounds
- p. Passports
- q. Alien registration cards

Contractor must send a returned item list to End User monthly, unless otherwise specified, listing items that have been returned to TDHS customers. The returned item list must include any indexing information captured that includes the customer's identifying information such as first and last name, address, description of the item returned, and date of return.

Other exceptions are to be spelled out further in the Project Implementation Plan.

A.9. Quality Control. Contractor shall perform a final quality control step after digital imaging has been completed that compares the final output to source media delivered to ensure that every document has been scanned according to the Project Implementation Plan.

A.10. Source Media Preparation and Scanning. Contractor shall perform document preparation as necessary to scan source media in accordance to the Project Implementation Plan.

Contractor shall perform document preparation as necessary to scan all files. This includes removing the paperwork from envelopes or packaging, removing all staples and paperclips, repairing any torn documents with non-reflective tape, straightening all folded documents and mounting any irregular size item on standard 8 ½ x 11 paper, and otherwise make the documents ready for processing. Contractor shall verify with the State before allowing employees to cut and remove corners of documents. Documents shall not be reattached, re-stapled or re-paper clipped, unless otherwise specified by the End User.

A.11. Backup Requirements.

a. Contractor must digitally backup images during the scanning process.

b. After shredding occurs, the digital backup must be kept for six (6) months. Contractor must delete the digital backup and metadata according to security controls stated in the Tennessee Enterprise Information Security Policies, https://www.tn.gov/assets/entities/finance/oir/attachments/PUBLIC-Enterprise-Information-Security-Policies-v2.0_1.pdf, and conform to all applicable State and federal laws regarding information security.

c. Protection of Information. The Contractor shall be responsible for properly protecting all information used, gathered, or developed as a result of work under this Contract. It is anticipated that this information will be gathered, created, and stored within the primary work location. If Contractor personnel must remove any information from the primary work area, they should protect it to the same extent they would their own proprietary data or company trade secrets. The use of any information that is subject to the Privacy Act will be utilized in full accordance with all rules of conduct as applicable to Privacy Act Information. The State will retain unrestricted rights to State data. The State also maintains the right to request full copies of the data at any time.

The data that is processed and stored by the various applications within the network infrastructure contains financial data as well as Personally Identifiable Information ("PII"). This data shall be protected against unauthorized access, disclosure or modification, theft, or destruction. The Contractor shall ensure that the facilities that house the network infrastructure are physically secure. The data must be available to the State upon request within one (1) business day or within the timeframe specified otherwise, and shall not be used for any other purpose other than that specified herein. The Contractor shall provide requested data at no additional cost to the State.

A.12. Delivery and Pickup of Source Media.

Source media shall be mailed to a USPS P.O. Box number, unless as otherwise specified by the End User. Contractor and subcontractors must maintain chain of custody of source media at all times and during transit. At no time will any source media be left unattended. All vehicles used for transfer of source media shall have lockable cabs and lockable, fully enclosed boxes.

A.13. Contractor and subcontractors shall be required to follow TDHS Audit Services procedures requiring additional annual training of staff to include watching the IRS disclosure awareness video, signing a training log, and signing an acknowledgement agreement.

- A.14. Scanning Quality and Production Requirements. Contractor shall complete the following actions, obligations and responsibilities:
- a. Contractor shall ensure all source media is preserved in a form identical to, or functionally equal to, the original record.
 - b. Contractor shall scan the front and back of the source media envelope or packaging mail is received. If the back side of the envelope or packaging is blank, Contractor shall not include the blank image in the electronic PDF returned back to the End User.
 - c. Contractor must be able to select appropriate bit depth, resolution, tonal dynamic range, color space, color mode, contrast and other settings to provide best capture from source media to electronic image per End User.
 - d. Contractor shall scan all source media by document type:
 - 1) Family Assistance Application
 - 2) Family Assistance Renewal Application
 - 3) Simplified Report (SR) with change
 - 4) Simplified Report (SR) without change
 - 5) Voter Registration Declination
 - 6) Change Report
 - 7) Supporting verification documents includes envelopes and any customer provided documents contained in one piece of mail.
 - 8) Other: Contractor must be capable of adding additional documents types.
 - d. Output. One piece of mail will contain one or more TDHS document types including any customer provided documents contained within the envelope. End User may request real-time methods of return through an application program interface (API). Unless as otherwise specified by the End User, Contractor shall return the scanned images in an OCR conversion to text-searchable PDF file within 24 hours as follows:
 - 1) Scanned Images. Contractor shall separate the form(s) received from the supporting documentation provided by the customer. The first PDF file shall contain the images of the scanned form and the second PDF file shall contain all other images as supporting documentation including any scanned image(s) of the front and back of the envelope or packaging. If more than one form is received within the envelope, Contractor shall create as many files as forms received and the file containing supporting documentation.
 - 2) Metadata files. Contractor shall return a file containing the metadata of the indexed information for items scanned in with OCR conversion to text-searchable PDF files. Contractor shall assign a unique key to these files to link the images to the metadata file for the End User. Contractor shall follow metadata file instructions and prepare metadata as shown in the sample provided in within the Project Implementation Plan, Attachment D.
 - 3) Contractor shall ensure that each scanned image will have a unique file name as determined by the End User or as provided within the Project Implementation Plan, Attachment D.
 - e. Contractor must have the capability to provide digital master and/or derivative images and index data to the End User in non-proprietary formats designed by the End User to include, but not limited to, PDF, OCR conversion to text-searchable PDF, formats compatible with databases, and State repositories such as FileNet and SharePoint.

- f. Contractor shall index fields designated by the End User per the Project Implementation Plan.
 - g. Contractor shall have the capability to use State database files for auto-populating index fields.
 - h. Contractor shall communicate with STS for access and integration of End User's database system, or other databases as upgrades are made timely as specified in the Project Implementation Plan.
 - i. Contractor shall scan source media in proper orientation without rotation when the source media is displayed.
 - j. Contractor shall use a dot per inch (DPI) measurement that is a good clear representation of the original source media.
 - k. Contractor shall not scan blank documents, unless specified by the End User.
 - l. Contractor shall re-scan any defective media return at no charge to the State.
 - m. Contractor shall immediately report any problem source media that cannot be captured to meet specifications of the End User.
 - n. Contractor shall post-process digital images (cropping, de-skewing, de-speckling, image 25 rotation).
 - o. Use of page count and single key quality methods are not acceptable quality checks. Contractor must ensure all source media is scanned and properly processed according to Project Implementation Plan.
 - p. Contractor shall read and interpret barcodes on envelopes and forms to incorporate data into indexing fields and naming of electronic files.
 - q. Contractor shall perform a consistency check on all the images. This shall include image clarity, orientation, and accuracy.
 - r. Contractor shall perform random quality checks (above the quality check included in scanning fees) on a random basis of 20 percent of all items scanned. Random quality checks must be performed by someone other than the individual who initially scanned and indexed the source media and check for quality and that the Project Implementation Plan is being followed accurately.
- A.15. Temporary labor. Contractor must provide and keep temporary staffing agency information current with the Contract Administrator to include process for vetting temporary staff, background checks, drug testing and as otherwise specified by the End User.
- A.16. The sensitive nature of the information being converted dictates that all of the conversion process be performed in the Continental United States. No offshore processing or offshore use of labor is permitted. Contractor shall not utilize subcontractors without the permission of the State.
- A.17. Shredding.
- a. Contractor is responsible for shredding source media after a ninety (90) day storage period; shredding prior to the ninety (90) day storage period is prohibited. Contractor may charge End User for extended storage of source media if asked by End User to store source media longer than ninety (90) days.
 - b. The State reserves the right to use a State shredding vendor as specified by the End User.

- c. All materials shall be destroyed to the applicable NAID specifications. All Paper or Printed Media will be destroyed according to the dimensions outlined in NAID specifications:
 - i. Continuous Shred:
Maximum Width: 5/8 inch
Maximum Length: Indefinite
 - ii. Cross Cut or Pierce and Tear:
Maximum Width: 3/4 inch
Maximum Length: 2.5 inches
 - iii. Pulverized (Equipment with Screens):
Maximum Screen Size: 2 inch diameter holes

Note: The above listed specifications are the current dimensions for document destruction used in the NAID Certification Program. If at any point these specifications are updated by NAID, it is the Contractor's responsibility to abide by the new specifications and notify Contract Administrator immediately. Any adjustment or modification to the above listed specifications to meet NAID requirements will not require an amendment.

- d. Contractor and subcontractors shall be solely responsible for shredding all source media and must maintain chain of custody at all times and during transit. At no time will any source media be left unattended. All vehicles used for transfer or destruction of source media shall have lockable cabs and lockable, fully enclosed boxes. Once source media has been destroyed, Contractor shall provide the State with a certificate of destruction that the Contractor signs, verifying what documents have been destroyed, the date of destruction and that the security of the documents was safeguarded through the entire destruction process.
- e. Contractor and subcontractors shall maintain NAID certification throughout entirety of this contract. Contractor shall immediately notify Contract Administrator if Contractor or subcontractors fails to maintain NAID certification and if Contractor receives official notification loss of certification will occur if the Contractor does not comply with NAID requirements within 24 hours. Contractor and all approved subcontractors shall supply the State with copy of NAID certification when requested at no additional charge to the State.
- f. All shredding facilities used during the performance of this contract shall be NAID certified.
- g. Contractor and subcontractors shall be licensed pursuant to all applicable federal, state, and local laws, ordinances, rules, and regulations and shall upon request provide proof of licenses at no additional charge to the State.
- h. Contractor and subcontractors acknowledge that they will be handling confidential information and must agree to maintain the confidentiality of the information. All records are to be disposed of in a confidential manner. Removal of records to a municipal dump is not permitted. Contractor must:
 - 1. Ensure no violation of any state, federal or local law, including HIPAA guidelines;
 - 2. Ensure that there are appropriate safeguards to prevent use or disclosure of the information;
 - 3. Immediately inform the End User and the Contract Administrator of any use or disclosure of information; and
 - 4. Ensure that all subcontractor and third-party entity (i.e. paper mills, trucking companies, etc.) employees are aware and prohibited from disclosing confidential information.

Contractor must ensure all shredded material is not recycled and not used for packing material or animal bedding.

A.18. Shredding Subcontracting.

- a. Subcontractors shall be certified members in good standing with NAID.

- b. Prior to using a subcontractor, Contractor is required to obtain written authorization from the Contract Administrator via letter or email to the Contract Administrator requesting permission to subcontract. The letter or email shall include the following information:
 - 1. The subcontractor(s) name, address, contact person(s), email(s) and telephone number(s);
 - 2. A brief description of the work to be performed;
 - 3. An estimated dollar amount to be given to the subcontractor for the job or annually; and
 - 4. State whether the request is for a one-time job or continued service.
 - c. Subcontractor personnel are required to sign-in and sign-out and meet the same requirements as the Contractor's personnel.
 - d. Contractor cannot charge any higher rates than the contract rate even though their subcontractor may be charging a higher rate to the Contractor.
 - e. Contractor shall be responsible for paying their subcontractor(s).
- A.19. Workload adjustments. Contractor must immediately contact the State when staffing or ability to perform scope of services is hindered due to staffing, lack of equipment, or any unknown factor.
- A.20. Purchase and Usage Reports. Contractor shall submit monthly in Microsoft Excel format to the State. Reports shall provide statistical data on all services. Reports must include the ability to sort/summarize by account, cost item and category, and service description. Contractor must provide all data requested in a flat file format as designated by the State. This statistical data will be detailed and broken down by line item to include, but not limited to at least the following:
- 1. Contract number
 - 2. Identify Entity and any identifiable ID for multiple locations
 - 3. Service description and cost utilized for billing
 - 4. Invoice date
 - 5. Invoice number
 - 6. Usage volume for invoicing period
 - 7. Usage volume to date by project and by location (if multiple locations)
 - 8. Usage volume to date for all contract usage
 - 9. Sub totals for each category above
 - 10. Grand totals for each category above

Custom Reports: Contractor shall provide mutually agreed upon custom/special reports, as requested periodically by the State, at no additional cost to the State. The State may request custom reports from time to time.

- A.21. Contractor's Personnel and Staffing. Contractor must warrant that all persons assigned to perform the Services under this Contract are either lawful employees of Contractor or lawful employees of a subcontractor authorized by the State. All of Contractor's or any subcontractor's personnel shall comply with the confidentiality requirements of the Contract and the security requirements of the State.

All persons assigned to perform the Services under this Contract shall be qualified to perform services. Personnel assigned by Contractor shall have all professional licenses required to perform the services. Contractor warrants that an adequate number of appropriately qualified personnel shall be employed and available to provide the services under this Contract.

- A.22. Industry Standards. The Contractor warrants that all aspects of the services provided by it shall at a minimum conform to the standards in the Contractor's industry. This requirement shall be in addition to any express warranties, representations, and specifications included in the Contract, which shall take precedence.

A.23. Security Certification, Accreditation, Audit. At the State's request, the Contractor shall provide proof of any security certifications, accreditation, or audit on a yearly basis to the State to validate security. (Examples: SOC 2 Type II/ SOC 3, ISO 27001).

A.24. Confidentiality Information.

- a. Access to Confidential Data. The Contractor's employees and subcontractors may have access to confidential data maintained by the State to the extent necessary to carry out the Contractor's responsibilities under the Contract. All information received pursuant to the Contract is confidential and shall remain the property of the State at all times and Contractor shall:
 - i. Provide to the State a written description of the Contractor's policies and procedures to safeguard confidential information;
 - ii. Must have policies of confidentiality that address, as appropriate, information conveyed in verbal, written, and electronic formats;
 - iii. Must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Contractor in connection with the performance of the Contract; and
 - iv. Provide adequate supervision and training to its employees and subcontractors to ensure compliance with the terms of the Contract.
- b. Some services performed for the State may require the Contractor to sign a nondisclosure agreement. Contractor understands and agrees that refusal or failure to sign such a nondisclosure agreement, if required, may result in termination of the Contract.
- c. No Dissemination of Confidential Data. No confidential data collected, maintained, or used in the course of performance of the Contract shall be disseminated except as authorized by law and with the written consent of the State, either during the period of the Contract or thereafter. Any data supplied to or created by the Contractor shall be considered the property of the State. The Contractor must return any and all data collected, maintained, created or used in the course of the performance of the Contract, in whatever form it is maintained, promptly at the request of the State.
- d. Subpoena. In the event that a subpoena or other legal process is served upon the Contractor seeking records containing confidential information, Contractor shall notify the State within 24 hours and cooperate with the State in any lawful effort to protect the confidential information.
- e. Reporting of Unauthorized Disclosure. The Contractor shall immediately report to the State any unauthorized disclosure of any source media.

The confidentiality provisions set forth in this Contract shall survive termination of the Contract and be followed per Tenn. Code Ann. 10-7-301(2)

A.25. Compliance with Enterprise Information Security Policies.

The Contractor is required to meet all the security controls stated in the Tennessee Enterprise Information Security Policies, https://www.tn.gov/assets/entities/finance/oir/attachments/PUBLIC-Enterprise-Information-Security-Policies-v2.0_1.pdf, and conform to all applicable State and federal laws regarding information security. As additional State and federal security and regulatory requirements are imposed, Contractor shall ensure that the environment content and applications are kept up to date with the emerging requirements.

A.26. Encryption. All data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the Contractor is responsible for encryption of the data. The Contractor

shall ensure drive encryption consistent with validated cryptography standards as referenced in FIPS 140-2, Security Requirements for Cryptographic Modules for all personal data. The solution should support 256 bit encryption or latest State standard. This provision also applies to the data-at-rest and data-in-transit protections provided by the solution, even if protection of data-at-rest or data-in-transit is implemented by external modules (rather than the solution itself). The State will hold all encryption keys.

A.27. Access to Security Logs and Reports. The Contractor shall provide reports to the State in a format as agreed to by both the Contractor and the State. Reports shall include latency statistics, user access, user access IP address, user access history and security logs for all State files related to this Contract.

A.28. Security Audits. The State may conduct audits of Contractor's compliance with the State's Enterprise Information Security Policy ("The Policy") or under this Contract, including those obligations imposed by federal or State law, regulation or policy. The Policy, as may be periodically revised, can be located at the following link: <http://www.tn.gov/finance/oir/security/secpolicy.html>. The State's right to conduct security audits is independent of any other audit or monitoring required by this Contract. The timing and frequency of such audits shall be at the State's discretion and may, but not necessarily shall, be in response to a security incident.

A security audit may include the following: (i) review of access logs, screen shots and other paper or electronic documentation relating to Contractor's compliance with the Policy. This may include review of documentation relevant to subcontractors or suppliers of security equipment and services used with respect to State data; (ii) physical inspection of controls such as door locks, file storage, communications systems, and employee identification procedures; and (iii) interviews of responsible technical and management personnel regarding security procedures.

Contractor shall provide reports or additional information upon request of the State and access by the State or the State's designated staff to Contractor's facilities or any location involved with providing services to the State or involved with processing or storing State data, and Contractor shall cooperate with State staff and audit requests submitted under this Section. Any confidential information of either party accessed or disclosed during the course of the security audit shall be treated as set forth under this Contract or federal or State law or regulations. Each party shall bear its own expenses incurred in the course of conducting this security audit. Contractor shall at its own expense promptly rectify any non-compliance with the Policy or other requirements identified by this security audit and provide proof to the State thereof.

A.29. Physical Security. All enterprise data processing facilities that process or store data shall have multiple layers of physical security. Each layer should be independent and separate of the preceding or following layers.

All facilities should have, at a minimum, a single security perimeter protecting it from unauthorized access, damage or interference. Secure areas should be protected by appropriate entry controls to restrict access only to authorized personnel. Procedures for working in secure areas should be created and implemented. Access points such as delivery and loading areas and other points where unauthorized persons could enter the premises should be controlled, and if possible, isolated from information processing facilities. Equipment should be located in secured areas or protected to reduce the risks from environment threats and hazards, and to reduce the opportunities for unauthorized access. Secured cabinets or facilities should support further segregation based on role and responsibility. Users should ensure that unattended data processing equipment has appropriate protection.

The Contractor shall perform an independent audit of its data centers at least annually at its expense, and provide a redacted version of the audit report upon request. The Contractor may remove its proprietary information from the redacted version. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit.

A.30. Security.

- a. Contractor must only connect imaging equipment to the Internet for specified media transfer back to the End User, unless otherwise specified by End User.
- b. All End User's data that has been, or will be, provided to Contractor or subcontractors is solely for use in connection with providing the services under this contract. Re-use of any data in any form is not permitted. Contractor agrees that it will not access, use or disclose End User's data for any purpose not necessary for the performance of its duties under this contract. Without the End User's approval, neither Contractor or subcontractor shall: (i) use data other than in connection with providing the contract services; (ii) disclose, sell, assign, lease, or otherwise provide data to third parties, including any local, state, or Federal legislative body; (iii) commercially exploit the data or allow the data to be commercially exploited; or (iv) create, distribute, or use any electronic or hard copy mailing list of End User's customers.
- c. Contractor shall provide safeguards against theft, loss, and damage of source media. No unauthorized reproduction or duplication of any media produced by the Contractor is permissible.
- d. Federal Tax Information (FTI). Compliance with IRS Publication 1075 is mandatory as described in Attachment B, *Federally mandated requirements for technology services contracts with access to federal tax return information*. Proof of compliance must be provided annually.
- e. Contractor shall engage in a continuous cycle of process improvement and vigilance to assess risks, monitor and test security protection, and implement change to protect the State's data. Contractor must perform such continuous process improvement and to upgrade its security protection during the term of this contract.
- f. Security methods that Contractor must include, but is not limited to, the following:
 - i. Conducting annual criminal background checks of all employees of Contractor equivalent to a ten (10) year felony background check before they are assigned to perform services under this Contract. Contractor must send updates to the State for all staff annually and for new employees at the time of hire. Contractor must require Contractor's personnel to notify Contractor of any arrest (to include the date of arrest, arresting entity, and charges) no later than the end of the first business day following an arrest. Within one business day of such notification the Contractor in turn shall notify the State of such arrest. Contractor must also require the individual who has been arrested to provide an official offense report to the Contractor as soon as possible but no later than 30 calendar days from the date of the arrest. Within one business day of receipt, the Contractor in turn shall provide the State with a copy of such offense report.
 - ii. Use of non-disclosure agreements for all employees.
 - iii. Contractor must have a written security protocol which is updated at a minimum of yearly.
 - iv. Building security must include the use of cameras high fences, separate key card access to scanning area, use of data firewalls, and other security methods as stated in the Tennessee Enterprise Information Security Policies. No cell phone or any type of recording devices may be allowed within the scanning areas or storage areas.
 - v. Contractor must notify the State per the Project Implementation Plan of any actual or potential risk of unauthorized access to any data or information within 24 hours. Notification must be immediate and verbal with the proper contact personnel for the End User and Contract Administrator.
 - vii. Contractor shall comply with all applicable laws and regulations regarding documents which contain HIPAA, PII and FTI information in meeting its obligations.

A.31. Disaster Recovery/Continuity of Operations Plan. The Contractor acknowledges and represents to the State that it has implemented a disaster recovery/continuity of operations plan that may be executed in the event of a natural disaster or man-made disaster. Such plan shall be made available to the State annually.

A.32. Security Incident and Data Breach. The Contractor shall inform the State of any security incident or data breach. The Contractor may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries, and seeking external expertise as mutually directed, defined by law or contained in the Contract. Discussing security incidents with the State must be handled on an urgent as-needed basis, as part of Contractor communication and mitigation processes as directed by the State, defined by law or contained in the Contract.

The Contractor shall report any security incident to the appropriate State identified contact immediately. If the Contractor has actual knowledge of a confirmed data breach that affects the security of any State content that is subject to applicable data breach notification law, the Contractor shall:

- a. Promptly notify the appropriate State identified contact within 24 hours or sooner, unless shorter time is required by applicable law,
- b. Take commercially reasonable measures to report perceived security incidents to address the data breach in a timely manner.
- c. Cooperate with the State as reasonably requested by the State to investigate and resolve the data breach,
- d. Promptly implement necessary remedial measures, if necessary, and
- e. Document responsive actions taken related to the data breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.

Unless otherwise stipulated, if a data breach is a direct result of the Contractor breach of its Contract obligation to encrypt personal data or otherwise prevent its release, the Contractor shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by State law; (3) a credit monitoring service required by State (or federal) law; (4) a website or a toll-free number and call center for affected individuals required by State law - all not to exceed the average per record per person cost calculated for data breaches in the United States (currently \$201 per record/person) in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach; and (5) complete all corrective actions as reasonably determined by Contractor based on root cause; all [(1) through (5)] subject to this Contract's limitation of liability.

A.33. Transition Cooperation and Cooperation with other Contractors. Upon expiration or termination of this Contract, Contractor shall provide detailed procedures to enable this Contract to transition to the State or management by a third party at no additional cost to the State. Contractor shall work with the State under the State's management supervision for a period of sixty (60) days, prior to the expiration or termination of this Contract, to ensure the orderly transfer and efficient transition from current Contractor to the State or management by a third party. Contractor shall provide full disclosure to the State and the third-party contractor about the equipment, software, or services required to perform the services for the State and shall transfer any and all records, files and logs to the State regarding work performed for the State during the Contract period.

Further, in the event that the State has entered into or enters into agreements with other contractors for additional work related to services rendered under the Contract, Contractor must cooperate fully with such other contractors. Contractor shall not commit any act which will interfere with the performance of work by any other contractor.

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 general 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 **July 15, 2016 ("Effective Date") and ending on July 14, 2017, ("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 three (3) 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.
- B.3. Term Extension. The State may extend the Term an additional period of time, not to exceed one hundred-eighty (180) days beyond the expiration date of this Contract, under the same terms and conditions, 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:

Services Description	Amount (per compensable increment)
Project initial Setup fee (Project Implementation Plan) (Section A.6.)	\$ one-time set up fee per project
Document Retrieval/Special Handling – Special return instruction items (Section A.8.)	\$ unlimited instances/per month
Backup of Electronic Media (Section A.11.)	\$ per image
Document Scanning (Incoming Mail) includes document prep, batching, scanning to good clear representation of original document, quality control and SFTP output in OCR conversion to text-searchable PDF file and metadata file, read and interpret envelope and form barcoding, index up to five (5) fields with up to 20 keystrokes per field. (Section A.14.)	\$ per image
Random Quality Checks (above the quality check included in document scanning fees) – 20 percent of items are randomly checked (Section A.14.r.)	\$ per image
Secure Document Destruction - Shredding (Section A.17.)	\$ per pound
Extended Storage of Documents (only to be charged 90 days after quality checks have occurred by the State) (Section A.17.a.)	\$ per cubic foot

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:

State Agency Billing Address

- 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: Tennessee Department of Human Services, Family Assistance Program;
- (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:

State Contact Name & Title
State Agency Name
Address
Email Address
Telephone # Number
FAX # Number

The Contractor:

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

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

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

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

- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.
- D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

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

- D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.

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

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

In the event of any suit or claim, the Parties shall give each other 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 or disqualified.

- D.24. Force Majeure. “Force Majeure Event” means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor’s representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force

Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.

- D.25. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. § 9-8-101-407.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
 - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes Attachments A, B, C, and D;
 - 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. Insurance. Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified below. The COI shall be provided ten (10) business days prior to the Effective Date and again upon renewal or replacement of coverages required by this Contract. If insurance expires during the Term, the State must receive a new COI at least thirty (30) calendar days prior to the insurance's expiration date. If the Contractor loses insurance coverage, does not renew coverage, or for any reason becomes uninsured during the Term, the Contractor shall notify the State immediately.

The COI shall be on a form approved by the Tennessee Department of Commerce and Insurance ("TDCI") and signed by an authorized representative of the insurer. The COI shall list each insurer's national association of insurance commissioners (also known as NAIC) number or federal employer identification number and list the State of Tennessee, Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 in the certificate holder section. At any time, the State may require the Contractor to provide a valid COI detailing coverage description; insurance company; policy number; exceptions; exclusions; policy effective date; policy expiration date; limits of liability; and the name and address of insured. The Contractor's failure to maintain or submit evidence of insurance coverage is considered a material breach of this Contract.

If the Contractor desires to self-insure, then a COI will not be required to prove coverage. In place of the COI, the Contractor must provide a certificate of self-insurance or a letter on the Contractor's letterhead detailing its coverage, liability policy amounts, and proof of funds to reasonably cover such expenses. Compliance with Tenn. Code Ann. § 50-6-405 and the rules of the TDCI is required for the Contractor to self-insure workers' compensation.

All insurance companies must be: (a) acceptable to the State; (b) authorized by the TDCI to transact business in the State of Tennessee; and (c) rated A- VII or better by A. M. Best. The Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that the subcontractors are included under the Contractor's policy.

The Contractor agrees to name the State as an additional insured on any insurance policies with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) ("Professional Liability") insurance. Also, all policies shall contain an endorsement for a waiver of subrogation in favor of the State (other than Professional Liability, Intellectual Property, Cyber-Risk/Network Security/Privacy Insurance, Crime Insurance policies).

The deductible and any premiums are the Contractor's sole responsibility. Any deductible over fifty thousand dollars (\$50,000) must be approved by the State. 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. 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.

All coverage required shall be on a primary basis and noncontributory with any other insurance coverage or self-insurance carried by the State. The State reserves the right to amend or require additional endorsements, types of coverage, and higher or lower limits of coverage depending on the nature of the work. Purchases or contracts involving any hazardous activity or equipment, tenant, concessionaire and lease agreements, alcohol sales, cyber-liability risks, environmental risks, special motorized equipment, or property may require customized insurance requirements (e.g. umbrella liability insurance) in addition to the general requirements listed below.

a. Commercial General Liability Insurance

- 1) The Contractor shall maintain commercial general liability insurance, which shall be written on an Insurance Services Office, Inc. (also known as ISO) occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises/operations, independent contractors, contractual liability, completed operations/products, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
- 2) The Contractor shall maintain bodily injury/property damage with a combined single limit not less than one million dollars (\$1,000,000) per occurrence and two

million dollars (\$2,000,000) aggregate for bodily injury and property damage, including products and completed operations coverage with an aggregate limit of at least two million dollars (\$2,000,000).

- b. Workers' Compensation and Employer Liability Insurance
 - 1) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:
 - i. Workers' compensation and employer liability insurance in the amounts required by appropriate state statutes.
 - 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
 - i. The Contractor employs fewer than five (5) employees;
 - ii. The Contractor is a sole proprietor;
 - iii. The Contractor is in the construction business or trades with no employees;
 - iv. The Contractor is in the coal mining industry with no employees;
 - v. The Contractor is a state or local government; orThe 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
 - i. The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).
 - ii. The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars (\$1,000,000) per occurrence or combined single limit.
- d. Professional Liability Insurance
 - i. Professional liability insurance shall be written on an occurrence basis. This coverage may be written on a claims-made basis but must include an extended reporting period or "tail coverage" of at least two (2) years after the Term;
 - ii. Any professional liability insurance policy shall have a limit not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the aggregate; and
 - iii. If the Contract involves the provision of services by medical professionals, a policy limit not less than two million (\$2,000,000) per claim and three million dollars (\$3,000,000) in the aggregate for medical malpractice insurance.
- e. Intellectual Property, Cyber-Risk/Network Security/Privacy Insurance (including third-party (cyber liability) and first-party (cybercrime/terrorism expense coverages) with a direct loss/legal liability and consequential loss and expenses resulting from cyber security/network security breaches data loss, including protected health and personal information intellectual property with combined single limit of one million dollars (\$1,000,000) per claim or wrongful act for network asset protection, three million dollars (\$3,000,000) for breach response, and five million dollars (\$5,000,000.00) aggregate. This coverage may be written on a claims-made basis but must include an extended reporting period or "tail coverage" of at least two (2) years after the Term.
- f. Crime Insurance
 - i. The Contractor shall maintain crime insurance, which shall be written on a "loss sustained form" or "loss discovered form" providing coverage for third party fidelity, including cyber theft if not provided as part of the Cyber Insurance required by subsection e., above. The policy must allow for reporting of circumstances or incidents that may give rise to future claims, include an

extended reporting period of no less than two (2) year with respect to events which occurred but were not reported during the term of the policy, and not contain a condition requiring an arrest or conviction.

- ii. Any crime insurance policy shall have a limit not less than five million dollars (\$5,000,000) per claim and five million dollars (\$5,000,000) in the aggregate.
- iii. This coverage may be written on a claims-made basis but must include an extended reporting period or "tail coverage" of at least two (2) years after the Term.
- iv. The policy shall contain an endorsement covering social engineering.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.
- E.2. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

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

- E.3. Additional lines, items, or options. At its sole discretion, the State may make written requests to the Contractor to add lines, items, or options that are needed and within the Scope but were not included in the original Contract. Such lines, items, or options will be added to the Contract through a Memorandum of Understanding ("MOU"), not an amendment.
- a. After the Contractor receives a written request to add lines, items, or options, the Contractor shall have ten (10) business days to respond with a written proposal. The Contractor's written proposal shall include:
 - (1) The effect, if any, of adding the lines, items, or options on the other goods or services required under the Contract;
 - (2) Any pricing related to the new lines, items, or options;
 - (3) The expected effective date for the availability of the new lines, items, or options.
 - b. The State may negotiate the terms of the Contractor's proposal by requesting revisions to the proposal.
 - c. To indicate acceptance of a proposal, the State will sign it. The signed proposal shall constitute a MOU between the Parties, and the lines, items, or options shall be incorporated into the Contract as if set forth verbatim.
 - d. Only after a MOU has been executed shall the Contractor perform or deliver the new lines, items, or options.

- E.4. 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 reasonable 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.5. 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.6. 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.7. 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 and/or procure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

The Contractor shall report to the State any instances of unauthorized access to or potential disclosure of PII in the custody or control of Contractor ("Unauthorized Disclosure") that come to the Contractor's attention. Any such report shall be made by the Contractor within twenty-four (24) hours after the Unauthorized Disclosure has come to the attention of the Contractor. Contractor shall take all necessary measures to halt any further Unauthorized Disclosures. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals whose PII was affected by the Unauthorized Disclosure. The Contractor shall bear the cost of notification to all individuals affected by the Unauthorized Disclosure, including individual letters and public notice. The remedies set forth in this Section are not exclusive and are in

addition to any claims or remedies available to this State under this Contract or otherwise available at law.

- E.8. 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.9. Software License Warranty. Contractor grants a license to the State to use all software provided under this Contract in the course of the State's business and purposes.
- E.10. Software Support and Maintenance Warranty. Contractor shall provide to the State all software upgrades, modifications, bug fixes, or other improvements in its software that it makes generally available to its customers.
- E.11. Extraneous Terms and Conditions. Contractor shall fill all orders submitted by the State under this Contract. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this Contract shall contain any terms or conditions other than as set forth in the Contract. Any such extraneous terms and conditions shall be void, invalid and unenforceable against the State. Any refusal by Contractor to supply any goods or services under this Contract conditioned upon the State submitting to any extraneous terms and conditions shall be a material breach of the Contract and constitute an act of bad faith by Contractor.
- E.12. Intellectual Property. 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.13. 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 **Solicitation Number** (Attachment **Reference**) 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 quarterly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, and Tennessee service-disabled veterans. Such reports shall be provided to the State of Tennessee Governor's Office of Diversity Business Enterprise in the required form and substance.

IN WITNESS WHEREOF,

CONTRACTOR LEGAL ENTITY NAME:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF HUMAN SERVICES:

NAME & TITLE

DATE

DRAFT

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

<p>If the attestation applies to more than one contract, modify this row accordingly.</p> <p>SUBJECT CONTRACT NUMBER:</p>	
<p>CONTRACTOR LEGAL ENTITY NAME:</p>	
<p>EDISON VENDOR IDENTIFICATION NUMBER:</p>	

If the attestation applies to more than one contract, modify the following paragraph accordingly.

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

CONTRACTOR SIGNATURE

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

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION

**FEDERALLY MANDATED REQUIREMENTS FOR TECHNOLOGY SERVICES
CONTRACTS WITH ACCESS TO FEDERAL TAX RETURN INFORMATION**

Federal Tax Information ("FTI") means any return or return information, as defined by I.R.C. § 6103(b)(2), received from the Internal Revenue Service or secondary source, such as the Social Security Administration, Federal Office of Child Support Enforcement, or Bureau of Fiscal Service. FTI includes any information created by the recipient that is derived from return or return information.

1. 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:

- 1.1 All work will be done under the supervision of the Contractor or the Contractor's employees.
- 1.2 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 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.
- 1.3 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.
- 1.4 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.
- 1.5 Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the State. When this is not possible, the Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the State with a statement containing the date of destruction, description of material destroyed, and the method used.
- 1.6 All computer systems receiving, processing, storing, or transmitting FTI 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.
- 1.7 No work involving Federal Tax Information furnished under this Contract will be subcontracted without prior written approval of the IRS.
- 1.8 The Contractor will maintain a list of employees authorized access. Such list will be provided to the State and, upon request, to the IRS reviewing office.
- 1.9 The State will have the right to void the Contract if the Contractor fails to provide the safeguards described above.

2. CRIMINAL/CIVIL SANCTIONS:

- 2.1 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 five thousand dollars (\$5,000) or imprisonment for as long as five (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 one thousand dollars (\$1,000) with respect to each instance of unauthorized disclosure. These penalties are prescribed by I.R.C. §§ 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

- 2.2 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 one thousand dollars (\$1,000) or imprisonment for as long as one (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 in an amount equal to the sum of the greater of one thousand dollars (\$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 I.R.C. §§ 7213A and 7431.
- 2.3 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 or her employment or official position, has possession of or access to State 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 five thousand dollars (\$5,000).
- 2.4 Granting a Contractor access to FTI must be preceded by certifying that each individual understands the State'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 State's files for review. As part of the certification and at least annually afterwards, Contractors must be advised of the provisions of I.R.C. §§ 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 must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.
- 3. INSPECTION:**
The IRS and the State shall have the right to send its 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 under this Contract. On the basis of such inspection, specific measures may be required in cases where the Contractor is found to be noncompliant with Contract safeguards.

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

THIS BUSINESS ASSOCIATE AGREEMENT (hereinafter "Agreement") is between The State of Tennessee, Department of Human Services (hereinafter "Covered Entity") and **BUSINESS ASSOCIATE NAME** (hereinafter "Business Associate"). Covered Entity and Business Associate may be referred to herein individually as "Party" or collectively as "Parties."

BACKGROUND

Parties acknowledges that they are subject to the Privacy and Security Rules (45 CFR Parts 160 and 164) promulgated by the United States Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191 as amended by Public Law 111-5, Division A, Title XIII (the HITECH Act), in certain aspects of its operations.

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

LIST OF AGREEMENTS AFFECTED BY THIS BUSINESS ASSOCIATE AGREEMENT:

LIST OF CONTRACTS AFFECTED BY HIPAA REQUIREMENTS OR NOT APPLICABLE

Contract Name:

Execution Date:

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

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

DEFINITIONS

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 CFR §§ 160.103, 164.103, 164.304, 164.501 and 164.504.

- 1.1 "Breach of the Security of the [Business Associate's Information] System" shall have the meaning set out in its definition at Tenn. Code Ann.. § 47-18-2107
- 1.2 "Business Associate" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.
- 1.3 "Covered Entity" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.
- 1.4 "Designated Record Set" shall have the meaning set out in its definition at 45 C.F.R. § 164.501.
- 1.5 "Electronic Protected Health Care Information" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.

- 1.6 "Genetic Information" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.
- 1.7 "Health Care Operations" shall have the meaning set out in its definition at 45 C.F.R. § 164.501.
- 1.8 "Individual" shall have the same meaning as the term "individual" in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- 1.9 "Information Holder" shall have the meaning set out in its definition at Tenn. Code Ann.. § 47-18-2107
- 1.10 "Marketing" shall have the meaning set out in its definition at 45 C.F.R. § 164.501.
- 1.11 "Personal information" shall have the meaning set out in its definition at Tenn. Code Ann.. § 47-18-2107
- 1.12 "Privacy Official" shall have the meaning as set out in its definition at 45 C.F.R. § 164.530(a)(1).
- 1.13 "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, subparts A, and E.
- 1.14 "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- 1.15 "Required by Law" shall have the meaning set forth in 45 CFR § 164.512.
- 1.16 "Security Incident" shall have the meaning set out in its definition at 45 C.F.R. § 160.304.
- 1.17 "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Parts 160 and 164, Subparts A and C.

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

- 2.1 Business Associate is authorized to use PHI for the purposes of carrying out its duties under the Services Contract. In the course of carrying out these duties, including but not limited to carrying out the Covered Entity's duties under HIPAA, Business Associate shall fully comply with the requirements under the Privacy Rule applicable to "business associates," as that term is defined in the Privacy Rule and not use or further disclose PHI other than as permitted or required by this Agreement, the Service Contracts, or as Required By Law. Business Associate is subject to requirements of the Privacy Rule as required by Public Law 111-5, Section 13404 [designated as 42 U.S.C. 17934] In case of any conflict between this Agreement and the Service Contracts, this Agreement shall govern.
- 2.2 The Health Information Technology for Economic and Clinical Health Act (HITECH) was adopted as part of the American Recovery and Reinvestment Act of 2009. HITECH and its implementing regulations impose new requirements on Business Associates with respect to privacy, security, and breach notification. Business Associate hereby acknowledges and agrees that to the extent it is functioning as a Business Associate of Covered Entity, Business Associate shall comply with HITECH. Business Associate and the Covered Entity further agree that the provisions of HIPAA

and HITECH that apply to business associates and that are required to be incorporated by reference in a business associate agreement have been incorporated into this Agreement between Business Associate and Covered Entity. Should any provision not be set forth specifically, it is as if set forth in this Agreement in its entirety and is effective as of the Applicable Effective Date, and as amended.

- 2.3 Business Associate shall use appropriate administrative, physical, and technical safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement, Services Contract(s), or as Required By Law. This includes the implementation of Administrative, Physical, and Technical Safeguards to reasonably and appropriately protect the Covered Entity's PHI against any reasonably anticipated threats or hazards, utilizing the technology commercially available to the Business Associate. The Business Associate shall maintain appropriate documentation of its compliance with the Privacy Rule, including, but not limited to, its policies, procedures, records of training and sanctions of members of its Workforce.
- 2.4 Business Associate shall require any agent, including a subcontractor, to whom it provides PHI received from, maintained, created or received by Business Associate on behalf of Covered Entity or that carries out any duties for the Business Associate involving the use, custody, disclosure, creation of, or access to PHI or other confidential information, to agree, by written contract with Business Associate, to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- 2.5 Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.
- 2.6 Business Associate shall require its employees, agents, and subcontractors to promptly report, to Business Associate, immediately upon becoming aware of any use or disclosure of PHI in violation of this Agreement. Business Associate shall report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement. Business Associate will also provide additional information reasonably requested by the Covered Entity related to the breach.
- 2.7 As required by the Breach Notification Rule, Business Associate shall, and shall require its subcontractor(s) to, maintain systems to monitor and detect a Breach of Unsecured PHI, whether in paper or electronic form.
 - 2.7.1 Business Associate shall provide to Covered Entity notice of a Provisional or Actual Breach of Unsecured PHI immediately upon becoming aware of the Breach.
 - 2.7.2 Business Associate shall cooperate with Covered Entity in timely providing the appropriate and necessary information to Covered Entity.
 - 2.7.3 Covered Entity shall make the final determination whether the Breach requires notification and whether the notification shall be made by Covered Entity or Business Associate.
- 2.8 If Business Associate receives PHI from Covered Entity in a Designated Record Set, Business Associate shall provide access, at the request of Covered Entity, to PHI in a Designated Record Set to Covered Entity, in order to meet the requirements under 45 CFR § 164.524, provided that Business Associate shall have at least 30 business days from Covered Entity notice to provide access to, or deliver such information.

- 2.9 If Business Associate receives PHI from Covered Entity in a Designated Record Set, then Business Associate shall make any amendments to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to the 45 CFR § 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity, provided that Business Associate shall have at least 30 business days from Covered Entity notice to make an amendment.
- 2.10 Business Associate shall make its internal practices, books, and records including policies and procedures and PHI, relating to the use and disclosure of PHI received from, created by or received by Business Associate on behalf of, Covered Entity available to the Secretary of the United States Department of Health in Human Services or the Secretary's designee, in a time and manner designated by the Secretary, for purposes of determining Covered Entity's or Business Associate's compliance with the Privacy Rule.
- 2.11 Business Associate shall document disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosure of PHI in accordance with 45 CFR § 164.528.
- 2.12 Business Associate shall provide Covered Entity or an Individual, in time and manner designated by Covered Entity, information collected in accordance with this Agreement, to permit Covered Entity to respond to a request by an Individual for and accounting of disclosures of PHI in accordance with 45 CFR § 164.528, provided that Business Associate shall have at least 30 business days from Covered Entity notice to provide access to, or deliver such information which shall include, at minimum, (a) date of the disclosure; (b) name of the third party to whom the PHI was disclosed and, if known, the address of the third party; (c) brief description of the disclosed information; and (d) brief explanation of the purpose and basis for such disclosure. Business Associate shall provide an accounting of disclosures directly to an individual when required by section 13405(c) of Public Law 111-5 [designated as 42 U.S.C. 17935(c)].
- 2.13 Business Associate agrees it must limit any use, disclosure, or request for use or disclosure of PHI to the minimum amount necessary to accomplish the intended purpose of the use, disclosure, or request in accordance with the requirements of the Privacy Rule.
- 2.13.1 Business Associate represents to Covered Entity that all its uses and disclosures of, or requests for, PHI shall be the minimum necessary in accordance with the Privacy Rule requirements.
- 2.13.2 Covered Entity may, pursuant to the Privacy Rule, reasonably rely on any requested disclosure as the minimum necessary for the stated purpose when the information is requested by Business Associate.
- 2.13.3 Business Associate acknowledges that if Business Associate is also a covered entity, as defined by the Privacy Rule, Business Associate is required, independent of Business Associate's obligations under this Memorandum, to comply with the Privacy Rule's minimum necessary requirements when making any request for PHI from Covered Entity.
- 2.14 Business Associate shall adequately and properly maintain all PHI received from, or created or received on behalf of, Covered Entity

- 2.15 If Business Associate receives a request from an Individual for a copy of the individual's PHI, and the PHI is in the sole possession of the Business Associate, Business Associate will provide the requested copies to the individual and notify the Covered Entity of such action. If Business Associate receives a request for PHI in the possession of the Covered Entity, or receives a request to exercise other individual rights as set forth in the Privacy Rule, Business Associate shall notify Covered Entity of such request and forward the request to Covered Entity. Business Associate shall then assist Covered Entity in responding to the request.
- 2.16 Business Associate shall fully cooperate in good faith with and to assist Covered Entity in complying with the requirements of the Privacy Rule.

3 OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE (Security Rule)

- 3.1 Business Associate shall fully comply with the requirements under the Security Rule applicable to "business associates," as that term is defined in the Security Rule. In case of any conflict between this Agreement and Service Agreements, this Agreement shall govern.
- 3.2 Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of the covered entity as required by the Security Rule and Public Law 111-5. This includes specifically, but is not limited to, the utilization of technology commercially available at the time to the Business Associate to protect the Covered Entity's PHI against any reasonably anticipated threats or hazards. The Business Associate understands that it has an affirmative duty to perform a regular review or assessment of security risks, conduct active risk management and supply best efforts to assure that only authorized persons and devices access its computing systems and information storage, and that only authorized transactions are allowed. The Business Associate will maintain appropriate documentation to certify its compliance with the Security Rule.
- 3.3 Business Associate shall ensure that any agent, including a subcontractor, to whom it provides electronic PHI received from or created for Covered Entity or that carries out any duties for the Business Associate involving the use, custody, disclosure, creation of, or access to PHI supplied by Covered Entity, to agree, by written contract (or the appropriate equivalent if the agent is a government entity) with Business Associate, to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- 3.4 Business Associate shall require its employees, agents, and subcontractors to report to Business Associate within five (5) business days, any Security Incident (as that term is defined in 45 CFR § 164.304) of which it becomes aware. Business Associate shall promptly report any Security Incident of which it becomes aware to Covered Entity.
- 3.5 Business Associate shall make its internal practices, books, and records including policies and procedures relating to the security of electronic PHI received from, created by or received by Business Associate on behalf of, Covered Entity available to the Secretary of the United States Department of Health in Human Services or the Secretary's designee, in a time and manner designated by the Secretary, for purposes of determining Covered Entity's or Business Associate's compliance with the Security Rule.

- 3.6 Business Associate shall fully cooperate in good faith with and to assist Covered Entity in complying with the requirements of the Security Rule.
- 3.7 Notification for the purposes of Sections 2.8 and 3.4 shall be in writing made by email/fax, certified mail or overnight parcel immediately upon becoming aware of the event, with supplemental notification by facsimile and/or telephone as soon as practicable, to:

**COVERED ENTITY NAME
NAME AND TITLE
ADDRESS**

Telephone: **NUMBER**

Fax: **NUMBER**

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

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

4. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- 4.1 Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in Service Contract(s), provided that such use or disclosure would not violate the Privacy and Security Rule, if done by Covered Entity. Business Associate's disclosure of PHI shall be subject to the limited data set and minimum necessary requirements of Section 13405(b) of Public Law 111-5, [designated as 42 U.S.C. 13735(b)]
- 4.2 Except as otherwise limited in this Agreement, Business Associate may use PHI as required for Business Associate's proper management and administration or to carry out the legal responsibilities of the Business Associate.
- 4.3 Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or provided that, if Business Associate discloses any PHI to a third party for such a purpose, Business Associate shall enter into a written agreement with such third party requiring the third party to: (a) maintain the confidentiality, integrity, and availability of PHI and not to use or further disclose such information except as Required By Law or for the purpose for which it was disclosed, and (b) notify Business Associate of any instances in which it becomes

aware in which the confidentiality, integrity, and/or availability of the PHI is breached immediately upon becoming aware.

- 4.4 Except as otherwise limited in this Agreement, Business Associate may use PHI to provide data aggregation services to Covered Entity as permitted by 42 CFR § 164.504(e)(2)(i)(B).
- 4.5 Business Associate may use PHI to report violations of law to appropriate Federal and State Authorities consistent with 45 CFR 164.502(j)(1).
- 4.6 Business Associate shall not use or disclose PHI that is Genetic Information for underwriting purposes. Moreover, the sale, marketing or the sharing for commercial use or any purpose construed by Covered Entity as the sale, marketing or commercial use of member's personal or financial information with affiliates, even if such sharing would be permitted by federal or state laws, is prohibited.
- 4.7 Business Associate shall enter into written agreements that are substantially similar to this Business Associate Agreements with any Subcontractor or agent which Business Associate provides access to Protected Health Information.
- 4.8 Business Associates shall implement and maintain information security policies that comply with the HIPAA Security Rule.

5. OBLIGATIONS OF COVERED ENTITY

- 5.1 Covered Entity shall provide Business Associate with the Notice of Privacy Practices that Covered Entity produces in accordance with 45 CFR § 164.520, as well as any changes to such notice. Covered Entity shall notify Business Associate of any limitations in its notice that affect Business Associate's use or disclosure of PHI.
- 5.2 Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses.
- 5.3 Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use of PHI.

6. PERMISSIBLE REQUESTS BY COVERED ENTITY

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

7. TERM AND TERMINATION

- 7.1 **Term.** This Agreement shall be effective as of the date on which it is signed by both parties and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, Section 7.3. below shall apply.
- 7.2 Termination for Cause.

- 7.2.1 This Agreement authorizes and Business Associate acknowledges and agrees Covered Entity shall have the right to immediately terminate this Agreement and Service Contracts in the event Business Associate fails to comply with, or violates a material provision of, requirements of the Privacy and/or Security Rule or this Memorandum.
- 7.2.2 Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
- 7.2.2.1 Provide a reasonable opportunity for Business Associate to cure the breach or end the violation, or
 - 7.2.2.2 If Business Associate has breached a material term of this Agreement and cure is not possible or if Business Associate does not cure a curable breach or end the violation within a reasonable time as specified by, and at the sole discretion of, Covered Entity, Covered Entity may immediately terminate this Agreement and the Service Agreement.
 - 7.2.2.3 If neither cure nor termination is feasible, Covered Entity shall report the violation to the Secretary of the United States Department of Health in Human Services or the Secretary's designee.

7.3 Effect of Termination.

- 7.3.1 Except as provided in Section 7.3.2. below, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of, Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
- 7.3.2 In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction unfeasible. Upon mutual agreement of the Parties that return or destruction of PHI is unfeasible; Business Associate shall extend the protections of this Memorandum to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction unfeasible, for so long as Business Associate maintains such PHI.

8. MISCELLANEOUS

- 8.1 Regulatory Reference. A reference in this Agreement to a section in the Privacy and or Security Rule means the section as in effect or as amended.
- 8.2 Indemnity. The Business Associate shall indemnify the Covered Entity and hold it harmless for any claims, losses or other damages arising from or associated with any act or omission of Business Associate under this Agreement. This includes the costs of responding to a breach of the Agreement or the release of PHI contrary to the terms and conditions of this Agreement, the costs of responding to a government enforcement action related to the breach, and any resultant fines, penalties, or damages paid by the Covered Entity.
- 8.3 Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the

Privacy and Security Rules and the Health Insurance Portability and Accountability Act, Public Law 104-191, including any amendments required by the United States Department of Health and Human Services to implement the Health Information Technology for Economic and Clinical Health and related regulations upon the effective date of such amendment, regardless of whether this Agreement has been formally amended, including, but not limited to changes required by the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

- 8.4 Survival. The respective rights and obligations of Business Associate under Section 7.3. of this Memorandum shall survive the termination of this Agreement.
- 8.5 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity and the Business Associate to comply with the Privacy and Security Rules.
- 8.6 Notices and Communications. All instructions, notices, consents, demands, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered by hand, by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below, or to such other party, facsimile number, or address as may be hereafter specified by written notice.

COVERED ENTITY:

**ENTITY NAME
NAME AND TITLE
ADDRESS
Telephone: NUMBER
Fax: NUMBER**

BUSINESS ASSOCIATE:

**ENTITY NAME
NAME AND TITLE
ADDRESS
Telephone: NUMBER
Fax: NUMBER**

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

- 8.7 Strict Compliance. No failure by any Party to insist upon strict compliance with any term or provision of this Agreement, to exercise any option, to enforce any right, or to seek any remedy upon any default of any other Party shall affect, or constitute a waiver of, any Party's right to insist upon such strict compliance, exercise that option, enforce that right, or seek that remedy with respect to that default or any prior, contemporaneous, or subsequent default. No custom or practice of the Parties at variance with any provision of this Agreement shall affect, or constitute a waiver of, any Party's right to demand strict compliance with all provisions of this Agreement
- 8.8 Severability. With respect to any provision of this Agreement finally determined by a court of competent jurisdiction to be unenforceable, such court shall have jurisdiction to reform such

provision so that it is enforceable to the maximum extent permitted by applicable law, and the Parties shall abide by such court's determination. In the event that any provision of this Agreement cannot be reformed, such provision shall be deemed to be severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.

8.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee except to the extent that Tennessee law has been pre-empted by HIPAA.

8.10 Compensation. There shall be **no** remuneration for performance under this Agreement except as specifically provided by, in, and through, existing administrative requirements of Tennessee State government and services contracts referenced herein.

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

IN WITNESS WHEREOF,

COVERED ENTITY LEGAL ENTITY NAME:

NAME AND TITLE

Date:

BUSINESS ASSOCIATE LEGAL ENTITY NAME:

NAME AND TITLE

Date:



CONTRACT

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

Begin Date	End Date	Agency Tracking #	Edison Record ID
-------------------	-----------------	--------------------------	-------------------------

Contractor Legal Entity Name	Edison Vendor ID
-------------------------------------	-------------------------

Goods or Services Caption (one line only)

Contractor <input checked="" type="checkbox"/> Contractor	CFDA #
---------------------------------------------------------------------	---------------

Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
TOTAL:					

Contractor Ownership Characteristics:

Minority Business Enterprise (MBE): African American, Asian American, Hispanic American, Native American

Woman Business Enterprise (WBE)

Tennessee Service Disabled Veteran Enterprise (SDVBE)

Tennessee Small Business Enterprise (SBE): \$10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees.

Other:

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

Competitive Selection Describe the competitive selection process used

Other Describe the selection process used and submit a Special Contract Request

Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.

Speed Chart (optional)	Account Code (optional)
-------------------------------	--------------------------------