



CONTRACT

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

Begin Date 7/1/2018	End Date 12/31/2023	Agency Tracking # 31786-00141	Edison Record ID 59309
-------------------------------	-------------------------------	---	----------------------------------

Contractor Legal Entity Name International Business Machines Corporation (IBM), through Watson Health business unit	Edison Vendor ID 0000000267
---	---------------------------------------

Goods or Services Caption (one line only)
Decision Support System for the State's Public Sector Plans

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

Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2019			\$502,000.00		\$502,000.00
2020			\$845,000.00		\$845,000.00
2021			\$716,000.00		\$716,000.00
2022			\$753,000.00		\$753,000.00
2023			\$791,000.00		\$791,000.00
2024			\$411,000.00		\$411,000.00
TOTAL:			\$4,018,000.00		\$4,018,000.00

Contractor Ownership Characteristics:

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

Woman Business Enterprise (WBE)

Tennessee Service Disabled Veteran Enterprise (SDVBE)

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 RFP

Other

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

Veronica Coleman Ivh

Digitally signed by Veronlca Coleman Ivh
 DN: cn=Veronlca Coleman Ivh, o=Finance & Administration, ou=Office of Business and Finance,
 email=lisa.vonhaeger@tn.gov, c=US
 Date: 2018.06.18 14:24:57 -05'00'

[Handwritten signature]

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

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
STATE INSURANCE COMMITTEE,
LOCAL EDUCATION INSURANCE COMMITTEE,
LOCAL GOVERNMENT INSURANCE COMMITTEE
AND
IBM Corporation**

This Contract, by and between the State of Tennessee, State Insurance Committee, Local Education Committee, and Local Government Insurance Committee ("State") and International Business Machines Corporation (IBM), through Watson Health business unit ("Contractor"), is for the provision of a Health Care Information Decision Support System (DSS), as further defined in the "SCOPE." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is For-Profit Corporation
Contractor Place of Incorporation or Organization: New York
Contractor Edison Registration ID #

A. SCOPE:

Definitions. Defined terms shall be as follows and as set forth in the text of the Contract.

- a. **Affiliate:** A business organization or entity that, directly or indirectly, is owned or controlled by the Contractor, or owns or controls the Contractor, or is under common ownership or control with the Contractor.
- b. **Benefits Administration:** The division of the Tennessee Department of Finance & Administration that administers the Public Sector Plans.
- c. **Business Days:** Traditional workdays, including Monday, Tuesday, Wednesday, Thursday, and Friday. State Government Holidays are excluded.
- d. **Calendar Days:** All seven days of the week.
- e. **Claims Data:** Current and historical health care codes and information regarding Member services including medical, pharmacy, wellness, biometrics, and EAP which result in payment of services to providers and contractors.
- f. **CFR:** Code of Federal Regulations.
- g. **CPT:** Current Procedural Terminology coding system of nomenclature and five-digit codes for reporting of physician services, currently listed is ICD-9/ICD-10 but is subject to updates and amendments by the American Medical Association ("AMA").
- h. **Day(s):** Calendar day(s) unless otherwise specified in the Contract.
- i. **Decision Support System ("DSS"):** A database and query tool based on health care information and Claims Data which allows for analytics and executive decision making. Also known as an Executive Information System ("EIS").
- j. **EAP/BHO:** Employee Assistance Program/Behavioral Health Organization.
- k. **Grand Division:** A defined geographical area that includes specified counties in the State of Tennessee. The following counties constitute the Grand Divisions in Tennessee for this Contract:

*East Grand Division – Anderson, Bledsoe, Blount, Bradley, Campbell, Carter,
Claiborne, Cocke, Grainger, Greene, Hamblen, Hamilton, Hancock, Hawkins,*

Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Morgan, Polk, Rhea, Roane, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union, and Washington Counties

Middle Grand Division – Bedford, Cannon, Cheatham, Clay, Coffee, Cumberland, Davidson, DeKalb, Dickson, Fentress, Franklin, Giles, Grundy, Hickman, Houston, Humphreys, Jackson, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Montgomery, Moore, Overton, Perry, Pickett, Putnam, Robertson, Rutherford, Smith, Stewart, Sumner, Trousdale, Van Buren, Warren, Wayne, White, Williamson, and Wilson Counties

West Grand Division – Benton, Carroll, Chester, Crockett, Decatur, Dyer, Fayette, Gibson, Hardeman, Hardin, Haywood, Henderson, Henry, Lake, Lauderdale, Madison, McNairy, Obion, Shelby, Tipton, and Weakley Counties

- l. HEDIS: Healthcare Effectiveness Data and Information Set tool used to measure performance on important dimensions of care and service.
- m. In Writing: Written communication between the Parties, which may be in the form of an official memo, or documents sent via postal mail, fax, or email, or email communications.
- n. Information System(s): A combination of computing and telecommunications hardware and software that is used in: (a) the capture, storage, manipulation, movement, control, display, interchange and/or transmission of information, i.e., structured data (which may include digitized audio and video) and documents as well as non-digitized audio and video; and/or (b) the processing of information and non-digitized audio and video for the purposes of enabling and/or facilitating a business process or related transaction.
- o. Member: Eligible employees and their dependents, retirees and their dependents and/or survivors, and individuals qualified under The Federal Consolidated Omnibus Budget Reconciliation Act (“COBRA”) and their dependents, who are enrolled in the health plan options sponsored by the State, Local Education, and Local Government Insurance Committees.
- p. Operational Readiness Review: A pre- implementation audit conducted by the State, and/or its authorized representative, at least thirty (30) days prior to the go-live date in Contract section A.19. , to ensure the contractor is ready to deliver all required services.
- q. PBM: Pharmacy Benefits Manager is the State’s contractor which provides pharmacy benefit management services.
- r. Plan Documents: The legal publication that defines eligibility, enrollment, benefits and administrative rules of the Public Sector Plans.
- s. Plan Year: the twelve (12) month period that commences when a Member’s annual benefit elections take affect. Currently, the State’s Plan Year is coterminous with the calendar year.
- t. PMPM: Per Member per month.
- u. PMPY: Per Member per year.
- v. PPO: Preferred Provider Organization
- w. Protected Health Information (“PHI”): As defined in the HIPAA Privacy Rule, 45 CFR § 160.103.

- x. Public Sector Plans ("Plan"): Refers to all benefit options sponsored by the State, Local Government, and Local Education Insurance Committees (e.g. health plan options, life insurance, other voluntary benefits). The Plan is available to eligible employees and dependents of participating State (Central State and Higher Education), Local Government, and Local Education agencies.
 - y. RFP: Request for Proposals.
 - z. State, Local Government, and Local Education Insurance Committees: Policy making bodies for the State, Local Government, and Local Education agencies under the Public Sector Plans established under Tenn. Code Ann. § 8-27-101, 8-27-207, and 8-27-301 respectively.
 - aa. State Government Holidays: Days on which official holidays and commemorations as defined in Tenn. Code Ann. § 15-1-101 *et seq.* are observed.
 - bb. Third Party Administrator ("TPA"): The State's contracted medical contractor(s) responsible for processing medical claims and providing other administrative support for the contract.
- 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. The Contractor shall design, implement, maintain, and operate a DSS for the State's Public Sector Plans adhering to all service requirements detailed herein as well as all associated services and deliverables as required.
- a. Management Responsibility. Contractor's services may include advice and recommendations; but all decisions in connection with the implementation of such advice and recommendations shall be the responsibility of, and made by, the State. The Contractor will not perform management functions or make management decisions for the State.
- A.3. **Enrollment and Eligibility Data**
- a. To ensure that the State's enrollment records remain accurate and complete, the Contractor shall, unless otherwise directed by the State, retrieve, via secure medium monthly enrollment files from the State, in the State's Edison enrollment file (currently a .CSV file format). Files will include full population records for all Members with several fields customized by the State. (Previous files have been in the format of ANSI ASC X12N, Benefit Enrollment and Maintenance 834 (5010), version 005010X220A1 and can replace current .CSV format).
 - b. The Contractor shall accept from the State monthly enrollment and eligibility data in one format consisting of up to and no more than 350,000 covered lives.
 - c. The Contractor shall accept from the State and load to DSS five (5) working/rolling years of eligibility and enrollment data as well as historical data. In addition for each month the Contractor shall accept and load eligibility and enrollment data provided by the State in the electronic format used by the State. When the Contractor requires the exchange of PHI with the State, the State requires the use of second level authentication using the State's standard software product which supports Public Key Infrastructure. The Contractor shall design a solution and submitted to the State In Writing for approval, to connect to the State's secure file transfer protocol ("SFTP") server using a combination of the password and the authentication certificate. The initial sign-on and transmission testing will use a password. Certificate testing may also be performed during the test cycle. Subsequent production sign-on will be done using the authentication certificate. The Contractor will then download the file and decrypt the file in its secure environment.

Additionally, federal standards require encryption of all electronic protected health data at rest as well as during transmission. The State uses public key encryption with Advanced Encryption Standard to encrypt PHI. If the State plans to adopt a different or additional encryption standard or tool in the future, the State will notify the Contractor and the Contractor shall comply. The Contractor shall establish and maintain the security of all Confidential State Data according to all applicable state and federal standards within thirty (30) days of the State's use of the new or additional encryption standard or tool.

- d. Upon request by the State, not to exceed four (4) times annually, the Contractor shall submit to the State, in a secure manner, its full file of all Members, by which the State may conduct a data match against the State's Edison database. The purpose of this data match will be to determine the extent to which the Contractor is maintaining its database of State Members. The State will communicate results of this match to the Contractor, including any Contractor requirements, and associated timeframes, for resolving the discrepancies identified by the data match.

A.4. Claims, Wellness and Voluntary Benefit Data

- a. The Contractor shall work with the State, wellness contractor(s), voluntary benefit contractor(s) and claims administrators toward providing the necessary data based on Claims Data for State use on a monthly basis. In addition to Claims Data, the data will also include lab results, other information derived from wellness exams and questionnaires, and the State's other contractors for the Plan to provide monthly claim, wellness, and EAP data to the Contractor no later than the 15th of the following month. At the discretion of the State, Voluntary benefit contractors may send data files containing information related to dental, vision, disability insurance, life insurance, etc.
- b. The Contractor shall accept and load five (5) years of historical Claims Data to the database from any possible previous DSS contractor, if applicable, and accept and load for each month during the Term Claims Data in the Contractor's format from each of the State's self-insured claims administrators. The Contractor shall import data into the Contractor's database supporting DSS on-line access. Contractor shall load the monthly claims, wellness, and EAP data within fifteen (15) business days of receipt. Contractor shall accept, monthly, during the Term up to a maximum of twenty (20) individual Claims Data format conversions from the State's TPAs, PBMs, BHO/EAP providers, and wellness contractors.
- c. The Contractor shall make all Claims Data available for use on the DSS no later than 45 days from receipt of the monthly update from the claims administrator contractor(s).

A.5. Historical Data

- a. The Contractor shall, at minimum, import up to ten (10) years of historical data from the State's current DSS contractor through a methodology satisfactory to the State and at no additional cost to the State during implementation to be completed no later than December 31, 2018. Historical data shall include the historical plan Claims Data, enrollment and eligibility, EAP/BHO, biometric and wellness data beyond the most recent five (5) years to be loaded per Contract section A.4.b.
- b. The Contractor shall maintain all historical data received during the Term and provide a methodology satisfactory to the State for the archiving and retrieval of historical data at no cost as stated in Contract section A.5.a.
- c. The Contractor shall provide the most recent five (5) years of history for the appropriate plans in the database, maintaining at least sixty (60) months of paid Claims Data and sixty (60) months of incurred claims (rolling time periods) data through the DSS on-line access at all times.

A.6. Ownership of Data

- a. The State owns all the data submitted or produced under this Contract. Any such data may not be used by any entity for any purpose other than performance of this Contract by Contractor without written permission of the State. If a need arises by the Contractor to use the data provided under this Contract outside the scope of the Contract, a written request detailing the nature and scope of the data to be used must be submitted to the State and the Contractor shall receive written approval by the State before such data can be used.
- b. At the termination of the Contract, the Contractor shall send an electronic copy of all Confidential State Data from the State claims administrators and other Benefits Administration contractors during the Term to the State's new contractor. Such data shall be sent at least sixty (60) days before Contract termination, with an update sent no later than thirty (30) days following Contract termination.
- c. The contractor shall use the data only to accomplish the nature and scope of this contract. The Contractor is expressly prohibited from sharing or publishing State information and reports or releasing such information to external entities, affiliates, parent company, or subsidiaries without the prior written consent of the State. If a need arises by the contractor to use the data provided under this contract outside the scope of the contract, a written request detailing the nature and scope of the data to be used has to be submitted to the State and the Contractor will receive written approval by the State before such data can be used.

A.7. User Access & Availability

- a. The Contractor shall provide on-line, web-based computer-to-computer access to the DSS services via a microcomputer platform under the Windows operating system for use of the personal computer of the designated Benefits Administration staff as well as specific users with the actuarial contractor. Access must be made through an encrypted virtual private network ("VPN") tunnel. The web-based access shall be provided to a maximum of ten (10) simultaneous, on-line State users. The State may have as many users as necessary. These users would have the full drill down query and analysis capabilities of the DSS, with the ability to generate user-developed reports.
- b. The Contractor shall provide security clearances so that certain staff within Benefits Administration's Program Integrity Group has individual Member level access while other users on the DSS only have blinded Member information available.
- c. The Contractor shall, through the EIS portion of DSS, provide on-line computer-to-computer executive management reporting and analysis on personal computers (PC's) for a maximum of eight (8) simultaneous users. The reporting and analysis tools shall include, at a minimum, prepackaged reports, query, online analytical processing, and scenario planning tools.
- d. The Contractor shall assure that the DSS will be available to State users ninety-nine percent (99%) of the time between the hours of 6:00 a.m. and 7:00 p.m. Central Time Monday through Saturday calculated on a thirty (30) day basis. The State will allow the Contractor to exclude the time spent performing regular maintenance and database updates.
- e. The Contractor shall ensure that internal systems within its control that support its data exchanges with the State and the State's contractors are available and operational according to the specifications in Contract section A.12 and schedule associated with each exchange.

A.8. Upgrades or Enhancements

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

A.9. Quality Assurance Program for Claims Administrators and Wellness Contractor(s)

- a. The Contractor shall maintain a data quality assurance program to identify and assist in correcting current and future problems with the data submitted by the claims administrators and the State. Standard Contractor-provided data quality reports as well as various custom data quality thresholds applicable to the State of Tennessee should be provided to the State after each monthly database update. These custom data quality threshold reports will allow the State to determine the data quality for each of its health plan carriers and the basis of these measures will be used in the State's contracts with its health insurance carriers. In the course of doing business, it may be necessary for the State to change the types of data quality upon which it measures its TPAs, PBM, BHO, and wellness contractors as these contracts come up for renewal. The State will work with the Contractor to develop the fields or metrics best suited for measurement of data quality.
- b. Upon receipt of monthly other Benefits Administration contractor transmissions to the Contractor, the Contractor shall run data variance reports and compare data received against 12-18 months of historical data by fund, plan, etc. to catch any possible data omissions or errors in contractor data. If the Contractor detects an error with the transmission file or missing data, an account representative shall notify the State data analyst, the State compliance specialist, the Contractor account manager, and the applicable State program director of the issue within seven (7) business days of loading data files. The State will provide the Contractor an updated personnel list for such purposes.
- c. Upon each monthly update to the State's database, the Contractor shall prepare and disseminate to the appropriate State personnel a data quality spreadsheet which details various data quality measures for each of the State's health insurance carriers. The Contractor shall submit this document to the State no later than thirty (30) days after the database updates each calendar month; refer to RFP Appendix 7.5(Data Quality Spreadsheet).
- d. The Contractor shall prepare and disseminate to the appropriate State personnel a data quality spreadsheet which details various data quality measures for each of the State's health insurance carriers on a quarterly basis. The Contractor shall submit this document to the State no later than thirty (30) days after the database updates each quarter's worth of data; refer to RFP Appendix 7.5 (Data Quality Spreadsheet).

A.10. Contractor Quality Assurance Program

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

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

A.11. DSS Specifications

The Contractor is required, during the Term, to provide the following capabilities and functionality through the DSS consistent with the data provided by the State and its claim and program administrators.

The Contractor shall design, develop, and operate a single customized, fully integrated DSS running at a Contractor facility, using Contractor hardware/software, in an Application Service Provider ("ASP") mode. The DSS should be completely operational and ready for State use at least one (1) month prior to the Go-Live date in Contract section A.18.2. The DSS is required to:

a. DSS User Availability

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

b. DSS Ability to Transform and Link Data

- (1) Link all claims related to a hospital admission.

- (2) Link all claims related to outpatient episodes of care consistent with the Contractor's definition of episodes of care.
- (3) Link all eligible dependents with contract holder.
- (4) Link eligibility data to Claims Data.
- (5) Link medical Claims Data to pharmacy claims by individual, family, and sub-groups.
- (6) Provide cross-links to all participant and provider demographic and geographic indicators.
- (7) Provide cross-links to all claims related to Ambulatory Surgical Centers ("ASC"), and outpatient hospital surgical settings reimbursed on an ASC basis.
- (8) Provide breakout of all outpatient prescription drug data by name and code using National Drug Code ("NDC") therapeutic groups, therapeutic classes, Generic Product Identifier ("GPI"), and GPI subgroups (both number value and name), as well as whether a drug is classified as a generic, brand, etc.
- (9) Link medical, pharmacy, behavioral health, EAP, wellness, biometric, and disease management by Member.
- (10) Link to utilization by various lots of data such as actives, retirees, COBRA participants, plan type, plan group, etc. (defined by classes such as actives versus retirees/COBRA/Medicare eligible, etc.) and all other divisions of contract types (define employee coverage across eligibility variables), and plan and agencies.
- (11) Link claims information at the Member level and plan level, along with enrollment information, wellness data, biometrics, and carve-out programs including pharmacy, mental health, wellness, biometrics, substance abuse and disease management.
- (12) Link Major Diagnostic Categories ("MDC") to inpatient cases and outpatient services.
- (13) Link Diagnostic Related Groups ("DRG") to inpatient cases. Contractor shall provide information on the methodology used to group DRGs utilized during the Term.
 - i. The Contractor shall inform the State In Writing at least ninety (90) days prior to a DRG grouping change.
 - ii. In the event of any anticipated DRG grouper software change, the Contractor's written notification should also provide justification for the switch as well as the benefits of the switch/new software to the State.
- (14) Link International Classification of Diseases ("ICD")-9 and/or ICD-10 codes based on the State Physicians' Current Procedural Terminology, 2016 Edition, or corrected, amended, or replacement of CPT, to inpatient and outpatient physician and hospital cases and outpatient medical services. CPT is copyrighted by the AMA and all notices of proprietary rights, including trademark and copyright in CPT must appear on all permitted back-up or archival copies made by the user; any printout or other output from the Electronic Media that contains any portion of CPT (other than that which would constitute fair use, internal reports and claim forms for specific patients and external reports distributed outside of your entity containing less than twenty (20) CPT codes and/or descriptions) will display the following:
 - i. CPT only © 2012 American Medical Association. All Rights Reserved.
 - ii. The year specified in the copyright notices must conform to future CPT updates.
- (15) Link provider directory with specific identifiers such as the National Provider Identifier ("NPI"), allowing for consistent reporting and provider identification across health plans, thus negating the need for provider "home grown" codes or provider identities. Should include but not be limited to provider first and last name or facility name, address, city, state, zip, telephone number, hospital name, hospital identification number, hospital system (if applicable), address, city, state, zip, telephone number, etc.
- (16) Link all information back to Data Source (carrier or TPA name, PBM name, etc.).
- (17) Link Claims Data received to TPA independently of eligibility data.

- (18) Link or update any codes based on content of any "National Correct Coding Policy" included is with the Centers for Medicare and Medicaid Services ("CMS").
- c. DSS ability to compare, contrast, and evaluate all Public Sector Plan participants as a book of business by (including but not limited to):
- (1) Contractor's Name or Data Source (e.g. CIGNA, BCBSTN, CAREMARK, OPTUM, etc.).
 - (2) Business Purpose (e.g. Medical, PBM, BHO/EAP, wellness Data, etc.).
 - (3) Region (e.g. East, Middle, West, etc.).
 - (4) High Cost and Low Cost Provider (e.g. Provider and Network Type)
 - (5) Funding Type (e.g. Fund 51000 -State Retired, Fund 52000 -Local Ed Retired, Fund 53000 -Local Gov Retired, Fund 55000 - State Active & COBRA, Fund 56000 - Local Ed Active & COBRA, Fund 56000 - Local Ed Active & COBRA, Fund 59000 - Retired Med Sup).
 - (6) Division (State, Local Education, Local Government, Higher Education).
 - (7) Member's home zip code(s)
 - (8) Employee status (e.g. Active, Retired, and COBRA).
 - (9) Member Coverage Type (e.g. Employee, Employee+Child(ren), Employee+Spouse+Child(ren)).
 - (10) Plan Type (current plans are Premier PPO, Standard PPO, Limited PPO, CDHP/HSA) with ability to add more plan options in the future as needed due to plan changes.
 - (11) Plan Year (e.g. Plan Year 2010, Plan Year 2011).
 - (12) Create Budget Code using first three (3) digits of State's mail drop code in Edison (e.g. 31704xxxx where 317 equals Finance & Administration). Create with both number value and name, respectively.
 - (13) Create Agency Code using three (3)-digit Budget Code plus digits four (4) and five (5) of Edison mail drop code (e.g. 31704xxxxx where 317 plus 04 equals Finance & Administration, Benefits Administration). Create with both number value and name, respectively. State will provide agency names for all State, Local Education and Local Government agencies participating in the State-sponsored plans.
 - (14) Establish ID that is unique to each plan individual and would remain the same for this plan Member as long as they are enrolled in the State-sponsored plans, regardless of employee status, health plan in which they are enrolled or agency/group for which they work.
 - (15) Establish ID that is unique to the subscriber (e.g. Contract holder, employee) and their associated dependents and would remain the same for this subscriber and their associated dependents as long as they are enrolled in the State-sponsored plans, regardless of employee status, health plan in which they are enrolled or agency/group for which they work.
 - (16) Show the cost and use performance of specified physicians and hospitals. The DSS should allow for the adjustment of case-mix in providing accurate comparisons among providers.
 - (17) Differentiate the use of in-network and out-of-network services by Members.
 - (18) The specific negotiated payment discount arrangements (e.g. charge submitted, discount, amount allowed, Member share, plan pay out).
 - (19) Calculate each of the negotiated payment discount arrangements:
 - a. Charge Submitted Med & Rx
 - b. Amount Allowed Med & Rx
 - c. Copay Med & Rx
 - d. Coinsurance Med & Rx
 - e. Out of Pocket Med & Rx
 - f. Net Pay Med & Rx
 - g. Charge Submitted Medical
 - h. Charge Submitted Rx
 - i. Amount Allowed Medical

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

d. DSS Ability for interactive data selection:

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

e. DSS/EIS Ability for interactive modeling capabilities, wherever the Contractor's current capability lies, shall be able to perform the following functions:

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

providers. A quality measure should be based on the Centers for Medicare and Medicaid Services ("CMS") mortality statistics.

- f. DSS/EIS Ability for monitoring capabilities, the Contractor's shall be able to provide reporting capability for monitoring the following areas:
 - (1) Third party claims administrators and/or insurers.
 - (2) Providers such as physicians, hospitals, other health care providers, and provider networks.
 - (3) Cost containment programs: drugs, variable deductibles, outpatient, and physician benefits.
 - (4) Wellness program benefits to the health plan.
 - (5) Pharmacy benefits manager.
 - (6) Quality measures such as HEDIS reporting across a broad range of adult and children related variables.
 - (7) Disease management programs.
 - (8) Fraud, waste, and abuse.

A.12. Custom/Ad-Hoc and Standard Reporting Specifications

- a. DSS must provide a mechanism for creating user-designed reports.
- b. DSS must contain a custom reporting module to enable the State to create custom/ad hoc report formats and select fields to be included in the reports with the following minimum options:
 - (1) Tabulate the values of various fields of information against other fields (for example, tabulation of submitted charges, discounts provided, allowed amounts, deductibles, copayments, coinsurance, payments, and average charge per case by age group of the patient) and tabulate values of one field by multiple ranges or another field (e.g. tabulation of total payments by location and by dependent status).
 - (2) Ability to use eligibility and claims cost data to provide PMPM and PMPY measurements for various topics (e.g. Net Payment, Allowed Amount, Net Cost Drugs, Net Cost Inpatient Hospital, Net Cost Professional Care).
 - (3) Provide functionality to perform ad hoc reporting and on-line ad hoc queries from a PC when accessing the proposed database. The system must provide query and report development functions.
 - (4) Combine the above options with data sub-setting to provide ad hoc reporting flexibility.
 - (5) Ability to save and store user-defined subsets to a library or other source for use at a future time.
 - (6) Automatic online capability to calculate case-mix, age-sex and severity adjustments to ensure accuracy of analysis.
- c. The Contractor shall provide a wide range of pre-defined reports such as clinical based reports, financial reports, incurred but not reported claims triangle reports, and various cost and utilization reports to include both current and historical data.
- d. Produce cost trend reports on inpatient and outpatient hospital, professional, or surgical charges/payments, in total, per case, per Member (per capita), or per employee. Must have trend reporting in components of total payments such as deductibles, co-payments, and cost-of-benefit.
- e. Produce reports on submitted charges, discounts provided, disallowed amounts, deductibles, copayments, coinsurance, total, etc., at both allowed amount and net amount levels.

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

(4) Primary care physician's region of practice (such as zip code, county, etc.).

- n. Generate utilization and trend reports on drug data by brand, generic substitutes, and generics and be able to link this to medical claims as necessary.
- o. Provide pharmacy industry reference data (Redbook, First Databank, or Medi-Span) to support analysis by therapeutic group and class, comparisons to average wholesale price by drug name and NDC code, assessment of generic equivalents, etc. State shall have the ability to look up drug names by actual drug name or product name within the database and be able to report on these as such.
- p. Provide reports addressing the quality of data provided by the third party claims administrator and the pharmacy benefit manager indicating comparisons to industry norms.
- q. Provide examples of standard reports and a description of each report along with a reconciliation matrix of how reports relate to one another.

A.13. Consulting and Analytical Support

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

A.14. Staffing Requirements

- a. The Contractor warrants and represents that all persons assigned to this Contract shall be fully qualified to perform the work required herein.
- b. The Contractor shall identify the executive and professional personnel who will be assigned to this project and state their duties and responsibilities. Resumes shall be provided that include, for each individual identified, the relevant experience in the area of the project they will undertake. Resumes of technical consulting and analytical personnel should include experience in the development language and environment of the systems proposed.
- c. Of the identified personnel listed above, the Contractor shall designate a senior account representative/account manager, junior account representative, and senior data analyst to be responsible for day to day inquiries/technical support for the State. These identified personnel must be accessible by both email and phone to State personnel, Monday-Friday between the hours of 8:00 a.m. – 4:30 p.m. CT. The Contractor shall also ensure that any State initiated contact not immediately answered be responded to within twenty-four (24) hours of the initial contact attempt. The response shall be in the form of a personal email, not auto-generated, or phone call from any of the three (3) Contractor personnel listed above.
- d. The Contractor shall ensure that its personnel engaged in this Contract receive initial and ongoing training regarding all applicable requirements of this Contract and the Public Sector Plans, receive comprehensive orientations and training regarding their functions, are knowledgeable about the Contractor's operations relating to the Public Sector Plans, and are knowledgeable about their functions and how those functions relate to the requirements of this Contract.
- e. The Contractor shall have an ongoing dedicated, full-time account team, as specified in the Contractor's Proposal in response to RFP # 31786-00141 and approved by the State, which can provide daily operational support as well as strategic planning and analysis. All members of the account team shall have previous experience administering DSS/EIS for large employers. The account team shall be available for consultation with the State during the hours of 8:00 a.m. to 4:30 p.m. CT, Monday through Friday, as required to fulfill the scope of services specified in this Contract. The senior account representative/account manager shall also be available via cell phone and email after hours, including weekends.
- f. The Contractor shall designate a dedicated full time account manager as a member of the account team. The dedicated account manager shall have a minimum of three (3) years of experience with decision support systems. He or she shall have the responsibility and authority to manage the entire range of services specified in this Contract and shall respond promptly to changes in procedures, or general administrative problems identified by the State. At a minimum, the account manager shall meet with the State once a month and more often if required by the State. At its discretion, the State may allow the Contractor to participate in such meetings by teleconference.
- g. The State shall have the right to approve or disapprove the Contractor's key personnel assigned to this Contract, approve or disapprove any proposed changes in key staff or to require the removal or assignment of any key Contractor employee or subcontractor personnel found unacceptable by the State at any time during the term of this contract.
- h. Key personnel commitments made in the Contractor's proposal shall not be changed unless prior approved by the State In Writing. The Contractor shall notify the State at least thirty (30) business days in advance, or as soon as the information is available, of proposed changes and shall submit justification (including proposed substitutions) in

sufficient detail regarding education and experience equal to previous staff to the State to evaluate the impact upon the Contract.

- i. If any key position becomes vacant, the Contractor shall provide a replacement with commensurate experience and required professional credentials within sixty (60) days of the vacancy unless the State grants an exception to this requirement In Writing.
- j. The Contractor shall survey the DSS users annually in January to determine the State's satisfaction with the account team and report the results of the survey to the State (see Attachment C.1, Account Team Satisfaction Survey Report).
- k. Status updates for continued compliance to be held through the duration of the Contract. Monthly meetings will be by phone to address updates to the State, account management team, and any deliverables. Quarterly meetings will be in person at the State to discuss planning and DSS updates, upgrades and changes.
- l. Upon written request of the State, the Contractor shall provide the required specialized consulting and analytical support in accordance with the following professional designations and descriptions:
 - (1) **Account Client Services Director** – manages the relationship between the State and Contractor and is responsible for the quality of that relationship. The Client Services Director also leads the team that supports the State's use and application of the DSS to identify opportunities to better manage the cost and quality of the healthcare services provided to the State's plan participants. The Account Client Services Director is responsible for ensuring that the State is entirely satisfied with the services, products, and solutions provided to the State.
 - (2) **Client Services Manager** – is responsible for the day-to-day activities related to the ongoing support for the State relationship. The Client Services Manager provides leadership on consulting engagements and collaborates with team members to ensure effective integration with consulting and service delivery capabilities. The Client Services Manager also monitors and manages DSS user satisfaction and recommends appropriate strategies, tactics and operational initiatives to continuously enhance customer satisfaction.
 - (3) **Consulting Manager** –provides expertise for both clinical and statistical data analysis using the Decision Support Product and actively participates in the identification of business needs, as well as the design of the database and reports to support those business needs. The Consulting Manager develops an analytic agenda to support the State's strategic objectives, scoping and pricing analytic projects to manage project delivery time and ensure deliverables of the highest quality. In addition, the Consulting Manager translates analytic work to proactively assist the State and answer related questions.
 - (4) **Consultant/Data Manager** – responsible for communicating data requirements and making certain data is submitted and formatted in a manner that will meet the State's analytic needs. In addition, the Consultant/Data Manager coordinates routine updates with the Contractor's production team and the State. The Consultant/Data Manager also communicates any database changes that occur with version upgrades and helps the State plan for any extract changes made to address new reporting needs.
 - (5) **Analyst/Programmer (Analytic Consultant)** – provides analytic support and expertise for both clinical and statistical data analysis using DSS. The Analytic Consultant actively participates in the identification of business needs, as well as the design of the database and reports to support those business needs. The Analytic Consultant can either support the State's users in use of DSS or perform the analytic work themselves, depending on the State's needs and the sophistication of their users.

A.15. Initial Training

- a. The Contractor shall provide complete initial onsite DSS training, at the State's offices or at the Contractor's offices based on the State's preference, by a qualified trainer with at least two (2) years of experience in training in the DSS to be utilized by the State. The cost of said training shall be borne by the Contractor, including, if applicable, a reimbursement of any travel expenses and a waiver of any required registration fees. Training shall be for up to ten (10) designated State employees and cost of training and waiver of any required registration fees for up to two (2) actuarial contracted representatives, or contracted representatives. Initial training schedule shall provide for the completion of training at least one full month prior to full system Go-Live and shall include the following:

- (1) Course outline including objectives, scope and subject material to be taught.
- (2) Hands-on detailed applications training with emphasis on user generated reporting.
- (3) Use of DSS and distribution of individual user manuals and related documentation for each user.
- (4) Course material to include manuals and texts necessary for training which shall be retained by each attendee.

Hands-on detailed applications training with emphasis on executive level, user generated reporting, system access, and standard reports, graphing, and trending capabilities available in the EIS portion of DSS.

A.16. Ongoing Training

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

A.17. Project Implementation

- a. The Contractor is responsible for implementing the DSS during the implementation period commencing with the Contract award date and through all identified dates in Contract section A.18 below.
- b. The Contractor's programs, services and systems, shall be fully operational on the applicable dates specified in Contract Section A.18. (See also Contract Attachment C.) All of programs, services and systems in this Contract shall be operational by January 1, 2019 ("Go-Live" date).
- c. The Contractor shall implement the Information Systems and other processes required to perform all services described herein.
- d. The Contractor shall have a designated full-time implementation team to service this account. All of the Contractor's implementation team members shall have participated,

as team members, in the implementation of a DSS for at least one (1) other large employer (i.e., an employer plan with at least 30,000 members). The Contractor's implementation team shall include a full-time, dedicated project manager ready to begin work immediately following the Effective Date until thirty (30) days after the Go-Live date. The team shall also include an account manager dedicated to this Contract, who will be the main contact with the State for all of the day-to-day matters relating to the implementation and ongoing operations of this Contract. Also, the Contractor shall assign a project coordinator (i) to serve as backup to the account manager and (ii) to coordinate activities among the Contractor and the State's existing contractors and all the internal and external participating and affected entities. All implementation team members that the Contractor referenced in its proposal response to RFP #31786-00141, Attachment 6.2, Section C.2 4 shall be available as needed during the implementation as well as thirty (30) days after the Go-Live date.

- e. All key Contractor project staff shall attend a project kick-off meeting at the State of Tennessee offices in Nashville, TN within the first twenty-one (21) days after the Effective Date.
- f. At least seventy-five (75) days prior to the Go-Live date, the Contractor shall complete testing of the transmission, receipt, and loading of the eligibility/enrollment file from the State. No later than one (1) month prior to the Go-Live date, the Contractor shall certify In Writing to the State that the Contractor understands and can fully accept and utilize the eligibility/enrollment files as provided by the State specified in Contract section A.17.j
- g. At least forty-five (45) days prior to the Go-Live date, the Contractor shall complete testing of the transmission, receipt, and loading of the data files from the State's other health contractors, (i.e. TPA's, PBM, EAP/BHO, wellness contractor). No later than one (1) month prior to the Go-Live date, the Contractor shall certify In Writing to the State that the Contractor understands and can fully accept and utilize the data files as provided by the State's health contractors. (See Contract Attachment B.5.)
- h. The Contractor shall provide a project implementation document to the State no later than thirty (30) days after the Contract start date. The Contractor shall maintain the plan and ensure that it is updated at least daily. The plan shall be in a Microsoft Excel- or Microsoft Project-formatted file and shall be made available to State staff as it is updated or upon the State's request.
- i. The project implementation plan shall comprehensively detail all aspects of implementation, which includes all tasks with deliverable dates necessary to satisfactorily implement all pieces of the DSS as specified in Contract section A.19. 18. The plan shall also include a description of the members on the implementation team and their roles with respect to each item/task/function. The plan shall include a detailed timeline description of all work to be performed both by the Contractor and the State. The implementation plan shall also provide specific details on the following:
 - (1) Identification, timing, and assignment of significant responsibilities and tasks;
 - (2) Names and titles of key implementation Contractor staff;
 - (3) Identification and timing of the State's responsibilities;
 - (4) Data requirements (indicate type and format of data required);
 - (5) Identification and timing for the testing, acceptance and certification of exchange of data between the Contractor and Edison and other relevant information
 - (6) Schedule of in-person meetings and conference calls with the State; and
 - (7) Transition requirements with the incumbent decision support system Contractor.
- j. The Contractor's implementation plan shall require written approval by the State as specified in Contract section A.18.4.

- k. The Contractor shall provide for a comprehensive Operational Readiness Review (pre-implementation audit) by the State, and/or its authorized representative, at least thirty (30) days prior to the Go-Live date as specified in Contract section A.19. 18. The review by the State, and/or its authorized representative, may include, but not be limited to, an onsite review of the Contractor's operational readiness for all services required in this Contract (e.g., reporting requirements, EIS, training, data integration, acceptance of the state's enrollment file, and quality assurance report templates). The review may also include desk reviews of documentation that includes but is not limited to:
- (1) Policy and Procedures Manual(s);
 - (2) Information Systems documentation and business logic the Contractor plans or determines as the internal method for storing data; and
 - (3) The ability to provide and explain the processes of any and all deliverables required under this Contract.
- l. At its discretion, the State may conduct an additional, pre-implementation review of the Contractor's progress towards fulfilling the requirements of this Contract. Such review by the State, and/or its authorized representative, may include both onsite and desk reviews, including but not limited to staff interviews, DSS demonstrations, DSS testing, and document review.
- m. During pre-scheduled State onsite visits as part of readiness review or an implementation review, the Contractor shall provide onsite workspace and access to a telephone, fax, printer, copy machine, computer, and Internet connection. The Contractor's staff members shall be available to the State officials to answer questions during these visits.
- n. In a format determined by the State, the Contractor shall conduct status meetings with the State concerning project development, project implementation and Contractor performance at least once a week during implementation and for the two (2) weeks prior to and the first month following the Go-Live date, unless otherwise approved by the State In Writing.
- o. No later than forty-five (45) days post-implementation, the Contractor shall provide the State with an implementation performance assessment survey, to be completed by the State and results provided to the Contractor. This assessment will be used to document the State's satisfaction with the implementation process and identify any necessary corrective action(s).

A.18. Due Dates for Project Deliverables/Milestones

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

Deliverables/Milestones:	Contract Reference(s):	Deliverable Due Dates & Milestone Target Dates:
Implementation		
1. Programs, service, and information systems Information Systems are fully operational	A.11.	December 31, 2018
2. Go-live	A.11.	January 1, 2019
3. Kick-off meeting for all key Contractor staff	A.17.d	Within the first 21 days after Contract effective date
4. Implementation plan	A.17.g	30 days after Contract start date (on or before)
5. State readiness review	A.17.j	December 1, 2018 (on or before)

	Deliverables/Milestones:	Contract Reference(s):	Deliverable Due Dates & Milestone Target Dates:
6.	Weekly Status Meetings	A.17.m	Contract start date through February 20, 2019
7.	Implementation Performance Assessment	A.17.n	February 20, 2019 (on or before)
Quality Assurance Program			
8.	Data Quality Spreadsheet	A.9.b., A.19.c	Monthly and Quarterly after Go-Live.
9.	System Satisfaction Survey tool	A.10.e and Attachment C	No less than annually
Coordination and Collaboration			
10.	Monthly Operational Meetings	A.14.f and k	Monthly after Go-Live
11.	Quarterly meetings with the State	A.14.k.	Quarterly after Go-Live
Staffing			
12.	Account Team Satisfaction Survey	A.14.j	Annually in January
13.	Account Team Satisfaction Survey Report	A.14.j and Attachment C.1	Annually
Information Systems			
14.	BC-DR Test Results	E.9	December 1, 2018
15.	Business Continuity/Disaster Recovery (BC-DR) Results Report	E. 9 and Attachment C.2	December 1, 2018 and then annually in January beginning in 2019
16.	Duplicate set of data records	E.9	Daily, and maintain for sixty (60) days from date of creation.
Data Integration & Technical Requirements			
17.	Completion of eligibility file testing	A.17.e	October 17, 2018 (on or before)
18.	Edison System Interface/Eligibility file acceptance (Written verification that Contractor can fully accept and utilize the eligibility/enrollment files as provided by the State)	A.17.e	December 1, 2018 (on or before)
19.	State enrollment data match	A.3.d	Up to four (4) times annually, as requested by the State
20.	Completion of testing files from other contractors	A.17.f	November 14, 2018 (on or before)
21.	Interface with other contractors/file acceptance	A.17.f	December 1, 2018
22.	Transmission of data and records New Contractor	A.6.b	Within 60 days' notice of contract termination
Reporting & Systems Access			
23.	Reports specified in Contract Attachment C	A.3 to A.18 and Contract Attachment C	As specified in Contract Attachment C
24.	EIS & Reporting system access	A.12.	January 1 2019 (on or before)

Deliverables/Milestones:	Contract Reference(s):	Deliverable Due Dates & Milestone Target Dates:
25. State staff systems training	A.15.	December 1, 2018 (on or before)
26. Maintenance & Operation Plan	A.19 and Contract Attachment C	January 1, 2019 (on or before), & upon any plan revisions

A.19. Project Management Plan for Maintenance & Operations

- a. The Contractor is responsible for providing the State with a detailed Maintenance and Operations (“M&O”) plan report (See Contract Attachment C Section 3). M&O commences on the date of full DSS functionality, no later than January 1, 2019.
- b. On the date of Contract implementation, M&O shall include a project organizational chart depicting the interrelationships and responsibilities between the Contractor’s staff and its subcontractors including reporting relationships.
- c. M&O plan will address the following requirements:
 - (1) The Contractor will have the qualified staff as listed in Contract section A.14.
 - (2) Contractor staff will be readily available by phone during Benefits Administration normal operating hours to assist users in the use of the DSS, including all features, functions and capabilities. These staff shall be qualified to assist in (1) providing practical training, (2) solving particular problems, and (3) assist in running reports requiring additional functionality.
 - (3) The Contractor staff will be readily available to assist the users in operating the DSS to study and research particular issues or problems. This would include walking the user through given steps to complete the task, and suggesting alternative solutions.
 - (4) The Contractor staff will assist the users in understanding the meaning of underlying health care data and information conveyed by the DSS and in understanding the practical uses of such data and information.
 - (5) The staff will assist users by suggesting new and alternative approaches in the use of the DSS system and health care data.
 - (6) The Contractor staff will assist users in utilizing the DSS to view or present the data and information in alternative ways. Consulting and analytical support are an integral and critical component of the services being requested from the contractor.
 - (7) The Contractor shall provide the necessary staff to address routine inquiries, prepare reports, and work with the State’s staff on a continuing basis to assist staff in fully utilizing the DSS capabilities.
 - (8) The Contractor is expected to routinely review State’s data and provide detail reports and advice/suggestions regarding areas where additional analysis may be warranted, reduction of costs may be identified.
 - (9) The Contractor will review Claims Data trends as appropriate.
 - (10) The Contractor will provide the State with a Monthly Status Report no later than fifteen (15) days after the close of each month as well as a Quarterly Status Report no later than fifteen (15) days after the end of a quarter.
 - (11) The Contractor will hold annual meeting with the State to review results, trends, opportunities.
 - (12) The Contractor will notify the State in advance of any and all changes including, but not limited to, staffing, system, operational or process changes affecting the DSS.

A.20. 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.

B. TERM OF CONTRACT:

This Contract shall be effective on July 1, 2018 ("Effective Date") and extend December 31, 2023 ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Four Million Eighteen Thousand Dollars (\$4,018,000.00) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.
- C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.
 - a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
 - b. For the implementation of the DSS, the Contractor shall be compensated a one-time flat rate as shown on the table below:

Service Description	Amount (per compensable increment)
Implementation Fee (Implementation Fee shall be paid once	\$150,000.00

implementation is complete and accepted by the State).

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

Service Description	Amount (per compensable increment as detailed)				
	CY 2019	CY 2020	CY 2021	CY 2022	CY 2023
General Fee (ALL services required under Contract Scope of Services (excluding additional specialized consulting and analytical support than may be requested).	\$0.13 /PMPM	\$0.13 /PMPM	\$0.14 /PMPM	\$0.14 /PMPM	\$0.15 /PMPM

- d. Professional Service Fees. The Contractor shall be compensated for the additional specialized consulting and analytical support as requested and performed pursuant to Contract section A.13.c based upon the following payment rates.

Professional Service Fees	Payment Rate Per Hour Per Contract Year				
	CY 2019	CY 2020	CY 2021	CY 2022	CY 2023
Account Client Services Director (as requested pursuant to Contract section A.14.I (1).	\$338.00 / Per Hour	\$344.76 / Per Hour	\$351.66 / Per Hour	\$358.69 / Per Hour	\$365.86 / Per Hour
Client Services Manager (as requested pursuant to Contract section A.14.I (2).	\$232.00 / Per Hour	\$236.64 / Per Hour	\$241.37 / Per Hour	\$246.2 / Per Hour	\$251.12 / Per Hour
Consulting Manager (as requested pursuant to Contract section A.14.I (3).	\$232.00 / Per Hour	\$236.64 / Per Hour	\$241.37 / Per Hour	\$246.2 / Per Hour	\$251.12 / Per Hour
Consultant / Data Manager (as requested pursuant to Contract section A.14.I (4).	\$159.00 / Per Hour	\$162.18 / Per Hour	\$165.42 / Per Hour	\$168.73 / Per Hour	\$172.10 / Per Hour
Analyst / Programmer (as requested pursuant to Contract section A.14.I (5).	\$119.00 / Per Hour	\$121.38 / Per Hour	\$123.81 / Per Hour	\$126.29 / Per Hour	\$128.82 / Per Hour

- e. The Contractor shall directly invoice any of the State's other contractors as outlined below for the start-up associated with accepting the contractor's data file transmissions, this shall be a one-time fee payable to the Contractor only when the initial contractor file feeds are set up.

- (1) In addition to the per Member per month fee, the Contractor may also invoice the State for any of the State's other contractors' data feeds it received in excess of twenty (20) data feeds per month, the cost for such data feed acceptance shall be invoiced at the rate shown below:

Service Description	Amount (per compensable increment)
Vendor File Start Up Fee ***One-time fee payable at the contractor Start Up***	\$15,000/ Per Vendor
Vendor Data Transmission Fee	\$350/Per file feed per month (applicable only after Contractor has already accepted twenty (20) file feeds from State Contractor in a month)

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:

Seannalyn Brandmeir, Esq.
 Procurement & Contracting Manager
 Tennessee Department of Finance & Administration
 Benefits Administration Division
 William R. Snodgrass Tennessee Tower
 312 Rosa L. Parks Avenue, Suite 1900
 Nashville, Tennessee 37243

- a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):
- (1) Invoice number (assigned by the Contractor);
 - (2) Invoice date;
 - (3) Contract number (assigned by the State);
 - (4) Customer account name: Finance and Administration, Division of Benefits Administration;
 - (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
 - (6) Contractor name;
 - (7) Contractor Tennessee Edison registration ID number;
 - (8) Contractor contact for invoice questions (name, phone, or email);
 - (9) Contractor remittance address;
 - (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
 - (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
 - (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
 - (13) Amount due for each compensable unit of good or service; and
 - (14) Total amount due for the invoice period.
- b. Contractor's invoices shall:

- (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
 - (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
 - (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
 - (4) Include shipping or delivery charges only as authorized in this Contract.
- c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section.
- C.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:

Seannalyn Brandmeir, Esq.
Tennessee Department of Finance & Administration
Division of Benefits Administration
312 Rosa L. Parks Avenue, Suite 1900
Nashville, TN 37243
Seannalyn.Brandmeir@tn.gov
Phone: 615-532-4598
Fax: 615-253-8553

The Contractor:

Gary Redding
VP, Client Services
gredding@us.ibm.com
Phone: 770-861-5863

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

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall provide written notice to Contractor specifying the Breach Condition. If within thirty (30) days of notice, the Contractor has not cured the Breach Condition, the State may terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor and the State may seek other remedies allowed at law or in equity for breach of this Contract.

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

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

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

D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

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

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

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

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

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

- e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract

providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.

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

In the event of any suit or claim, the Parties shall give each other 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.
- e. The Contractor shall not sell Public Sector Plan Member information or use Member information unless it is aggregated blinded data, which is not identifiable on a Member basis.
- f. The Contractor shall not use Public Sector Plan Member identified or non-aggregated information for advertising, marketing, promotion or any activity intended to influence sales or market share of any product or service except when permitted by the State, such as advertisements of the Program for enrollment purposes.
- g. The Contractor shall have full financial responsibility for any penalties, fines, or other payments imposed or required as a result of the Contractor's non-compliance with or violation of HIPAA or HITECH requirements, and the Contractor shall indemnify the State

with respect to any such penalties, fines, or payments, including the cost of credit protection. At the request of the State, the Contractor shall offer credit protection for those times in which a Member's PHI is accidentally or inappropriately disclosed.

- D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired Member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the Member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired Member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.
- D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
 - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

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

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

- D.25. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 407.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
 - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes:
 - i. Contract Attachment A Attestation Re Personnel Used in Contract Performance;
 - ii. Contract Attachment B Performance Guarantees and Liquidated Damages;
 - iii. Contract Attachment C Reporting Requirements; and
 - iv. Contract Attachment D HIPAA Business Associate Agreement
 - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
 - e. any technical specifications provided to proposers during the procurement process to award this Contract;
 - f. the Contractor's response seeking this Contract; and
 - g. any Contractor rules or policies including but not limited to internal rules or policies and statements included in insurance policies filings by the Contractor with State regulators

- D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101 et.seq., addressing contracting with persons as defined at T.C.A. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.
- D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible over fifty thousand dollars (\$50,000) must be approved by the State. The deductible and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

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

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

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

The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.

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).
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 in an amount not less than one million dollars (\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit by disease, and one million dollars (\$1,000,000) per employee for bodily injury by disease.
- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. § 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
 - i. The Contractor employs fewer than five (5) employees;
 - ii. The Contractor is a sole proprietor;
 - iii. The Contractor is in the construction business or trades with no employees;
 - iv. The Contractor is in the coal mining industry with no employees;
 - v. The Contractor is a state or local government; or
 - vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

c. Professional Liability Insurance

- 1) 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;

- 2) Any professional liability insurance policy shall have a limit not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the aggregate; and
- 3) If the Contract involves the provision of services by medical professionals, a policy limit not less than two million (\$2,000,000) per claim and three million dollars (\$3,000,000) in the aggregate for medical malpractice insurance.

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

- 1) The Contractor shall maintain technology professional liability (errors & omissions)/cyber liability insurance appropriate to the Contractor's profession in an amount not less than five million dollars (\$5,000,000) per occurrence or claim and five million dollars (\$5,000,000) annual aggregate, covering all acts, errors, omissions, negligence, infringement of intellectual property (except patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, information theft, damage to destruction of or alteration of electronic information, breach of privacy perils, wrongful disclosure and release of private information, collection, or other negligence in the handling of confidential information, and including coverage for related regulatory fines, defenses, and penalties.
- 2) Such coverage shall include data breach response expenses, in an amount not less than five million dollars (\$5,000,000) and payable whether incurred by the State or Contractor, including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services and expenses in the performance of services for the State or on behalf of the State hereunder.

e. Automobile Liability Insurance

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

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

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. Software License Warranty. Contractor grants a license to the State to use all software provided under this Contract in the course of the State's business and purposes.
- E.4. Software Support and Maintenance Warranty. Contractor shall provide to the State all software upgrades, modifications, bug fixes, or other improvements in its software that it makes generally available to its customers.
- E.5. Prohibited Advertising or Marketing. The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.
- E.6. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's Response to #31786-00141 (RFP Attachment 6.2 Section B.15) and resulting in this Contract.

The Contractor shall assist the State in monitoring the Contractor's performance of this commitment by providing, as requested, a monthly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, service-disabled veterans, and persons with disabilities. Such reports shall be provided to the State of Tennessee Governor's Office of Diversity Business Enterprise in the TN Diversity Software available online at:

<https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810>.

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

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

E.8. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify 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.9. Contractor Hosted Services and Confidential Data.

- a. Contractor must enter into a Business Associate Agreement (BAA) with the State (see Contract Attachment D).
- b. "Confidential State Data" is defined as data deemed confidential by State or Federal statute or regulation. The Contractor shall protect Confidential State Data as follows:
 - (1) The Contractor shall ensure that all Confidential State Data is housed in the continental United States, inclusive of backup data.
 - (2) The Contractor shall encrypt Confidential State Data at rest and in transit using the current version of Federal Information Processing Standard ("FIPS") 140-2 validated encryption technologies.
 - (3) The Contractor's processing environment containing Confidential State Data shall be in accordance with at least one of the following security standards: (i) International Standards Organization ("ISO") 27001; (ii) Federal Risk and Authorization

Management Program ("FedRAMP"); or (iii) American Institute of Certified Public Accountants ("AICPA") Service Organization Controls ("SOC") 2 Type II certified. The Contractor shall provide proof of current certification annually and upon State request. The Contractor shall also provide, at the State's request, a copy of the report for any applicable subcontractors.

- (4) The Contractor must comply with the State's Enterprise Information Security Policies. This document is found at the following URL:
<https://www.tn.gov/content/dam/tn/finance/documents/Enterprise-Information-Security-Policies-ISO-27002-Public.pdf>
- (5) In the event that the operating system is an integral part of the application, the Contractor agrees to maintain Operating Systems at current, manufacturer supported versions. "Operating System" shall mean the software that supports a computer's basic functions, such as scheduling tasks, executing applications, and controlling peripherals.
- (6) The Contractor agrees to maintain the Application so that it will run on a current, manufacturer-supported Operating System. "Application" shall mean the computer code that supports and accomplishes the State's requirements as set forth in this Contract. The Contractor shall make sure that the Application is at all times fully compatible with a manufacturer-supported Operating System; the State shall not be required to run an Operating System that is no longer supported by the manufacturer.
- (7) If the Application requires middleware or database software, Contractor shall maintain middleware and database software versions that are at all times fully compatible with current versions of the Operating System and Application, to ensure that security vulnerabilities are not introduced.
- (8) With advance notice from the State, and no more than one (1) time per year the Contractor agrees to allow the State to perform logical and physical audits of the Contractor's facility and systems that are hosting Confidential State Data.
- (9) The Contractor must annually perform Penetration Tests and Vulnerability Assessments against its Processing Environment. "Processing Environment" shall mean the combination of software and hardware on which the Application runs. "Penetration Tests" shall be in the form of software attacks on the Contractor's computer system, with the purpose of discovering security weaknesses, and potentially gaining access to the computer's features and data. The "Vulnerability Assessment" shall have the goal of defining, identifying, and classifying the security holes (vulnerabilities) in the Contractor's computer, network, or communications infrastructure. The Contractor shall allow the State, at its option, to perform Penetration Tests and Vulnerability Assessments on the Contractor's Processing Environment.

c. Business Continuity Requirements.

- (1) Regardless of the architecture of its systems, the Contractor shall develop and be continually ready to invoke a business continuity and disaster recovery ("BC-DR") plan. The BC-DR plan shall encompass all Information Systems supporting this Contract. At a minimum the Contractor's BC-DR plan shall address and provide the results for the following scenarios:
 - i. Central and/or satellite data processing, telecommunications, print and mailing facilities and functions therein, hardware and software are destroyed or damaged;
 - ii. System interruption or failure resulting from network, operating hardware, software, communications infrastructure or operational errors that

compromise the integrity of transactions that are active in a live system at the time of the outage;

- iii. System interruption or failure resulting from network, operating hardware, software, communications infrastructure or operational errors that compromise the integrity of data maintained in a live or archival system; and
- iv. System interruption or failure resulting from network, operating hardware, software, communications infrastructure or operational errors that does not compromise the integrity of transactions or data maintained in a live or archival system but does prevent access to the system.

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

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

a. Recovery Point Objective ("RPO"). The RPO is defined as the maximum targeted period in which data might be lost from an IT service due to a major incident: twenty-four (24) hours a day, seven (7) days a week, except during periods of scheduled System unavailability agreed upon by the State and the Contractor.

b. Recovery Time Objective ("RTO"). The RTO is defined as the targeted duration of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity: Seventy-two (72) hours.

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

d. Upon State request, the Contractor shall provide a copy of all Confidential State Data it holds. The Contractor shall provide such data on media and in a format determined by the State.

The Contractor shall maintain a duplicate set of all records relating to this Contract in electronic medium, usable by the State and the Contractor for the purpose of disaster recovery. Such duplicate records are to be stored at a secure fire, flood, and theft-protected facility located away from the storage location of the originals. The Contractor shall update duplicate records, at a minimum, on a daily basis and shall retain said records for a period of sixty (60) days from the date of creation.

- e. Upon termination of this Contract or upon notice of termination of this Contract prior to the Term date, the Contractor shall convey the original and the duplicate records medium and the information they contain to the State on or before the date of termination. In consultation with the State, the Contractor shall destroy all Confidential State Data it holds (including any copies such as backups) in accordance with the current version of National Institute of Standards and Technology ("NIST") Special Publication 800-88. The Contractor shall provide a written confirmation of destruction to the State within ten (10) business days after destruction.
- E.10. Intellectual Property Indemnity. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.
- E. 11. Extraneous Terms and Conditions. Contractor shall fill all orders submitted by the State under this Contract. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this Contract shall contain any terms or conditions other than as set forth in the Contract. Any such extraneous terms and conditions shall be void, invalid and unenforceable against the State. Any refusal by Contractor to supply any goods or services under this Contract conditioned upon the State submitting to any extraneous terms and conditions shall be a material breach of the Contract and constitute an act of bad faith by Contractor.
- E.12. Survival. The terms, provisions, representations, and warranties contained in this Contract which by their sense and context are intended to survive the performance and termination of this Contract, shall so survive the completion of performance and termination of this Contract.

IN WITNESS WHEREOF,

International Business Machines Corporation (IBM), through Watson Health business unit:



CONTRACTOR SIGNATURE **Jon S. Newport**
 VP & GM, GHHS NA

DATE

6-14-18

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

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



Larry B. Martin, CHAIRMAN

DATE

6-18-18

ATTACHMENT A

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	International Business Machines Corporation (IBM), through Watson Health business unit
EDISON VENDOR IDENTIFICATION NUMBER:	

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



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.

Jon S. Newpal
VP & GM, GHHS NA

PRINTED NAME AND TITLE OF SIGNATORY

6-14-18

DATE OF ATTESTATION

CONTRACT ATTACHMENT B**LIQUIDATED DAMAGES FOR PERFORMANCE GUARANTEES**

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

1. **Performance Reporting:** The Contractor shall develop a Performance Report Card as a means to measure compliance on a quarterly basis. The Contractor shall provide the quarterly performance report card in a manner acceptable to the State, on or before the 20th day of the month following the reporting quarter. Supporting documentation used to calculate the performance guarantees shall be provided with the Performance Report Card. The Performance Report Card shall include cumulative data over the life of the contract.
2. **Payment of Liquidated Damages:** It is agreed by the State and the Contractor that any liquidated damages assessed by the State shall be due and payable to the State within forty-five (45) calendar days after Contractor receipt of the Invoice containing an assessment of liquidated damages. If payment is not made by the due date, said liquidated damages may be withheld from future payments by the State without further notice.
3. **Maximum Assessment:** The maximum amount of Liquidated Damages payable over any twelve (12) month period shall not exceed twenty percent (20%) of the annual staffing, general, administrative, and management billings. In the event that a single occurrence subjects the Contractor to Liquidated Damages in multiple subsections of this provision, the State is entitled to assess a single Liquidated Damage selected at the discretion of the State.
4. **Waiver of Liquidated Damages:** The State, in its sole discretion, may elect not to assess Liquidated Damages against the Contractor in certain instances, including but not limited to the following:
 - a. Where the State determines that only inconsequential damage has occurred, unless the deficiency is part of a recurring or frequent pattern of deficiency, with regard to one (1) or more Contract deliverables or requirements
 - b. For performance measures that are resolved based on the Contractor's corrective action plan
 - c. If the failure is not due to Contractor fault (i.e. caused by factors beyond the reasonable control and without any material error or negligence of the Contractor, its staff or subcontractors)
 - d. Where no damage or injury has been sustained by the State or its members
 - e. Where the failure does not result in increased Contract management time or expense
 - f. Where the failure results from the State's failure to perform
 - g. For other reasons at the State's sole discretion
5. The Contractor shall pay to the State the indicated total dollar assessment upon notification by the State that an amount is due, through the term of this Contract.

1. Implementation Plan	
Guarantee	The Contractor shall provide a project implementation plan that meets the requirements of Contract section A.17.g. to the State no later than thirty (30) days after the contract start date.
Assessment	One thousand dollars (\$1,000) for each day beyond the deadline that the plan is not provided to the State.
Measurement	Measured, reported, assessed and paid no later than three (3) months after the Go-Live date.
2. Operational Readiness	
Guarantee	The Contractor shall resolve all findings identified by the State during its Operational Readiness Review, as required in Contract section A.17.j, prior to the Go-Live date.
Assessment	Five thousand dollars (\$5,000) per finding if the standard is not met. Fifty thousand dollar (\$50,000) maximum.
Measurement	Measured, reported, assessed, and paid no later than three (3) months after the Go-Live date.
3. Initial Data Loading	
Guarantee	All data required for implementation as described in Contract section A.3., shall be loaded correctly.
Assessment	Five thousand dollars (\$5,000) if the standard is not met.
Measurement	Measured, reported, assessed, and paid no later than three (3) months after the Go-Live date.
4. On-going Data Loading	
Guarantee	All subsequent data (monthly claims & wellness data) required for operations, as described in Contract section A.4.b shall be loaded within fifteen (15) business days or receipt of usable data from the claims administrators and wellness contractors.
Assessment	Five hundred dollars (\$500) per day for the first (1 st) and second (2 nd) business days out of compliance; one thousand dollars (\$1,000) per business day thereafter.
Measurement	Measured based on a quarterly audit of Member data. Measured, reported, and assessed quarterly; quarterly assessments paid annually.
5. Data Availability to State	
Guarantee	All data shall be available for State use of DSS no later than forty-five (45) days from the receipt of the Contractor monthly updates, as described in Contract section A.4.c.
Assessment	Five hundred dollars (\$500) per day for the first (1 st) and second (2 nd) business days out of compliance; one thousand dollars (\$1,000) per business day thereafter.
Measurement	Measured based on a monthly audit of data receipt. Measured, reported, and assessed monthly; monthly assessments paid quarterly.
6. Historical Data Availability to State	

Guarantee	At the request of the State any historical data (greater than 5 years) shall be available for State use of DSS no later than 10 business days from the receipt of the initial request, as described in Contract section A.5.
Assessment	Five hundred dollars (\$500) per day for the first (1 st) and second (2 nd) business days out of compliance; one thousand dollars (\$1,000) per business day thereafter.
Measurement	Measured based on a quarterly audit of data receipt. Measured, reported, and assessed quarterly; quarterly assessments paid annually.
7. System User Availability	
Guarantee	DSS shall be available to State users ninety-nine percent (99%) of the time between 6:00 a.m. and 7:00 p.m. CT Monday through Saturday, as described in Contract section A.7.d.
Assessment	One thousand dollars (\$1,000) for each instance the standard is not met.
Measurement	Measured, reported, assessed and paid monthly.
8. Critical Functionality Recovery	
Guarantee	The Contractor's critical functionality, needed to provide services under this contract, shall be restored within seventy-two (72) hours of failure or disaster occurrence, as described in Contract section E.9.
Assessment	Ten thousand dollars (\$10,000) for each day following the seventy-two (72) hour period that functionality is not restored. Not to exceed Fifty thousand dollars (\$50,000) annually.
Measurement	Measured, reported, assessed and paid annually.
9. Account Management Satisfaction	
Guarantee	Achieve a 90% satisfaction or better (defined as "top two-box" satisfaction/ approval using an approved standard 5 pt. survey tool) on a survey completed by the State assessing account management performance including but not limited to timely response to questions and resolution of issues.
Assessment	Ten thousand dollars (\$10,000) for each year that the standard is not met.
Measurement	Measured, reported, and assessed quarterly; quarterly assessments paid annually.
10. Customer Service Response	
Guarantee	All State initiated contact not receiving an immediate response shall be returned via phone call or personal email (not auto-generated), within 24 hours of the initial State contact attempt.
Assessment	Five hundred dollars (\$500) per day for the first (1 st) and second (2 nd) business days out of compliance; one thousand dollars (\$1,000) per business day thereafter.
Measurement	Measured, reported, and assessed monthly; monthly assessments will be paid quarterly.
11. Key Position Vacancy Replacement	
Guarantee	In the event any key Contractor position related to this contract becomes vacant, the Contractor shall provide a replacement with commensurate experience within sixty (60) days of the vacancy, per Contract section A.14.i.

Assessment	Five hundred dollars (\$500) per day for the first (1 st) and second (2 nd) business days out of compliance; one thousand dollars (\$1,000) per business day thereafter.
Measurement	Measured, reported, and assessed monthly; monthly assessments paid quarterly.
12. Program Go-Live Date	
Guarantee	The Contractor shall be ready to Go-Live according to the date in Contract section A.18
Assessment	Twenty thousand dollars (\$20,000).
Measurement	Measured and reported no later than three (3) months after the Go-Live date.
13. Reporting	
Guarantee	The Contractor shall distribute to the State all reports required in Contract sections A.3 through A.19. and Contract Attachment C within the time frame specified in the Contract.
Assessment	Five hundred dollars (\$500) for each report not delivered to the State within the time frame specified in the Contract.
Measurement	Measured, reported, assessed, and paid after each occurrence.
14. Privacy and Security of Protected Health Information	
Guarantee	In accordance with Contract section D.20 and Contract Attachment D, the Contractor shall not violate 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).
Assessment	Two thousand five hundred dollars (\$2,500) for the first violation, five thousand dollars (\$5,000) for the second violation and ten thousand dollars (\$10,000) for the third and any additional violations with a maximum cap at one hundred thousand dollars (\$100,000) annually. The assessment will be imposed on a per incident basis meaning regardless of how many Members are impacted and the assessment will be levied on the graduated basis detailed above.
Measurement	Measured, reported, assessed, and paid after each occurrence.

Contract Attachment C**REPORTING REQUIREMENTS**

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

Unless otherwise directed by the State, the Contractor shall submit reports as follows:

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

Unless prior approved In Writing by the State, each report shall be specific to the Public Sector Plans (not the Contractor's book of business).

Reports shall include, at a minimum:

1. **Account Team Satisfaction Survey Report**, submitted annually using the template prior approved In Writing by the State. The report shall, at a minimum, summarize the methodology and results and identify improvement activities.
2. **BC-DR Results Report**, submitted annually using the template prior approved In Writing by the State.
3. **Maintenance and Operations Plan Report**, submitted at DSS implementation, and updated at necessary intervals if maintenance or operations are subject to change – any revisions must include an updated/revised project organizational chart depicting the interrelationships and responsibilities between the Contractor's staff and its subcontractors including reporting relationships.
4. **Corrective Action Plan**, submitted within ten (10) business days of the conclusion of BC-DR test, only if necessary. The corrective action plan must describe how any system function failure will be resolved, if BC-DR testing does not provide the restoration of system function per the standards outlined in the Contract.
5. **Data Quality Spreadsheet**, Submitted within thirty (30) days after the database updates each month, and within (30) days after the quarterly database update, detailing quality measures for each of the State's other contracted health contractors – TPA, PBM, BHO, health, and wellness.
6. **Strength of Controls Report**, submitted annually in accordance with at least one of the following security standards: (i) International Standards Organization ("ISO") 27001; (ii) Federal Risk and Authorization Management Program ("FedRAMP"); or (iii) American Institute of Certified Public Accountants ("AICPA") Service Organization Controls ("SOC") 2 Type II certified.

7. **System Satisfaction Survey Report**, submitted no less than annually using the template prior approved In Writing by the State. The report shall, at a minimum, summarize the methodology and results and address any Contractor actions taken to address the State's system concerns.
8. **Other Reports**, as specified in this Contract and using templates prior approved In Writing by the State.

CONTRACT ATTACHMENT D

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

THIS BUSINESS ASSOCIATE AGREEMENT (hereinafter "Agreement") is between **The State of Tennessee, Finance and Administration, Division of Benefits Administration** (hereinafter "Covered Entity") and **International Business Machines Corporation (IBM), through Watson Health business unit** (hereinafter "Business Associate"). Covered Entity and Business Associate may be referred to herein individually as "Party" or collectively as "Parties."

BACKGROUND

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

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

LIST OF AGREEMENTS AFFECTED BY THIS BUSINESS ASSOCIATE AGREEMENT:

Contract Name:

Execution Date:

Decision Support System

July 1, 2018

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

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

DEFINITIONS

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 CFR §§ 160.103, 164.103, 164.304, 164.402, 164.501, and 164.504.

- 1.1 "Breach of the Security of the [Business Associate's Information] System" shall have the meaning set out in its definition at T.C.A. § 47-18-2107
- 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 Information" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.

- 1.6 "Genetic Information" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.
- 1.7 "Health Care Operations" shall have the meaning set out in its definition at 45 C.F.R. § 164.501.
- 1.8 "Individual" shall have the same meaning as the term "individual" in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- 1.9 "Information Holder" shall have the meaning set out in its definition at T.C.A. § 47-18-2107
- 1.10 "Marketing" shall have the meaning set out in its definition at 45 C.F.R. § 164.501.
- 1.11 "Personal information" shall have the meaning set out in its definition at T.C.A. § 47-18-2107
- 1.12 "Privacy Official" shall have the meaning as set out in its definition at 45 C.F.R. § 164.530(a)(1).
- 1.13 "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, subparts A, and E.
- 1.14 "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- 1.15 "Required by Law" shall have the meaning set forth in 45 CFR § 164.512.
- 1.16 "Security Incident" shall have the meaning set out in its definition at 45 C.F.R. § 164.304.
- 1.17 "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Parts 160 and 164, Subparts A and C.

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

2.1 Business Associate is authorized to use PHI for the purposes of carrying out its duties under the Services Contract. In the course of carrying out these duties, including but not limited to carrying out the Covered Entity's duties under HIPAA, Business Associate shall fully comply with the requirements under the Privacy Rule applicable to "business associates," as that term is defined in the Privacy Rule and not use or further disclose PHI other than as permitted or required by this Agreement, the Service Contracts, or as Required By Law. Business Associate is subject to requirements of the Privacy Rule as required by Public Law 111-5, Section 13404 [designated as 42 U.S.C. 17934] In case of any conflict between this Agreement and the Service Contracts, this Agreement shall govern.

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

2.3 Business Associate shall use appropriate administrative, physical, and technical safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement, Services Contract(s), or as Required By Law. This includes the implementation of Administrative, Physical, and Technical

Safeguards to reasonably and appropriately protect the Covered Entity's PHI against any reasonably anticipated threats or hazards, utilizing the technology commercially available to the Business Associate. The Business Associate shall maintain appropriate documentation of its compliance with the Privacy Rule, including, but not limited to, its policies, procedures, records of training and sanctions of members of its Workforce.

2.4 Business Associate shall require any agent, including a subcontractor, to whom it provides PHI received from, maintained, created or received by Business Associate on behalf of Covered Entity or that carries out any duties for the Business Associate involving the use, custody, disclosure, creation of, or access to PHI or other confidential information, to agree, by written contract with Business Associate, in accordance with 164.502(e)(1)(ii), ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of business associate agree to the same restrictions and conditions that apply to the business associate with respect to such information.

2.5 Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

2.6 Business Associate shall require its employees, agents, and subcontractors to promptly (up to 48 hours) report, to Business Associate, immediately upon becoming aware of any use or disclosure of PHI in violation of this Agreement. Business Associate shall report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement. Business Associate will also provide additional information reasonably requested by the Covered Entity related to the breach.

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

2.7.1 Business Associate shall provide to Covered Entity notice of a Potential or Actual Breach of Unsecured PHI immediately upon becoming aware of the Breach.

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

2.7.3 Covered Entity shall make the final determination whether the Breach requires notification and whether the notification shall be made by Covered Entity or Business Associate.

2.8 If Business Associate receives PHI from Covered Entity in a Designated Record Set, Business Associate shall provide access, at the request of Covered Entity, to PHI in a Designated Record Set to Covered Entity, in order to meet the requirements under 45 CFR § 164.524, provided that Business Associate shall have at least 30 business days from Covered Entity notice to provide access to, or deliver such information.

2.9 If Business Associate receives PHI from Covered Entity in a Designated Record Set, then Business Associate shall make any amendments to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to the 45 CFR § 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity, provided that Business Associate shall have at least 30 business days from Covered Entity notice to make an amendment.

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

2.11 Business Associate shall document disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosure of PHI in accordance with 45 CFR § 164.528.

2.12 Business Associate shall provide Covered Entity or an Individual, in time and manner designated by Covered Entity, information collected in accordance with this Agreement, to permit Covered Entity to respond to a request by an Individual for and accounting of disclosures of PHI in accordance with 45 CFR § 164.528, provided that Business Associate shall have at least 30 business days from Covered Entity notice to provide access to, or deliver such information which shall include, at minimum, (a) date of the disclosure; (b) name of the third party to whom the PHI was disclosed and, if known, the address of the third party; (c) brief description of the disclosed information; and (d) brief explanation of the purpose and basis for such disclosure. Business Associate shall provide an accounting of disclosures directly to an individual when required by section 13405(c) of Public Law 111-5 [designated as 42 U.S.C. 17935(c)].

2.13 Business Associate agrees it must limit any use, disclosure, or request for use or disclosure of PHI to the minimum amount necessary to accomplish the intended purpose of the use, disclosure, or request in accordance with the requirements of the Privacy Rule.

- 2.13.1 Business Associate represents to Covered Entity that all its uses and disclosures of, or requests for, PHI shall be the minimum necessary in accordance with the Privacy Rule requirements.
- 2.13.2 Covered Entity may, pursuant to the Privacy Rule, reasonably rely on any requested disclosure as the minimum necessary for the stated purpose when the information is requested by Business Associate.
- 2.13.3 Business Associate acknowledges that if Business Associate is also a covered entity, as defined by the Privacy Rule, Business Associate is required, independent of Business Associate's obligations under this Memorandum, to comply with the Privacy Rule's minimum necessary requirements when making any request for PHI from Covered Entity.

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

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

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

3 OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE (Security Rule)

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

3.2 Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of the covered entity as required by the Security

Rule and Public Law 111-5. This includes specifically, but is not limited to, the utilization of technology commercially available at the time to the Business Associate to protect the Covered Entity's PHI against any reasonably anticipated threats or hazards. The Business Associate understands that it has an affirmative duty to perform a regular review or assessment of security risks, conduct active risk management and supply best efforts to assure that only authorized persons and devices access its computing systems and information storage, and that only authorized transactions are allowed. The Business Associate will maintain appropriate documentation to certify its compliance with the Security Rule.

3.3 Business Associate shall ensure that any agent, including a subcontractor, to whom it provides electronic PHI received from or created for Covered Entity or that carries out any duties for the Business Associate involving the use, custody, disclosure, creation of, or access to PHI supplied by Covered Entity, to agree, by written contract (or the appropriate equivalent if the agent is a government entity) with Business Associate, in accordance with 164.502(e)(1)(ii), ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of business associate agree to the same restrictions and conditions that apply to the business associate with respect to such information.

3.4 Business Associate shall require its employees, agents, and subcontractors to report to Business Associate within five (5) business days, any Security Incident (as that term is defined in 45 CFR § 164.304) of which it becomes aware. 45 CFR 164.314(a)(2)(C) requires that business associate shall report to the covered entity any security incident of which it becomes aware, including breaches of unsecured protected health information as required by 164.410. Business Associate shall promptly (up to 48 hours) report any Security Incident of which it becomes aware to Covered Entity. Provided however, that such reports are not required for attempted, unsuccessful Security Incidents, including trivial and routine incidents such as port scans, attempts to log-in with an invalid password or user name, denial of service attacks that do not result in a server being taken off-line, malware, and pings or other similar types of events.

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

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

3.7 Notification for the purposes of Sections 2.8 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:

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

With a copy to:

State of Tennessee
Benefits Administration
Contracting and Procurement Manager
312 Rosa L. Parks Avenue
1900 W.R.S. Tennessee Towers

Nashville, TN 37243-1102
Phone: (615) 532-4598
Facsimile: (615) 253-8556

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

Gary Redding
VP, Client Services
gredding@us.ibm.com
770.861.5863

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

4. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

4.1 Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in Service Contract(s), provided that such use or disclosure would not violate the Privacy and Security Rule, if done by Covered Entity. Business Associate's disclosure of PHI shall be subject to the limited data set and minimum necessary requirements of Section 13405(b) of Public Law 111-5, [designated as 42 U.S.C. 13735(b)]

4.2 Except as otherwise limited in this Agreement, Business Associate may use PHI as required for Business Associate's proper management and administration or to carry out the legal responsibilities of the Business Associate.

4.3 Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or provided that, if Business Associate discloses any PHI to a third party for such a purpose, Business Associate shall enter into a written agreement with such third party requiring the third party to: (a) maintain the confidentiality, integrity, and availability of PHI and not to use or further disclose such information except as Required By Law or for the purpose for which it was disclosed, and (b) notify Business Associate of any instances in which it becomes aware in which the confidentiality, integrity, and/or availability of the PHI is breached immediately upon becoming aware.

4.4 Except as otherwise limited in this Agreement, Business Associate may use PHI to provide data aggregation services to Covered Entity as permitted by 45 CFR § 164.504(e)(2)(i)(B).

4.5 Business Associate may use PHI to report violations of law to appropriate Federal and State Authorities consistent with 45 CFR 164.502(j)(1).

4.6 Business Associate shall not use or disclose PHI that is Genetic Information for underwriting purposes. Moreover, the sale, marketing or the sharing for commercial use or any purpose construed by Covered Entity as the sale, marketing or commercial use of Member's personal or financial information with affiliates, even if such sharing would be permitted by federal or state laws, is prohibited.

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

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

5. OBLIGATIONS OF COVERED ENTITY

5.1 Covered Entity shall provide Business Associate with the Notice of Privacy Practices that Covered Entity produces in accordance with 45 CFR § 164.520, as well as any changes to such notice. Covered Entity shall notify Business Associate of any limitations in its notice that affect Business Associate's use or disclosure of PHI.

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

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

6. PERMISSIBLE REQUESTS BY COVERED ENTITY

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

7. TERM AND TERMINATION

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

7.2 Termination for Cause.

7.2.1. This Agreement authorizes and Business Associate acknowledges and agrees Covered Entity shall have the right to immediately terminate this Agreement and Service Contracts in the event Business Associate fails to comply with, or violates a material provision of, requirements of the Privacy and/or Security Rule or this Memorandum.

7.2.2. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:

7.2.2.1. Provide a reasonable opportunity for Business Associate to cure the breach or end the violation, or

7.2.2.2. If Business Associate has breached a material term of this Agreement and cure is not possible or if Business Associate does not cure a curable breach or end the violation within a reasonable time as specified by, and at the sole discretion of, Covered Entity, Covered Entity may immediately terminate this Agreement and the Service Agreement.

7.2.2.3. If neither cure nor termination is feasible, Covered Entity shall report the violation to the Secretary of the United States Department of Health in Human Services or the Secretary's designee.

7.3 Effect of Termination.

- 7.3.1. Except as provided in Section 7.3.2. below, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of, Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
- 7.3.2. 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 Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy and Security Rules and the Health Insurance Portability and Accountability Act, Public Law 104-191, including any amendments required by the United States Department of Health and Human Services to implement the Health Information Technology for Economic and Clinical Health and related regulations upon the effective date of such amendment, regardless of whether this Agreement has been formally amended, including, but not limited to changes required by the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

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

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

8.5 Notices and Communications. All instructions, notices, consents, demands, or other communications required or contemplated by this Agreement shall be In Writing and shall be delivered by hand, by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below, or to such other party, facsimile number, or address as may be hereafter specified by written notice.

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

BUSINESS ASSOCIATE:
 Laurie Bourgea
 Contracts Specialist
 IBM Watson Health
 100 Phoenix Drive
 Ann Arbor, MI 48108
 lbourgea@us.ibm.com
 734.913.3407

With a copy to:

ATTN: Seannalyn Brandmeir
Procurements & Contracting Manager
At the address listed above
Phone: (615) 532-4598
Facsimile: (615) 253-8556
E-Mail: seannalyn.brandmeir@tn.gov

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

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

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

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

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

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

IN WITNESS WHEREOF,



International Business Machines Corporation (IBM), through Watson Health
business unit

Date:

6-14-18



Larry B. Martin, Commissioner of Finance & Administration

Date:

6-18-18