



**CONTRACT**

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

<b>Begin Date</b> 8/1/2018	<b>End Date</b> 12/31/2023	<b>Agency Tracking #</b> 31786-00135	<b>Edison Record ID</b> 59711
<b>Contractor Legal Entity Name</b> ActiveHealth Management			<b>Edison Vendor ID</b> 0000212405

**Goods or Services Caption (one line only)**  
Weight Management Program

<b>Contractor</b> <input checked="" type="checkbox"/> Contractor	<b>CFDA #</b>
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<b>Funding —</b>					
<b>FY</b>	<b>State</b>	<b>Federal</b>	<b>Interdepartmental</b>	<b>Other</b>	<b>TOTAL Contract Amount</b>
2019			\$582,000.00		\$582,000.00
2020			\$1,171,000.00		\$1,171,000.00
2021			\$1,187,000.00		\$1,187,000.00
2022			\$1,203,000.00		\$1,203,000.00
2023			\$1,220,000.00		\$1,220,000.00
2024			\$614,000.00		\$614,000.00
<b>TOTAL:</b>			<b>\$5,977,000.00</b>		<b>\$5,977,000.00</b>

**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 Veronica Coleman Ivh  
DN: cn=Veronica Coleman Ivh, o=Finance & Administration, ou=Office of Business and Finance,  
email=lisa.vonhaeger@tn.gov, c=US  
Date: 2018.07.11 10:53:48 -05'00'

<b>Speed Chart (optional)</b>	<b>Account Code (optional)</b>	<i>CM</i>
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**CONTRACT**  
**BETWEEN THE STATE OF TENNESSEE,**  
**STATE INSURANCE COMMITTEE, LOCAL EDUCATION INSURANCE COMMITTEE, LOCAL**  
**GOVERNMENT INSURANCE COMMITTEE**  
**AND**  
**ActiveHealth Management**

This Contract, by and between the State of Tennessee, State Insurance Committee, Local Education Insurance Committee, and the Local Government Insurance Committee, hereinafter referred to as the "State" and ActiveHealth Management ("Contractor"), is for the provision of weight management services for the State Health Plan, 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: Delaware  
Contractor Edison Registration ID # 0000212405

**A. SCOPE:**

- A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.
- a. The Contractor shall make available all services, including to support and deliver an online weight management program, described in this Contract to all eligible state and higher education health plan participants, regardless of what plan the Member is enrolled.
- A. 2. Implementation
- a. The Contractor's Weight Management program, services and systems, including but not limited to coaches, Member materials, call center and the Contractor's website, shall be fully operational on the applicable dates specified in Contract Section A.21.
- b. The Contractor shall implement the information systems and other processes required to perform all services described herein. The Contractor shall work with the State to ensure that the Contractor satisfies applicable requirements of this Contract, including requirements in the State Plan Document and which is located on the State's website at [www.tn.gov/finance/ins/publications.shtml](http://www.tn.gov/finance/ins/publications.shtml)) and State and Federal law.
- c. 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 weight management services for at least one other large employer (i.e., an employer plan with at least 20,000 members). The Contractor's implementation team shall include a full-time, designated project manager ready to begin work immediately following the contract effective date until thirty (30) days after the go-live date. The team shall also include an Account Manager designated 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 vendors and all the internal and external participating and affected entities. All implementation team members that the Contractor referenced in its proposal response to RFP #31786-00135, Attachment 6.2, Section C (Technical Proposal), item C.5.c.iv. shall

be available as needed during the implementation as well as thirty (30) days after the go-live date.

- d. 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 Contract effective date.
- e. The Contractor shall provide a project implementation plan 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.
- f. The project implementation plan shall comprehensively detail all aspects of implementation, which includes all tasks with deliverable dates necessary to satisfactorily implement the weight management program no later than the go-live date specified in Contract Section A.21. 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 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 systems;
  - (6) Member communications and their timing (consistent with Benefits Administration's larger Member communication strategy); and
  - (7) Schedule of in-person meetings and conference calls with the State.

The Contractor's implementation plan shall require written approval by the State as specified in Contract Section A.21.4

- g. 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.21.5 Such 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., Weight Management Program, Member services call center, Member communication, training, data integration, acceptance of the state's enrollment file, and web portal). The review may also include desk reviews of documentation that includes but is not limited to:
  - (1) Policy and Procedures Manual(s);
  - (2) Scripts for weight management coaches and call center representatives;
  - (3) Information systems documentation and business logic; and
  - (4) The ability to provide, and the process governing the preparation of, any and all deliverables required under this Contract.
- h. At its discretion, with prior written notification of at least three (3) days to the Contractor, in the form of an email, the State may conduct an additional, pre-implementation review of the Contractor's progress towards fulfilling the information systems 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, system demonstrations, systems testing, and document review.

- i. At its discretion, with prior written notification of at least three (3) days to the Contractor, in the form of an email, during onsite visits as part of readiness review or a pre-implementation review, the Contractor shall provide onsite workspace and access to a telephone, fax, printer, copy machine, and Internet connection. The Contractor's staff members shall be freely available to the State officials to answer questions during these visits.
- j. 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 twice a week during implementation and for the two weeks prior to and the first month following the go-live date, unless otherwise approved by the State in writing.
- k. 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). The Contractor shall comply with all recommendations/requirements made in writing by the State within thirty (30) days of receipt of the States recommendations/requirements.

A. 3. Content and Structure of Program

- a. Upon an individual's enrollment in the weight management program, the Contractor will provide the Member with the following:
  - (1) Information about the Contractor and specific information about the program and how it works.
  - (2) Information about the member's right to disenroll/opt out from the program at any time and how doing so could impact earning the incentive for those who are eligible.
- b. The Contractor's program shall be structured around, and integrate, nationally recognized, evidence-based and industry best practices consistent with the requirements in Contract Section A.12.
- c. The Contractor shall submit to the State the weight management program description. The State reserves the right to review this program description and request changes. The Contractor shall notify the State, in writing, thirty (30) days prior to any significant changes to the program description. The State reserves the right to review the proposed change(s) and require revisions.
- d. The Contractor shall make reasonable efforts to accommodate a participant's request to have a male or female coach, if applicable.
- e. The Contractor shall establish policies and procedures for assigning coaches, changing coaches, and notifying participants of such changes.
- f. The Contractor's policies and procedures shall include criteria for matching coaches to participants and other factors considered in assignments; how the Contractor ensures continuity of care when coach changes are made, whether initiated by the participant or by the Contractor; and how the Contractor provides advance notice to the participant of planned coach changes initiated by the Contractor (e.g., due to staff turnover or a change in the participant's needs).

- g.. The Contractor shall submit these policies and procedures to the State. The State reserves the right to review the policies and procedures and require changes. The Contractor shall notify the State, in writing, thirty (30) days prior to any significant changes to these policies and procedures. The State reserves the right to review the proposed change(s) and require revisions.
- h. The Contractor's program may be delivered using a variety of modalities, including options for the Contractor and Member to interact with one another: online or video chat, telephonically, text or some other method of interaction prior approved by the State and shall accommodate a participant's preferred means of communication. The Contractor shall ensure that all electronic correspondence is secure and meets HIPAA and other privacy and confidentiality requirements as described in Section A.18.
- i. The program shall be delivered in a non-intrusive manner that promotes a relationship between the Member and the program.

#### A.4. Weight Management

- a. Access to the weight management program shall be integrated into the Primary Population Health and Wellness Contractor's web portal and the weight management vendor shall work with the Primary Population Health and Wellness Contractor to ensure that members may access all information provided through this program from the Primary Population Health and Wellness Contractor's web portal.

- (1) The structured weight management program is aimed at reducing a member's Body Mass Index (BMI) with an initial emphasis on adults with a BMI greater than 34.9. Any eligible Member can opt into the weight management program with a BMI greater than 29.9. At the State's request, in consultation with the weight management Contractor, the thresholds for earning an incentive and program eligibility may be adjusted up or down.

The program may be delivered using a variety of modalities, including options for the Contractor and Member to interact with one another: online or video chat, telephonically, text or some other method of interaction prior approved by the State.

- b. The program must be a minimum of six months in length and provide, at a minimum, weekly activities and interaction between the program and the Member as well as collect the member's weight on a regular basis. At the request of the State, the member's weight must be captured via a scale with Bluetooth capability which is provided to the Member at no charge from the Contractor.
- c. Prior to program go live, the State and the Weight Management Contractor will meet to discuss the criteria/methodology used to determine BMI risk stratification to determine Member eligibility for the program.

#### A. 5. Identification, Outreach and Engagement

- a. Identification:

- (1) Based on the biometric data collected by the Primary Population Health and Wellness Contractor for the program, the Primary Population Health and Wellness Contractor shall provide the Weight Management Contractor with a detailed list of those members who qualify for the weight management program. This includes members who are eligible to earn the incentive as well as those able to opt in to the weight management program as determined by the state.

- b. Outreach:
  - (1) The Weight Management Contractor shall be responsible for notifying and enrolling members in the weight management program to ensure appropriate Member participation, as well as creating and providing appropriate educational materials and resources to participants. The Contractor shall have a procedure in place to ensure that the Member has the ability to opt-out of the program and the Contractor will remove the Member from the program for the remainder of the year.
  - (2) Additionally, eligible members who do not meet the criteria for earning the incentive shall still have the ability to opt in to the weight management program if they meet the appropriate BMI threshold.
  
- c. Engagement
  - (1) In order to consider a participant as an "engaged" participant in the weight management program for purposes of reimbursement pursuant to Section C.3, the Contractor shall track the member's participation and weight loss for purposes of reimbursement. See Contract Section C.3.
  - (2) Engagement" shall not be defined as a series of outbound outreach whether via phone, text, email or some other means of contact from the Contractor to which the Contractor receives no response from the member.
  - (3) The Contractor shall submit Weight Management participation reports to the State (see Contract Attachment C) as specified in Contract Section A. 21.

A. 6. Incentive Administration

- a. The Primary Population Health and Wellness Contractor shall be responsible for all incentive (reward) tracking and monitoring for members eligible to earn an incentive, including those participating in a weight management program.
  
- b. The Weight Management Contractor shall be expected to track, monitor and report Member activities to the Primary Population Health and Wellness Contractor for purposes of notifying the State who has earned the incentive. This Incentive Detail Report shall include all elements necessary for the Primary Population Health and Wellness Contractor to accurately and timely report to the State those members who are eligible to earn the incentive.
  
- c. Alternative Standard/Appeals
  - (1) The Primary Population Health and Wellness Contractor shall be responsible for managing and tracking a member's request for an alternative standard to completing wellness activities. It is the responsibility of the weight management vendor to refer these Members back to the Primary Population Health and Wellness Contractor for assistance with this request as well as a request for exemption as required by federal law.
  - (2) Members eligible to earn an incentive may file an appeal if they feel information is incorrect or inaccurate and therefore the Member is deemed ineligible for the incentive. The Primary Population Health and Wellness Contractor shall maintain a process by which a Member may file the appeal and such appeals shall be reviewed by a committee designated by the Primary Population Health and Wellness Contractor. The Weight Management vendor shall provide Member

information to the Primary Population Health and Wellness Contractor to help resolve a disputed appeal.

A. 7. Member Services

- a. All Member services representatives handling inquiries related to this Contract shall be familiar with the terms and provisions of this Contract. The Member services representatives shall also have basic knowledge about the benefits and services provided by other State vendors, including the medical TPAs, EAP/BHO, and PBM, including services for which each vendor is responsible and contact information for each vendor.
- b. During normal business hours, Contractor may use a "designated" call unit (as opposed to a "dedicated" call center) provided that the unit could meet all other call center standards defined in this Contract.
- c. The Contractor shall have sufficient staff to respond to inquiries, correspondence, complaints, and problems. Responsibilities include, but are not limited to, assisting members with enrolling in the weight management program, setting up or assisting with issues with setting up an account, assisting members with web portal or equipment issues, making referrals to other State vendors. The Contractor shall not answer technical questions regarding the State's eligibility policy to enroll in the Public Sector Plans (which is governed by Article III of the Plan documents) and shall refer these questions to the State's Benefits Administration Service Center staff.
- d. The Contractor shall have and implement procedures for monitoring and ensuring the quality of services provided by its Member services representatives, including but not limited to, services provided by call center and staff. At the State's request, the Contractor shall submit these procedures for review and approval by the State. Such procedures may include but are not limited to the following activities:
  - (1) Auditing calls/correspondence for each Member services representative;
  - (2) Silent monitoring of calls;
  - (3) Recording calls for quality and training purposes;
  - (4) Skill refresher courses; and
  - (5) Call coaching.
- e. Working in conjunction with the State, the Contractor shall set standards for customer satisfaction for Member services representatives based upon, but not limited to, an evaluation of the following areas: documentation, greeting, courtesy, responsiveness, explanation and guiding techniques, and accuracy. Adherence to the standards shall be measured, monitored and reviewed by the Contractor each month. Unless otherwise directed by the State, the Contractor shall report monthly results to the State. See Contract Section A.21. and Contract Attachment C.
- f. The Contractor shall provide a personalized response, in writing, to ninety-five percent (95%) of written (mail or email) inquiries from members concerning requested information within five (5) business days and one hundred percent (100%) within ten (10) days. The Contractor shall acknowledge receipt of email inquiries within one (1) business day and reply within the same time frame established for standard mail. (See Contract Attachment B.).
- g. The Contractor shall designate a client service liaison to respond to member-related issues identified by the State. For matters designated as urgent by the State, the Contractor shall contact the Member and resolve the issue and then notify the State in writing of the resolution.

A. 8. Member Services Call Center

a. General Requirements

- (1) The Contractor is responsible for operating a Member services call center to provide customer service to members.
- (2) The Contractor's call center shall be equipped with TDD (Telephone Device for the Deaf) in order to serve the hearing impaired population.
- (3) The Contractor's call centers and representatives shall be located in the continental United States.
- (4) The Contractor's call centers shall be open and staffed with trained personnel as of the date specified in Contract Section A. 21.
- (5) The Contractor shall make outbound calls without interrupting the ability of callers to continue to access the call centers.
- (6) The Contractor shall provide oral interpretation services via a telephone interpretation service free of charge to callers with limited English proficiency.

b. The Contractor's Member services call center shall at minimum accept calls Monday through Friday, for a continuous 12-hour period beginning no later than 8:00 a.m. Central Time except on official State Holidays. The call center shall have the capability of operating on weekends for spikes in call volume or if needed to outreach to members. The Contractor's hours of operations are subject to prior State approval.

- (1) Member services representatives shall provide "warm" transfers to:
  - i. The member's coach when indicated or requested. Member services representatives shall also direct members to the coach voice mail if preferred or transfer a Member to another coach/ if requested.
  - ii. The Primary Population Health Contractor.

The Contractor shall provide to the State policies and procedures related to the operation of the Member services call center. The State reserves the right to require changes to the policies and procedures that directly impact our members.

c. Member Services Call Center Performance Requirements

- (1) The Contractor shall report the extent to which its call center operations comply with each of the following performance metrics:
  - i. Daily Average Speed of Answer (ASA) of thirty (30) seconds. After answering the call the Contractor may only put callers on hold in order to (a) make outbound calls as necessary or (b) to research a caller's issue.
  - ii. First Call Resolution of 85% as measured by one or more of the following methods: a Member post-call phone or web survey; an end of call script where the customer service representative asks if the member's issue has been resolved; a voice menu allowing the Member to indicate if this is the first call they've made to resolve their inquiry or problem; or another method prior approved by the state.
  - iii. Telephone Service Factor of 80-20, meaning 80% of calls are answered within 20 seconds.
  - iv. Open call/inquiry closure rate of 90% within five (5) business days.



- (2) The Contractor shall provide statistics related to the performance standards above for both the Member services call center to the State. The monthly report shall include weekly and monthly data. (See also Contract Attachments B and C.)

d. Member Services Call Center System Requirements

- (1) The Contractor's call centers shall have call management systems and communications infrastructure that can manage the potential call volume and achieve the performance standards described in this Contract.
- (2) The Contractor's call management systems shall be scalable and flexible so they can be adapted as needed, within negotiated timeframes where applicable, in response to program, benefit, or enrollment changes.
- (3) The Contractor's call management systems shall be equipped with caller identification. In addition, the Contractor's call center shall adopt caller identification for itself that is prior approved in writing by the State.
- (4) The Contractor's call management systems shall provide greeting messaging when necessary. The Contractor may play music and/or messages prior approved by the State for the callers while they are on hold and shall play messages as directed by the State. The Contractor shall not play advertising or informational messages for callers while they are on hold unless prior approved in writing by the State (or the State directs the Contractor to play certain messages). Additionally, the Contractor's systems shall provide a message that notifies callers that calls are being recorded and may be monitored by the Contractor for quality control purposes.
- (5) The Contractor's call management system shall record and index one hundred percent (100%) of calls during the first three (3) months of the contract term such that the Contractor can easily retrieve recordings of individual calls based on the phone number of the caller, the caller's name, the date/time of the call, or the Member services representative who handled the call. The Contractor shall be able to provide a full recording of each call upon the State's request, using only the member's name or identifier to locate the call(s). Commencing with the fourth month of the Contract term, the Contractor shall record either ten percent (10%) of all calls or a statistically valid sample of calls. The determination of which standard will apply remains at the discretion of the State.
- (6) The system shall transfer calls to other telephone lines as necessary and appropriate, including transfers to other vendors (e.g., a medical TPA, EAP/BHO, or PBM).
- (7) The Contractor may use an automated interactive voice response (IVR) system for managing inbound calls, provided that the caller always has the ability to leave the IVR system and wait in queue in order to speak directly with a live-voice Member services representative/nurse during business hours rather than continue through additional prompts. The Contractor shall not have more than one (1) level of menu choices (limited to five (5) options) unless prior approved in writing by the State. The Contractor's decision tree and menu are subject to State review and prior written approval.
- (8) The Contractor shall inform callers of their likely wait times (based on real-time information, including call volume and Member services representative/nurse availability) as they enter the queue. The Contractor may also provide a "dial back" option that allows callers to receive a call back from the next available

Member services representative without losing their place in the queue. Note that calls receiving a call back pursuant to this provision are not counted as "abandoned."

- (9) The Contractor shall allow third parties (the State or its authorized representative) to monitor pre-recorded calls from a remote location. Additionally, the Contractor's call management systems shall be able to record calls for monitoring.
- (10) The call management systems shall enable the logging of all calls, including:
  - i. The caller's identifying information (e.g., employee ID);
  - ii. The call date and time;
  - iii. The reason for the call (including a reason code using a coding scheme prior approved by the State in writing);
  - iv. The Member services representative/nurse that handled the call;
  - v. The length of call; and
  - vi. The resolution of the call (including a resolution code using a coding scheme prior approved by the State in writing) (and if unresolved, the action taken and follow up steps required).
- (11) Additionally, the call management systems shall maintain a history of correspondence and call transactions for performance management, quality management and audit purposes. This history shall contain the actual information, a date/time stamp that corresponds to when the transaction took place, the origin of the transaction (e.g., the State and/or one of its authorized representatives or the member), and the Member services representative/nurse that processed the transaction. Related correspondence and calls shall be indexed and properly recorded such that they can be treated in reporting and analysis as part of a distinct transaction.

#### A. 9. Member Complaints

##### Complaint Resolution:

- a. The Contractor shall maintain a procedure for resolving complaints informally by phone.
- b. The Contractor shall maintain a process by which members may file complaints that cannot be resolved by phone. In addition, the Member shall have the ability to file a complaint, regardless of the complaint resolution.

The Contractor may require the Member to submit a written request or to complete and submit a "Member complaint form" or other designated form. If forms are required, the Contractor shall make such forms available on its website at all times and by mail within five (5) business days upon request by the member.

- c. At least one (1) month prior to the go-live date, the Contractor shall provide the State information describing in detail the Contractor's complaint process and procedures along with a sample determination letter. The State reserves the right to review the complaint process and procedures and letter and require changes, where appropriate.
- d. The Contractor shall submit quarterly complaints reports with information regarding each complaint filed with the Contractor (see Contract Attachment C).
- e. The Contractor shall provide the State with copies of requested complaint files within five (5) business days of the State's request.

- f. Any time a Member files a complaint, the Contractor shall ensure that all records and information related are preserved for the greater of (a) one (1) year following the conclusion of the complaint, including any external process and (b) any longer period required by other provisions of this Contract or state or federal law.
- g. For complaints the Contractor shall complete review and issue a written decision within ten business days of receipt.

A. 10. Member Communications/Materials

- a. The Contractor shall, in consultation with and following written approval by the State, develop and disseminate Member information and communication materials (hereinafter referred to as Member materials). Contractor shall ensure that Member material meets any regulatory compliance, if applicable. Member materials shall include, but are not limited to, educational materials, letters, brochures, fliers, webinars and online videos.
- b. Member materials shall be finalized (including State review and sign-off) and ready for distribution by the date specified in A.21.
- c. The Primary Population Health and Wellness Contractor shall be responsible for providing an annual mailer, mailed to the member, which includes detailed information about all available programs, how to access the programs and what incentives can be earned for participating. The Weight Management Contractor shall provide the Primary Population Health and Wellness Contractor with content for this mailer by the date specified in Contract Section A.21., subject to prior approval by the State.
- d. On an annual basis, at least three (3) months prior to the State's Annual Enrollment Period the Contractor shall provide to the State, requested information for Member handbooks and other enrollment materials, which shall include but not be limited to, toll-free Member services number, website address, website logon information, a confidentiality statement, an overview of available programs and services, procedures for accessing said programs and services, and other updates and/or changes that may be helpful to potential members.
- e. At the State's request, the Contractor shall notify members, in writing, of any benefit or service changes no less than thirty (30) days prior to the implementation of the change. Postage and production costs incurred by the Contractor, which are the direct result of communications requested by the State for benefit changes, shall be paid by the State pursuant to Contract Section C.3.d.
- f. In addition to the Member materials referenced above, the Contractor shall provide and disseminate, if requested by the State, general information regarding the Program. This may include but not be limited to:
  - (1) Written information;
  - (2) Audio/video presentations;
  - (3) Attendance at meetings, workshops, and conferences;
  - (4) Preparing materials and participating in educational training for human resources professionals and members; and
  - (5) Educating State staff and other persons on Contractor's administrative and benefits procedures.
- g. Unless otherwise specified in this Contract, the Contractor shall be responsible for all costs related to the design, development, printing, distribution, mailing (if applicable), and revision of all Member materials that are required to be produced under the terms of this Contract.

- h. If the State requires mailings above those identified in the contract, the State shall pay the postage, printing and production costs of such mailings pursuant to Contract Section C.3.d.
- i. Unless otherwise directed by the State, the Contractor shall obtain approval in writing from the State prior to using or distributing any Member materials under this Contract.
- j. The Contractor shall work in conjunction with the State's staff to ensure continuity of branding across all program and Member materials, mailings, website, and any other communications information. This branding shall include, but is not limited to, use of the ParTNers for Health logo, color scheme and applicable taglines. All uses of these branding elements shall be subject to prior written approval by the State.
- k. The Contractor shall have the exclusive responsibility to write, edit, and arrange for clearance of materials (such as securing full time use of a stock photograph for perpetuity) for any and all Member materials in time for the materials to be approved by the State and printed.
- l. The Contractor shall ensure that its Member materials are culturally sensitive and professional in content, appearance, and design.
- m. The Contractor shall prominently display the Contractor's call center telephone number and website address in large, bolded typeface on all Member materials, unless otherwise approved by the State.
- n. The Contractor shall, to the extent practicable, use relatively large and legible fonts in its Member materials. Additionally, the Contractor shall make maximum use of graphics to communicate key messages to populations with limited literacy, limited health plan literacy or limited English proficiency.
- o. Unless otherwise prior approved in writing by the State, the Contractor shall design all Member materials at the sixth (6.0) grade level or lower using the Flesch-Kincaid Index or other suitable metric that the State prior approves in writing. The Contractor shall evaluate materials using the entire text of the materials (except return addresses). When submitting draft materials to the State for approval, the Contractor shall provide a reading level analysis and certification of the reading level of each piece of material.
- p. The Contractor covenants that all materials distributed to Members and prepared or produced by the Contractor shall be accurate in all material respects.
- q. The Contractor shall ensure that up-to-date versions of all printed Member materials can be downloaded from the Contractor's web portal/website.
- r. The number of Member materials and other relevant information to be printed shall be in sufficient quantities for distribution by the Contractor to the State's Members, plus a quantity of materials as requested by the State for distribution to potential new Members.
- s. At the State's request, the Contractor shall attend meetings, workshops, and conferences to discuss and market the Program. Any on-site visits to agencies covered under this Program shall require prior approval by the State.
- t. Prohibition on Promotional Materials: Unless approved in advance and in writing by the State, the Contractor shall not distribute any promotional materials or gifts to employees or Program Members, even if such gifts are of a de minimus value (e.g., magnets, pens, etc.).

- u. The Contractor shall not publish or distribute terms and conditions binding on plan members using Contractor's services under this Contract unless these terms and conditions are approved by the State in writing. This includes terms and conditions on a website that plan members must click on to accept as a condition of using the Contractor's website for services or information relating to this Contract.

A. 11. Website/Mobile App

- a. The Contractor's own website shall be linked to the Primary Population Health and Wellness Contractor's website so that members can access the weight management program directly from the Primary Population Health and Wellness Contractor's platform. The website must have a Member log-in portal so members can view member-specific documents and materials pertaining to the program.
- b. The link to the website shall be fully operational on or before the date specified in Contract Section A.21.
- c. The Contractor shall grant the State access to the website in a page/test environment for review and approval no later than the date specified in Contract Section A.21.
- d. The Contractor shall host the website on a non-governmental server, which shall be located within the United States.
- e. The Contractor shall ensure that the website meets all of the capacity, availability, performance and security requirements outlined in Contract Sections A.16. and A.17.
- f. To ensure accessibility among persons with a disability, the Contractor's website shall substantially comply with Section 508 of the Rehabilitation Act of 1973 (29 USC Section 794d) and implementing regulations at 36 CFR 1194 Parts A-D.
- g. At a minimum the website/portal shall contain the following:
  - (1) Member-oriented educational materials;
  - (2) Contact information, including mail and email addresses, Member services telephone numbers, and fax number for the Contractor;
  - (3) A member-specific portal which members can access securely and confidentially via specific Member accounts and in which members can:
    - i. Communicate with coaches;
    - ii. Access to tools for fitness and nutrition (e.g., food journal linked to a database of food items, and activity trackers);
    - iii. A secure vehicle through which members can view their dashboard, post questions and interact with the coaches (video, messaging, classes and an online community board; and
    - iv. Ability to upload member's weight from a Bluetooth scale
- h. The Contractor shall include a mobile application for use by our members. The Contractor's Mobile App(s) shall be linked with other web applications to allow for seamless data linkage of Member information, including the ability for members to access and upload their information (through a mobile device) to the Contractor's system.

A. 12. Quality Assurance

- a. The Contractor shall maintain a comprehensive quality assurance program with prospective, concurrent, and retrospective review and monitoring programs in order to ensure the delivery of high-quality services to members.
- b. Whenever the Contractor identifies a potential quality issue, the Contractor shall conduct appropriate follow-up, including taking corrective action as necessary to remedy a deficiency.
- c. The Contractor's quality assurance program shall include process and outcomes measurement, evaluation, and management for the weight management and annual reporting. This shall include but not be limited to: (1) provide a BMI Report that measures the percent and numbers of members who were identified as eligible based on the risk criteria defined by the state, measure the shift in the participating population's BMI risk profile, total pounds lost, average weight loss and percent of members completing the program; (2) measuring Member satisfaction with the Contractor's programs. As part of its quality assurance program, the Contractor shall ensure that programs are continuously updated to include nationally recognized, evidence-based and industry best practices.
- d. The Contractor shall, as part of its quality assurance program, remain current on evidence-based and emerging best practices and activities and incorporate these activities and practices into the weight management program and activities performed under this Contract.
- e. The Contractor shall conduct a survey of participants using best practice survey methodology and include questions about each aspect of the program. The survey shall, at a minimum, collect information on overall satisfaction with each element of the program/service offered (website, online tools and resources, weight management program, ease of administration, overall program quality, communications, behavior change and health improvement, convenience of program, Member experience with customer service and coaches. The survey tool and methodology shall be prior approved by the State in writing by the deadline listed in Contract Section A.21. The Contractor shall submit an annual report to the State summarizing the methodology and results and identifying any activities to increase satisfaction with each program (see Contract Attachments B and C.).
- f. The Contractor shall submit its proposed quality assurance program to the State by the date specified in Contract Section A.21. The State will review the program, meet with the Contractor, and may require changes. The Contractor shall notify the State, in writing, within thirty (30) days of any significant changes to its quality assurance program. The State reserves the right to review the change and require changes, where appropriate.

A. 13. Coordination and Collaboration

- a. The Contractor shall coordinate with the Primary Population Health and Wellness Contractor to ensure integration and sharing of Member program data for the purposes of providing a seamless delivery of the Weight Management Program through the Primary Population Health and Wellness Contractor. This coordination shall include, but is not limited to, linking to the Primary Population Health and Wellness Contractor's website, tracking Member progress through the program for purposes of incentive payment, making referrals, sharing data and information and attending and participating in meetings.
- b. Consistent with Section A.21, the Contractor shall transmit electronic files to the Primary Population Health and Wellness Contractor to identify those members who have been enrolled in and completed the weight management program.

c. Meetings

- (1) The Contractor shall attend ongoing monthly operational meetings according to the State-specified schedule. If necessary, the State may require more frequent meetings. Such meetings shall be either by phone or onsite at the offices of the State of Tennessee in Nashville, TN, as determined by the State, and shall include the Account Manager and appropriate staff. Any costs incurred by the Contractor as a result of a meeting with the State shall be the responsibility of the Contractor.
- (2) The Contractor, at the request of either party, shall meet with representatives of the State periodically, but no less than quarterly, to discuss any problems and/or progress on matters outlined by the State. The Contractor shall have in attendance the staff requested by the State, which may include a Program Director and representatives from the Contractor's organizational units required to respond to topics indicated by the State's agenda. The Contractor shall provide information to the State concerning its efforts to engage members and improve administrative activities, as well as trends in the provision of health management and wellness benefits. These meetings will take place at the State of Tennessee offices in Nashville, TN. However, at its discretion, the State may allow the Contractor to participate in such meetings by teleconference.
- (3) The Contractor shall attend a State-sponsored vendor summit, when scheduled, with representatives from the State, the medical TPAs, the PBM, the EAP/BHO, and other vendor partners. The purpose of the vendor summit is to identify issues, develop solutions, share information, leverage resources, and discuss and develop policies and procedures as necessary to ensure collaboration among vendors and the State.
- (4) At the State's request, qualified members of the Contractor's staff shall participate in monthly meetings with representatives from the medical TPAs, the EAP/BHO vendor, and the PBM to improve coordination of their services to members.
- (5) Unless otherwise directed by the State, qualified members of the Contractor's staff shall participate in monthly conference calls with Agency Benefits Coordinators (ABCs) and/or Wellness Site Champions.

- d. Prior to contract termination, at the request of the State, the Contractor shall actively participate in the creation and implementation of a transition of care plan in order to seamlessly transition active program participants to the incoming Contractor. The Contractor shall continue to provide uninterrupted care to members until they are properly established with the incoming Contractor.

Transition of care: (1) Prior to contract termination, at the request of the State, the Contractor shall actively participate in the creation and implementation of a transition of care plan in order to seamlessly transition active program participants to the incoming Contractor. The Contractor shall continue to provide uninterrupted care to members until they are properly established with the incoming Contractor. (2) If the care to members extends beyond the termination date of the contract, the State shall submit an amendment to the contract under Section D.3 to compensate the contractor for those expenses. If the contractor's noncompliance with this section A.13(d) caused the period of care to extend beyond the termination date, the State will submit an amendment to extend the contract but the Contractor will not receive compensation during the extension period for providing the required transition care to Members.

A.14. Administrative Services

- a. The Contractor, upon request by the State, shall review and comment on proposed revisions to the population health management and wellness benefit in the Public Sector Plans. When so requested, the Contractor shall comment in regard to:
  - (1) Industry practices;
  - (2) The overall cost impact to the Public Sector Plans;
  - (3) Impact upon the Contractor's performance;
  - (4) Necessary changes in the Contractor's reporting requirements; and/or
  - (5) System changes which would be required to support the change.
- b. The Contractor shall provide advice and assistance with questions related to the scope of population health management and wellness activities as requested by the State, medical TPAs, the EAP/BHO, the PBM, members, and providers.
- c. The Contractor shall assist the State in responding to the requirements of all applicable federal regulations, including EEOC regulations.
- d. The Contractor shall assist the State, if requested, in the education and dissemination of information regarding the weight management program activities available to all members in the State Health Plan. This assistance may include but not be limited to:
  - (1) Written information;
  - (2) Audio/video presentations;
  - (3) Online information;
  - (4) Attendance at meetings, workshops, and conferences; and
  - (5) Training of State staff and other persons on Contractor's procedures.
- e. The State shall determine all policies and benefits related to the State Health Plan. Should the Contractor have a question on policy determinations, benefits, or operating guidelines required for proper performance of the Contractor's responsibilities, the Contractor shall request a determination from the State in writing. The State will then respond in writing making a determination within thirty (30) days. The Contractor shall then act in accordance with such policy determinations and/or operating guidelines.
- f. The Contractor shall not modify the services provided to members during the term of this Contract without the prior written consent of the State.
- g. The Contractor shall refer calls from Agency Benefits Coordinators (ABCs) regarding eligibility or enrollment systems issues to the State. The Contractor shall refer calls from ABCs regarding medical benefits to the member's medical TPA.
- h. The Contractor shall respond to all inquiries in writing from the State within five (5) business days after receipt of said inquiry. In cases where additional information to answer the State's inquiry is required, the Contractor shall notify the State immediately as to when the response can be furnished to the State. For matters designated as urgent by the State, the Contractor shall provide a response to the State within four (4) hours during normal business hours. During non-business hours the Contractor shall provide a response to urgent matters to the State within twenty-four (24) hours. Staff members, from the applicable business unit, with final decision making authority shall provide responses.
- i. The Contractor shall be responsible for preparing the agendas for and taking minutes during all meetings with the State, including meetings with non-State attendees. The Contractor shall submit the proposed agenda to the State at least forty-eight (48) hours prior to the meeting for State review and proposed changes. After all meetings the Contractor shall prepare meeting minutes, which shall include specific information on



required action items with responsible parties assigned to said action items. After approval of the minutes by the State, the Contractor shall distribute meeting minutes to all key Contractor project staff and meeting attendees.

- j. The Contractor shall refer all media and legislative inquiries to Benefits Administration, which will have the sole and exclusive responsibility to respond to all such queries. However, the Contractor shall respond directly to audit requests from the Comptroller, to audit requests from divisions within the Department of Finance & Administration, and to subpoenas; in all such instances, the Contractor shall copy Benefits Administration on all correspondence.
- k. Unless otherwise directed by the State, the Contractor should send all correspondences first class mail (as required and/or appropriate) with no "Return Service Requested."
- l. Unless prior approved in writing by the State and in compliance with State and Federal law, the Contractor shall not use information gained through this Contract, including but not limited to utilization, health status, and pricing information, in marketing or expanding non-State business relationships or for any pecuniary gain.
- m. The Contractor shall issue all related U.S. Internal Revenue Service (IRS) Form 1099 reports, submit required 1099 information directly to the IRS utilizing the Contractor's tax ID number, and shall maintain responsibility in matters relating to such information provided to payees and to the IRS, including the payment of any penalties or fees related to such 1099 reporting.
- n. In the event the Contractor has reason to believe that fraud or abuse has or may be taking place, the Contractor shall simultaneously inform the Benefits Administration and the Division of State Audit, in the Office of the Comptroller of the Treasury. If requested by the State, the Contractor shall provide assistance to the State in any fraud investigation related to this Contract.

A. 15. Staffing

- a. The Contractor shall provide and maintain qualified staff at a level that enables the Contractor to conduct the requirements of this Contract. The Contractor shall ensure that all persons, including independent contractors and consultants assigned to perform under the Contract, shall have the experience and credentials necessary (i.e., licensed and bonded, as required) to perform the work required herein. In addition, the Contractor shall ensure that all persons assigned to perform work under the Contract shall be fully qualified to perform the services required herein. The Contractor shall include a similar provision in any contract with any subcontractor selected to perform work hereunder.
- b. For its work under this Contract, the Contractor shall not use any person or organization that is on the U.S. Department of Health and Human Services' Office of Inspector General (OIG) exclusions list unless the Contractor receives prior, written approval from the State.
- c. The Contractor shall ensure that all staff receives initial and ongoing training regarding all applicable requirements of this Contract and the Public Sector Plans. The Contractor shall ensure that staff who provide services under this Contract have received 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.
- d. Key Personnel

- (1) The Contractor shall have qualified staff, as specified in the Contractor's Proposal in response to RFP # 31786-00135 and approved by the State, to provide the weight management program. The Contractor shall ensure continuous training, education and certification, and licensure of coaches. Specifically:
    - i. All weight management coaches shall have, at a minimum, a degree in a related field;
    - ii. All coaches shall be familiar with coverage and networks of the medical TPAs, EAP/BHO and PBM.
  - (2) The Contractor shall have an ongoing designated, full-time Account Team, as specified in the Contractor's Proposal in response to RFP # 31786-00135 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 the weight management program 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. Central Standard Time, Monday through Friday, as required to fulfill the scope of services specified in this Contract. The Account Manager shall also be available via cell phone and email after hours, including weekends.
  - (3) Consistent with Section A.2.c, the Contractor shall designate an Account Manager as a Member of the Account Team. The designated Account Manager shall have a minimum of (3) three years of experience with wellness and population health management programs. 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 benefit plan design, changes in procedures, or general administrative problems identified by the State. At a minimum, the Account Manager shall meet in person 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.
  - (4) The Contractor shall have a designated Information Technology Director/Manager who shall have overall responsibility for the information technology operations under the Contract. This individual shall be available on at least a fifty percent (50%) basis during the period beginning with contract execution and ending sixty (60) days after the go-live date as identified in Contract Section A.21. and as needed to ensure all services required by this Contract are provided thereafter.
- e. The Contractor agrees that the State may approve or disapprove the staff assigned to this Contract prior to the proposed assignment. The State may also direct the Contractor to replace staff members providing core functions as the State deems necessary and appropriate. The decision of the State on these matters shall not be subject to appeal.
  - f. 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 fifteen (15) 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. The decision of the State on these matters shall not be subject to appeal.
  - g. 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.

- h. The Contractor shall survey the State 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).
- i. The Contractor will not be in breach of this contract if a key employee resigns employment with the Contractor.

A. 16. Information Systems

a. Core Information Systems Functionality

At a minimum, the Contractor shall possess the following information system functionality with processing capacity and availability sufficient for it to meet the requirements of this Contract:

- (1) Member interaction management – functionality that enables the Contractor to capture all interactions regardless of modality (e.g., phone, text, email, mail, or web), the codified purpose, scope and resolution of said interactions, the recording of said interactions (if applicable – audio and/or video) and a date/time stamp for each discrete interaction;
- (2) Event scheduling – web-accessible;
- (3) Service tracking, recording and verification;
- (4) Risk analysis and stratification;
- (5) Weight management program management including facilitation and documentation of program activities (e.g., case notes);
- (6) Education and outreach materials management;
- (7) Payment to subcontractors;
- (8) Website/portal functionality as described in Contract Section A.11.; and
- (9) Interactive voice response functionality as described in Contract Section A.

b. The Contractor's systems shall house required data. This includes, but is not limited to:

- (1) Individual member-specific identifying data including TPA, benefit option and demographic and contact information;
- (2) Identification/referral source(s);
- (3) All interactions with individual members irrespective of interaction modality – e.g., phone, text, email, online inquiry, chat, mail, or fax;
- (4) Health/functional status and quality of life data as captured from health screenings, health questionnaires and other sources;
- (5) Discrete, codified data on all services provided to individual members under this Contract, including but not limited to, program activities, online lessons/webinars/podcasts/other programs, and scheduled attendance at program events. These data shall include chronological information as well as relevant information about the individual Member as captured during the course of the program.
- (6) Information about specific weight management programs in which individual members are enrolled, including program participation start and end/opt-out date(s) and all events (including material distribution) associated with their participation in the program;
- (7) Member outcomes data; and
- (8) Any other data necessary to measure program effectiveness and ensure compliance with state and federal requirements.

The State reserves the right to modify and/or expand data required as needed.

- c. The Contractor's systems shall have the capability of adapting to any future changes necessary as a result of modifications to the ParTNers Wellness Program as managed by Benefits Administration and its requirements, including data collection, records and reporting based upon unique identifiers to track services and expenditures across medical TPAs, plan designs, population types/demographic groups, or regions/parts of the state. The systems shall be scalable and flexible so they can be adapted as needed, for example, within negotiated timeframes, in response to changes in Contract requirements, and increases in enrollment estimates. The Contractor's System architecture shall facilitate rapid application of the more common changes that can occur in the Contractor's operation, including but not limited to:
- (1) Subcontractor rate changes;
  - (2) Additions and deletions of in-scope services;
  - (3) Changes in program management rules, e.g. eligibility for certain services; and
  - (4) Standardized contact/event/service codes.
- d. All Contractor systems shall maintain linkages and head of contract-dependent (e.g., spouse to spouse and parent to child) relationships between initial and related subsequent interactions/transactions/events/activities. Additionally, when the Contractor houses indexed images of documents used by members, providers and subcontractors to transact with the Contractor, the Contractor shall ensure that these documents maintain logical relationships to certain key data such as Member identification and provider/subcontractor identification numbers. The Contractor shall also ensure that records associated with a common event, transaction or customer service issue have a common index that will facilitate search, retrieval and analysis of related activities, e.g., interactions with a particular Member about the same matter/problem/issue.
- e. Upon the State's request, the Contractor shall be able to generate a listing of all members (including each Member's Edison identification number) and providers that were sent a particular document, the date and time that the document was generated, and the date and time that it was sent to particular members or providers or groups thereof. The Contractor shall also be able to generate a sample of said document.
- f. The Contractor shall save in its computer system the State's Edison employee identification number for Members and shall include the Edison identification number when communicating with the State about a particular Member.
- g. The Contractor shall for reporting purposes capture in its system the Member's agency of employment as identified in the State's Edison 834 enrollment record.
- h. All Contractor systems shall maintain linkages between initial and related subsequent interactions/transactions/events/activities. Additionally, when the Contractor houses indexed images of documents used by Members and subcontractors to transact with the Contractor, the Contractor shall ensure that these documents maintain logical relationships to certain key data such as Member identification and subcontractor identification numbers. The Contractor shall also ensure that records associated with a common event, transaction or customer service issue have a common index that facilitates search, retrieval and analysis of related activities, e.g., interactions with a particular Member about the same matter/problem/issue.
- i. Retention and Accessibility of Information
- (1) The Contractor shall provide and maintain a comprehensive information retention plan that is in compliance with applicable State and Federal requirements, including but not limited to 508 compliance (see Section A.16).

- (2) The Contractor shall maintain information on-line for a minimum of one (1) year, based on the last date of update activity, and update detailed and summary history data for up to two (2) years to reflect adjustments.
  - (3) The Contractor shall provide within three (3) business days turnaround or better on requests for access to information. Such requests for information shall be made by the State or its authorized designee. This section does not impact the requirements and timelines regarding auditing and the HIPAA Business Associate Agreement (Contract Attachment D).
  - (4) If an audit or administrative, civil or criminal investigation or prosecution is in progress or audit findings or administrative, civil or criminal investigations or prosecutions are unresolved, information shall be kept in electronic form until all tasks or proceedings are complete.
- j. Information Ownership. All information, whether data or documents, and reports that contain or make references to said information, involving or arising out of this Contract are owned by the State. 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.
- k. Upon termination of this Contract or request by the State, the Contractor shall provide to the State or its designated agent, pertinent data identified by the State for Members to effect a transition of the Program from the Contractor. The information shall be furnished in a format and medium as is compatible with the data processing system maintained by the State or its designated agent. Additionally, the Contractor shall provide all information necessary to properly interpret the data supplied. To ensure the continuous operation of the Program and upon 30 days' notice, this information shall be provided to the State or its designated agent at least 45 days prior to the termination date of this Contract; further, the State may require the Contractor to provide this information at various other times prior to or after the termination date of this Contract. Upon termination of the Contract, all Confidential Information in the Contractor's possession shall be returned to the State or destroyed in accordance with NIST Special Publication 800-88.
- l. System Availability, Business Continuity and Disaster Recovery (BC-DR)
- (1) The Contractor shall ensure that critical Member and other web-accessible and/or telephone-based functionality and information including the website/portal described in Section A.11. (to be agreed to by the State and the Contractor) are available to the applicable System users 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. Unavailability caused by events outside of the Contractor's span of control is outside of the scope of this requirement. Any scheduled maintenance shall occur between the hours of midnight and 5:00 a.m. Central Standard Time and shall be scheduled in advance with notification on the Member website/portal. The Contractor shall make efforts to minimize any downtime between 5:00 a.m. and 10:00 p.m. Central Time.
  - (2) The Contractor shall ensure that the systems within its span of control that support its data exchanges with the State and the State's vendors are available and operational according to the specifications and schedule associated with each exchange.
  - (3) 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 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.
- (4) The Contractor shall provide the State a written summary of its BC-DR plan and latest test results by the date specified in Contract Section A.21. The Contractor shall provide the State a copy of its BC-DR plan within ten (10) business days of the Contractor's revision of the plan.
  - (5) The Contractor shall periodically, but no less than annually, test its BC-DR plan through simulated disasters and lower level failures in order to demonstrate to the State that it can restore system functions. The Contractor shall submit an annual BC-DR Results Report to the State (see Contract Attachment C).
  - (6) In the event that the Contractor fails to demonstrate in the tests of its BC-DR plan that it can restore system functions per the standards outlined in this Contract, the Contractor shall submit to the State a summary of its BC-DR corrective action plan that describes how the failure will be resolved. If the summary results show failure or that remedial action is necessary, the Contractor shall also provide a timeline of how long exposure is and when remediation will be implemented.
  - (7) In the event of a declared major failure or disaster, as defined in the Contractor's BC-DR plan, the Contractor's critical functionality as discussed in Section A. 16. shall be restored within seventy-two (72) hours of the failure's or disaster's occurrence.
  - (8) The Contractor shall maintain a duplicate set of all records relating to this Program 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. At the end of the term 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.
- m. 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 system users, members and providers; (c) might have the effect of putting the Contractor in noncompliance with the provisions or substantive intent of the Plan Documents 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 systems prior to the effective date of the actual modification or replacement.

n. System and Information Security and Access Management Requirements

- (1) The Contractor shall make system information available to duly authorized representatives of the State and other State and Federal agencies to evaluate, through inspections or other means, the quality, appropriateness and timeliness of services performed.
- (2) The Contractor's systems shall contain controls to maintain information integrity. These controls shall be in place at all appropriate points of processing. The controls shall be tested in periodic and spot audits following a methodology to be mutually agreed upon by the Contractor and the State.
- (3) Audit trails shall be incorporated into all systems to allow information on source data files and documents to be traced through the processing stages to the point where the information is finally recorded.
- (4) The Contractor shall provide for the physical safeguarding of its data processing facilities and the systems and information housed therein. The Contractor shall provide the State or a third party who performs assessment work for the State with access to data facilities upon request. The physical security provisions shall be in effect for the life of this Contract. All data must be stored in the United States.
- (5) Unless the State prior-approves in writing the Contractor's use of alternate mitigating controls, the Contractor shall use Federal Information Processing Standard (FIPS) 140-2 compliant technologies to encrypt all Member specific information in motion or rest, including back-up media.
- (6) The Contractor shall provide the State a written copy of its most current FedRamp, ISO 27000 or SOC2 Type 2 report at least one (1) month prior to the go-live date as shown in contract section A.21. The Contractor shall provide the State a copy of its FedRamp, ISO 27000 or SOC2 Type 2 report on an annual basis beginning with the second year of the contract term. (See Contract Section A.21 and Attachment C). The Contractor shall also provide, at the State's request, a copy of the report for any applicable subcontractors.
- (7) To maintain the privacy of PHI, the Contractor shall enable Transport Layer Security (TLS) on the mail server used for daily communications between the State and the Contractor. TLS shall be enabled no later than January 1, 2019 and shall remain in effect throughout the term of the contract.

A.17. Data Integration and Technical Requirements

- a. The Contractor shall maintain an electronic data interface with the State's Enterprise Resource Planning for the purpose of processing State Member enrollment and the member's official information known to the State. The Contractor shall be responsible for providing and installing the hardware and software necessary. The State requires the use by the Contractor of second level authentication for the exchange of Member personal information. This is accomplished using the State's standard software product, which supports Public Key Infrastructure (PKI). The Contractor shall design a solution, in coordination with the State, 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. The State of Tennessee uses public key encryption with Advanced Encryption Standard (AES) to encrypt PHI. If the State adopts a different or additional encryption standard or tool in the future, the Contractor shall, with adequate notice, cooperate with the State to maintain the security of protected information according to all applicable State and Federal standards.

- b. Notwithstanding the requirement to maintain enrollment data, the Contractor shall not perform changes to enrollment data without the State's approval. This prohibition shall include, but not be limited to, initiation, termination, and/or changes of coverage. The Contractor will accept an email from the State requesting an add, change, or termination of a Member in an urgent situation prior to the information being included in the State's Edison enrollment file.
- c. 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 as specified in Contract Section A.21. 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 as specified in Contract Section A.21.
- d. At a time to be determined by the State, the Contractor shall transmit on a monthly basis a complete, electronic file of members receiving Weight Management to the State's medical TPAs, EAP/BHO and the PBM vendors. The Contractor shall generate and transmit files specific to each medical TPA such that only the members enrolled in that TPA are identified to that TPA. The Contractor's file shall be in a format specified by the State. The State's vendors may implement cost-sharing incentives (e.g., lower rates of coinsurance, provision of copayments in lieu of coinsurance, waiver of or provision of lower deductible amounts) for such members.
- e. The Contractor shall transmit to the State, no less frequently than monthly, a complete, electronic file that reports those members who have fulfilled the wellness requirements within that month for purposes of providing an incentive for completing said activities. The file format to include the Employee ID, Employee Name and Incentive Amount (see Appendix 7.8).
- f. The Contractor shall maintain, in its systems, in-force enrollment records of all individuals covered by the Public Sector Plans.
  - (1) Weekly Enrollment Update: 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 weekly enrollment files from the State, in the State's Edison 834 (see RFP # 31786-00135, Appendix 7.3 for the current file format), which may be revised. Files will include full population records for all members and, unless otherwise approved by the State, will be in the format of ANSI ASC X12N, Benefit Enrollment and Maintenance 834 (5010), version 005010X220A1, with several fields customized by the State.
  - (2) The Contractor shall complete and submit to the State a Weekly File Transmission Statistics Report within five (5) business day of receipt of the Weekly Enrollment Update. The Contractor shall submit this report via email to designated State staff. (See Contract Attachment C.)
  - (3) The Contractor and or its sub-contractors shall electronically process one hundred percent (100%) of electronic transmitted enrollment updates including the resolution of any errors identified during processing within four (4) business days of receipt of the weekly file. The State and the Contractor



shall work to develop a process for responding to invalid or non-processed records.

- (4) The Contractor and or its sub-contractors shall resolve all enrollment discrepancies as identified by the State or Contractor within one (1) business day of identification.
  - (5) The Contractor and/or its subcontractors with collaboration from the State, shall resolve associated system errors, as identified through enrollment discrepancy resolution, in a timeframe mutually agreed upon with the State. The Contractor shall document in an eligibility system modification log, the system error details, the proposed solution, and the final solution as agreed upon by the State. The Contractor shall update and submit this log quarterly (refer also to Contract Attachment C. Reporting Requirements). Subsequent errors identical in nature may be subject to Performance Guarantees and assessments as specified in Attachment B.
  - (6) State Enrollment Data Match: 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 State 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.
- g. The Contractor's systems shall conform to any future federal and state specific standards for data exchange by the standard's effective date.
  - h. The Contractor shall submit pre-mailing reports, as requested by the State (see Contract Attachment C).
  - i. The Contractor shall reconcile, within ten (10) business days of receipt, payment information provided by the State. Upon identification of any discrepancies, the Contractor shall immediately advise the State.
  - j. The Contractor shall establish and maintain systems and processes to receive and provide all appropriate and relevant data from entities and vendors providing services to members, including vendors under contract with the State (e.g., the medical TPAs, EAP/BHO vendor, and PBM) and integrate such data into Contractor's systems and processes as appropriate.
  - k. At the State's request the Contractor shall provide transmittal of data, via secure medium, to any additional third parties including the State's medical TPAs, EAP/BHO, PBM, or others as identified by the State.
  - l. If the contract is terminated pursuant to Section D.5 or D.6, within sixty (60) days, the Contractor shall transfer to the State all required data and records necessary to administer the plan(s)/program(s), subject to State and Federal confidentiality requirements. The transfer shall be made electronically via secure medium, in a file format to be determined based on the mutual agreement between the State and the Contractor.
  - m. By the start of systems testing activities with the State, the Contractor's systems shall be able to transmit, receive and process data in HIPAA-compliant or agency-specific methods and formats where applicable. Any state-specific methods and formats not

- otherwise specified in this Contract and associated references and attachments will be detailed in documents that will be provided to the Contractor within thirty (30) days of Contract execution.
- n. The Contractor's systems shall conform to future federal and state specific standards for data exchange by the standard's effective date.
- o. The Contractor shall partner with the State in the management of current and future data exchange formats and methods and in the development and implementation planning of future data exchange methods not specific to HIPAA or other federal effort.
- p. The Contractor's system(s) shall possess mailing address standardization functionality in accordance with U.S. Postal Service conventions.
- q. The Contractor shall integrate, as needed, to the State website/portals and/or the State's vendor website/portals. The Contractor shall conform to the applicable State or vendor standard for website structure, design/layout, navigation and usability.
- r. The Contractor shall accept data/information, at no additional cost to the State, from outside entities approved to report on a member's progress towards goals or participation in State approved wellness or care management activities and programs.

A. 18. Privacy and Confidentiality

The following privacy and confidentiality standards apply to all forms of assistance that the Contractor provides.

- a. The Contractor shall meet all of the requirements; follow all standards; procedures; and penalties listed in the HIPAA Business Associate Agreement (Contract Attachment D), specifically Section 2 and 3: Obligations & Activities of Business Associate.
- b. 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.
- c. The Contractor shall not use Public Sector Plan Member identified, aggregated 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.
- d. 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, federal or state requirements, and the Contractor shall indemnify the State with respect to any such penalties, fines, or payments.
- e. The Contractor shall assure that all Contractor staff is trained in all HIPAA requirements, as applicable.
- f. At the request of the State, the Contractor shall offer credit protection, at no cost to the State or the Member, for those times in which a Member's personal information is accidentally or inappropriately disclosed (See Section E.9).

A.19. State Audits

- a. Notwithstanding the records provision contained in Section D.11 of this contract, with provision by the State of thirty (30) days notice, and with the execution of any applicable

and reasonable third party confidentiality agreements, the State and/or its authorized representative has the right to examine and audit the Contractor to ensure compliance with all applicable requirements. For the purpose of this requirement, the Contractor shall include its parent organization, affiliates, subsidiaries, and subcontractors.

- b. The Contractor shall provide access, with thirty (30) days notice from the State, at any time during the term of this Contract, and for three (3) years after final contract payment (longer if required by law), to the State and/or its authorized representative to examine and audit the services provided under this Contract. The State reserves the right to request that documentation be provided for review at the authorized representative's location, the State's location, or at the Contractor's corporate site.
- c. The Contractor shall, at its own cost, provide the State and/or its authorized representative with prompt and complete access to any data, documents, access to systems, and other information necessary to ensure the Contractor is complying with all requirements of this Contract.
- d. The Contractor shall provide reasonable cooperation with requests for information, which includes but is not limited to the timing of the audit, deliverables, data/information requests and the Contractor's response time to the State's questions during and after the process. The Contractor shall also provide a response to all "findings" received within thirty (30) days, or at a later date if mutually determined to be more reasonable based on the number and type of findings.
- e. The State shall not be responsible for time or any costs incurred by the Contractor in association with an audit including, but not limited to, the costs associated with providing data, reports, documentation, systems access, or space.
- f. If the outcome of the audit results in an amount due to the State, one hundred percent (100%) of the payment of such settlement will be made by the Contractor within thirty (30) days of the Contractor's receipt of the final audit report. The Contractor shall also pay the State interest on the overcharge by multiplying the amount of the overcharge by the Tennessee State Pooled Investment Fund's Gross Total Portfolio Average Earnings Rate for the month(s) in the overcharge period, times the number of days in the overcharge period(s), divided by 365 days/year. Any amount due the State which is not paid by the Contractor within thirty (30) days of the Contractor's receipt of the final audit report shall be subject to a compounding interest penalty of one percent (1%) per month. Once an audit report is issued the Contractor shall have an opportunity to comment on any findings in the report. If the Contractor disagrees with a finding resulting in a payment to the State, the State will review the Contractor's comments, but if the State retains the original audit findings the Contractor will be responsible for any payment to the State.

#### A. 20. Reporting and Systems Access

- a. The Contractor shall submit reports in a mutually agreeable electronic format (e.g., Microsoft Word or Microsoft Excel), of the type, at the frequency, and containing the detail described in Contract Attachment C. Reporting shall continue for the twelve (12) month period following termination of this Contract, if applicable.
- b. The Contractor shall provide a mutually agreed upon mechanism for the State to access aggregate data, including, for example, program and fiscal information regarding members served, services rendered, and the ability for said personnel to develop and retrieve reports. This requirement could be met by the provision of access to a decision support system/data warehouse. The Contractor shall provide training in and documentation on the use of this mechanism. The Contractor shall provide access to this reporting functionality to a minimum of three (3) State employees and a maximum of five

(5) State employees no later than thirty (30) days prior to the go-live date. Additional or replacement users may be added at any time at the State's request.

- c. The Contractor shall train the same three (3) to five (5) State staff (and any additional or replacement users) regarding access to the Contractor's reporting functionality, if applicable, no later than one (1) month prior to the go-live date, unless otherwise directed by the State. Such training may be delivered remotely or in-person.
- d. The Contractor shall provide the State access to an ad-hoc reporting liaison to assist in the development of reports that cannot be generated using the Contractor's standard reporting package. The Contractor shall deliver such reports to the State within five (5) business days of the State's request. If requested by the State, the Contractor shall deliver up to five (5) reports annually deemed as "urgent" by the State within two business days. All ad-hoc reports shall be provided at no additional cost to the State.
- e. The Contractor shall ensure that reports submitted by the Contractor to the State shall meet the following standards:
  - (1) The Contractor shall verify the accuracy and completeness of data and other information in reports submitted.
  - (2) The Contractor shall ensure delivery of reports or other required data on or before scheduled due dates.
  - (3) Reports or other required data shall conform to the State's defined written standards.
  - (4) All required information shall be fully disclosed in a manner that is responsive and with no material omission.
  - (5) Each report shall be accompanied by a brief narrative that describes the content of the report and highlights salient findings of the report.
  - (6) As applicable, the Contractor shall analyze the reports for any early patterns of change, identified trend, or outlier and shall submit a written summary with the report including such analysis and interpretation of findings. At a minimum, such analysis shall include the identification of change(s), the potential reasons for change(s), and the proposed action(s).
  - (7) The Contractor shall notify the State regarding any significant changes in its ability to collect information relative to required data or reports.
  - (8) The submission of late, inaccurate or otherwise incomplete reports shall be considered failure to report within the specified timeframe (see Contract Attachment B).
  - (9) State requirements regarding reports, report content and frequency of submission may change during the term of the Contract. The Contractor shall have at least forty-five (45) days to comply with changes specified in writing by the State.
- f. The Contractor shall provide sufficient reports and data access to the State to allow the State to calculate the frequency and duration of contacts with individual Weight Management participants stratified by age, sex, and BMI risk category.

A. 21. Due Dates for 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:
<b>Implementation</b>		

<b>Deliverables/Milestones:</b>		<b>Contract Reference(s):</b>	<b>Deliverable Due Dates &amp; Milestone Target Dates:</b>
1.	Programs, service, and information systems are fully operational	A.2.a	December 15, 2018
2.	Go-live	A.2.	January 1, 2019
3.	Kick-off meeting for all key Contractor staff	A.2.d	Within the first 21 days after Contract effective date
4.	Implementation plan	A.2.e	30 days after Contract start date (on or before)
5.	State readiness review	A.2.g	December 1, 2018 (on or before)
6.	Bi-weekly Status Meetings	A.2.j	Contract start date through February 15, 2019
7.	Implementation Performance Assessment	A.2.k	No later than 45 days post implementation
<b>Identification, Outreach and Engagement</b>			
8.	Weight Management Program Participation Report	A.5.c(3) and Attachment C	Monthly after go-live
<b>Incentive Administration, Alternative Standards and Appeals</b>			
9.	Assist Primary Population Health and Wellness Contractor with appeals determination	A. 6.c. (2)	As requested
<b>Member Services</b>			
10.	Adherence to Customer Satisfaction Standards Report	A.7.e and Attachment C	Monthly after go-live
11.	Member Inquiries	A. 7. f. and Attachment C	Quarterly after go-live
<b>Member Services Call Center</b>			
12.	Member Services Call Center open	A.8.a.(4)	December 15, 2018
13.	Call Center Statistics and Summary Report	A.8.c.(2), Attachment B, and Attachment C	Monthly starting January 1, 2019
<b>Member Complaints</b>			
14.	Description of Member Complaints Process and Procedures and Sample Determination Letter	A.9.c.	November 15, 2018
15.	Quarterly Complaints Reports	A.9.d. and Attachment C	Quarterly after go-live
<b>Member Communication/Materials</b>			
16.	Information about program to Primary Population Health and Wellness Contractor	A.10.c.	Annually no later than the middle of November for a mailing target of the first week of January each year
17.	Materials for the Annual Enrollment Period	A.10.d.	Annually three (3) months before the annual enrollment (on or before)

<b>Deliverables/Milestones:</b>		<b>Contract Reference(s):</b>	<b>Deliverable Due Dates &amp; Milestone Target Dates:</b>
<b>Member Website/Portal</b>			
18.	Website/Portal go-live	A.11.b	December 1, 2018 (on or before)
19.	State Review of Website and all Materials on Website	A.11.c	November 1, 2018 (on or before)
<b>Quality Assurance Program</b>			
20.	Program Satisfaction Survey tool and methodology	A.12.e	October 10, 2018
21.	Program Satisfaction Report	A.12.e and Attachment C	Monthly after go-live
22.	Quality Assurance Program	A.12.f.	December 1, 2018
<b>Coordination and Collaboration</b>			
23.	Transmission of Electronic Files to Primary Vendor of Members Enrolled in Weight Management	A.13.band Attachment C	Monthly after go-live
24.	Monthly Operational Meetings	A.13.c.(1)	Monthly after go-live
25.	Quarterly meetings with the State	A.13.c. (2)	Quarterly after go-live
26.	State-Sponsored Vendor Summit	A.13.c.(3)	Date TBD by State
27.	Vendor Meetings	A.13.c.(4)	Monthly at the State's request
28.	Monthly Calls with ABCs and/or Site Champions	A.13.c.(5)	Monthly after go-live
<b>Staffing</b>			
29.	Account Team Satisfaction Survey	A.15.h	Annually in January
30.	Account Team Satisfaction Survey Report	A.15.h and Attachment C	90 days after the end of the calendar year. First report due in Q1 of 2019.
<b>Information Systems</b>			
31.	BC-DR Test Results	A.16.i.(4)	December 1, 2018
32.	Business Continuity/Disaster Recovery (BC-DR) Results Report	A.16. i.(5) and Attachment C	December 1, 2018 and then annually in January beginning in 2020
33.	Duplicate set of data records	A.16.i.(8)	On or before the date of contract termination.
<b>Data Integration &amp; Technical Requirements</b>			
34.	Completion of eligibility file testing	A.17.c	45 Days prior to go-live
35.	Edison System Interface/Eligibility file acceptance	A.17.c	December 1, 2018 (on or before)
36.	Weekly enrollment update	A.17.f.(1)	Weekly after December 1, 2018
37.	Weekly File Transmission Statistics Report	A.17.f.(2) and Attachment C	Within five (5) business days of receipt of the Weekly Enrollment

Deliverables/Milestones:		Contract Reference(s):	Deliverable Due Dates & Milestone Target Dates:
			Update
38.	State enrollment data match	A.17.f.(5)	Up to four (4) times annually, as requested by the State
39.	Completion of testing files from other vendors	A.17.d,A.17.h A.17.i	November 15, 2018 (on or before)
40.	Interface with other vendors/file acceptance	A.17.d,A.17.h A.17.p	December 1, 2018
41.	Program Completion file to Primary Population Health and Wellness Contractor	A.17.d.	Monthly after go-live
42.	Data transmission to third parties	A.17.d, A.17.h, A.17.i.	As described in A.20.d., unless otherwise directed by the State
43.	Transmission of data and records to State	A.17.j	Within 60 days of notice of termination
<b>Reporting &amp; Systems Access</b>			
44.	Reports specified in Contract Attachment C	A.20.a and Contract Attachment C	As specified in Contract Attachment C
45.	Reporting system access	A.20.b	January 15, 2019 (on or before)
46.	State staff systems training	A.20.c	January 15, 2019 (on or before)

A. 22. Definitions

- a. Abandoned Call: A call in which the caller elects an option and is either not permitted access to that option or disconnects from the system.
- b. 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.
- c. Agency Benefits Coordinator (ABC): An Agency Benefits Coordinator serves as the liaison between the Public Sector Plans and members.
- d. Average Seconds to Answer (ASA): The mean time between (a) the moment at which a caller to the Contractor's call center first hears an introductory greeting and enters the queue and (b) the time at which a Member services representative at the call center answers the call. For this definition, the term "answer" shall mean begin an uninterrupted dialogue with the caller. If a Member services representative asks the caller to hold during the first sixty (60) seconds of the dialogue, the Contractor shall not consider the call to be "answered" for purposes of this definition until the Member services representative returns to the caller and begins an uninterrupted dialogue. If a caller requested a returned call using the dial-back feature described in Contract Section A.10, the ASA shall be defined as the time between (a) the moment at which a caller to the Contractor's call center first hears an introductory greeting and enters the queue and (b) the time of the returned call (regardless of whether the Member answered).
- e. Benefits Administration: The division of the Tennessee Department of Finance & Administration that administers the Public Sector Plans.

- f. **Blocked Call:** A call that cannot be connected immediately because no circuit is available at the time the call arrives or the telephone system is programmed to block calls from entering the queue when the queue backs up behind a defined threshold.
- g. **Body Mass Index (BMI):** As defined by the National Heart, Lung, and Blood Institute in its clinical guidelines on the identification, evaluation, and treatment of overweight and obesity in adults, BMI equals a person's weight in pounds divided by height in inches squared and multiplied by 703, or as weight in kilograms divided by height in meters squared. BMI charts provide completed calculations and can be used to determine BMI by simply entering weight and height. For additional information, see [http://www.nhlbi.nih.gov/guidelines/obesity/ob\\_home.htm](http://www.nhlbi.nih.gov/guidelines/obesity/ob_home.htm).
- h. **Business Days:** Traditional workdays, including Monday, Tuesday, Wednesday, Thursday, and Friday. State Government Holidays are excluded.
- i. **Calendar Days:** All seven days of the week.
- j. **CFR:** Code of Federal Regulations.
- k. **Day(s):** Calendar day(s) unless otherwise specified in the Contract.
- l. **EAP/BHO:** Employee Assistance Program/Behavioral Health Organization.
- m. **Engagement:** An "engaged" participant is defined by the payment structure for the weight management program and includes enrolled members, members that have completed 50% of classes and members who lose 5% of their body weight. Engagement is not a series of outbound attempts by the Contractor, regardless of method of outreach, where there is no documented Member response.
- n. **Weight Management Contractor:** The Contractor responsible for delivery of a structured online weight management program.
- o. **Head-of-Contract:** Eligible employee, retiree, or individual qualified under the Federal Consolidated Omnibus Budget Reconciliation Act (COBRA) (not including dependents) who is enrolled in one of the medical benefit options of the Public Sector Plans.
- p. **HIPAA:** Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and implementing regulations.
- q. **HITECH:** Health Information Technology for Economic and Clinical Health Act Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA), Public Law 111-5 (Feb. 17, 2009) and implementing regulations.
- r. **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.
- s. **Member:** Any person who is enrolled in one of the medical benefit options of the Public Sector Plans in accordance with the Plan documents who is eligible for the programs provided.
- t. **Participant:** A Member who has been enrolled in one of the programs/services. A participant is engaged as defined in Sections A.25.n



- u. Partners Wellness Program: A variety of health management and wellness services are available to all members of the Public Sector Plans. This program compliments the health plan to ensure that members have access to wellness resources, health coaching, lifestyle management and disease management, providing a comprehensive wellness approach and using best practices and evidence-based approaches to achieve positive member outcomes.
- v. PBM: Pharmacy Benefits Manager.
- w. PEPM: Per employee per month
- x. Plan Documents: The State Plan, Local Education Plan, and Local Government Plan Documents, which are located on the State's website at <https://www.tn.gov/partnersforhealth/publications.html> and which govern coverage of services and eligibility under each plan.
- y. Plan year: the twelve-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.
- z. PMPM: Per Member per month.
- aa. PPO Grand Division: A defined geographical area that includes specified counties in the State of Tennessee. The Contractor shall serve an entire PPO Grand Division. The following counties constitute the PPO Grand Divisions in Tennessee for this Contract:  
  
*East PPO 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 PPO 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 PPO 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
- bb. Primary Population Health and Wellness Contractor: Defined as the vendor responsible for the majority of population health and wellness programs (web portal, disease management, lifestyle counseling, challenges, incentive tracking/reporting, etc.)
- cc. Protected Health Information (PHI): As defined in the HIPAA Privacy & Security Rule, 45 CFR § 160.103.
- dd. Public Sector Plans: Refers to all benefit options sponsored by the State, Local Government, and Local Education Insurance Committees.
- ee. RFP: Request for Proposals.
- ff. Span of Control: Information systems and telecommunications capabilities that the Contractor itself operates or for which it is otherwise legally responsible according to this

Contract. The Contractor's span of control also includes systems and telecommunications capabilities outsourced by the Contractor.

- gg. State: The State of Tennessee.
  - hh. State Health Plan: State and Higher Education Health Plan governed by the State Insurance Committee.
  - ii. State, Local Government, and Local Education Insurance Committees: Policy making bodies for the State, Local Government, and Local Education plans established under Tennessee Code Annotated 8-27-101, 8-27-207, and 8-27-301 respectively.
  - jj. State Government Holidays: Days on which official holidays and commemorations as defined in Tennessee Code Annotated 15-1-101 *et seq.* are observed.
  - kk. Subcontract: An agreement entered into by the Contractor with any other organization or person who agrees to perform any administrative function or service for the Contractor specifically related to securing or fulfilling the Contractor's obligations to the State under the terms of this Contract, when the intent of such an agreement is to delegate the responsibility for any major service or group of services required by this Contract.
  - ll. Subcontractor: Any organization or person who provides any function or service for the Contractor specifically related to securing or fulfilling the Contractor's obligations to the State under the terms of this Contract.
  - mm. Telecommunication Device for the Deaf (TDD): Special telephone devices with keyboard attachments for use by individuals with hearing impairments who are unable to use conventional phones. Also known as TTY.
  - nn. TPA: Third party administrator. The State's contracted medical vendor(s) responsible for processing medical claims and providing other administrative support for the contract
  - oo. Warm transfer: Member service representative dials the vendor or coach and talks to the person who has picked up the call before transferring the Member over to them.
- A.23. Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty general offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

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

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

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

A.24. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

**B. TERM OF CONTRACT:**

This Contract shall be effective on August 1, 2018 ("Effective Date") and extend for a period of sixty-five (65) months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

**C. PAYMENT TERMS AND CONDITIONS:**

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Five Million Nine Hundred Ninety-Seven Thousand Dollars (\$5,997,000.00) ("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. The Contractor shall be compensated based upon the following payment methodology:

Services	Fees				
	CY 2019	CY 2020	CY 2021	CY 2022	CY 2023
Implementation Fee*	\$0.00	N/A	N/A	N/A	N/A
Weight management program fee** without Bluetooth scale	\$300.00 Per enrolled member	\$306.00 Per enrolled member	\$312.00 Per enrolled member	\$318.00 Per enrolled member	\$324.00 Per enrolled member

<b>Weight management program fee** with Bluetooth scale***</b>	\$430.00 Per enrolled member	\$436.00 Per enrolled member	\$442.00 Per enrolled member	\$448.00 Per enrolled member	\$454.00 Per enrolled member
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\* The Implementation fee will be a one-time payment to be billed during the first month of the contract.  
 \*\*The state will pay the vendor 1/3 of the total fee when a Member enrolls, another 1/3 when Member completes at least 50% of sessions/classes, and the final 1/3 payment will be made when the Contractor demonstrates that the Member achieved a total weight loss of at least 5%.  
 \*\*\*The State will decide, based on cost, if providing a Bluetooth scale will be implemented as part of the program.

- c. If Member materials containing an error had been approved by the State in writing and the error was detected after the materials have been mailed, the State will reimburse the Contractor the production and postage cost of mailing the corrected version.
  - d. In a situation where program changes would require notification to plan members that is not detailed in the terms and conditions of this Contract, the State may request the Contractor to produce and mail such notification to plan members. In such extreme situations, the State shall reimburse the Contractor only for the actual cost of postage and document printing / production for mailing materials produced at the specific direction of the State and authorized by the State.
  - e. The State will pay for each individual "engaged" in the weight management program in three (3) installments. One third will be paid when a Member enrolls in the program, one third will be paid when the Member completes 50% of the required sessions/classes. The final third will be paid when the Member is documented as losing 5% of his/her weight from the initial reported weight.
  - f. The Contractor's rates above shall include all costs related to the transmission of data to and from the Primary Wellness Contractor, medical third party administrators, the EAP/BHO, and the PBM as required under this Contract. This shall include but not be limited to the costs of accessing any claims data for purpose of identifying Member eligibility as described in Section A.5 or in the Contractor's proposal response to RFP # 31786-00135.
- 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, as determined by the State, 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, Procurement & Contracting Manager  
 Tennessee Department of Finance & Administration  
 Benefits Administration Division  
 William R. Snodgrass Tennessee Tower  
 312 Rosa L. Parks Avenue, 19th Floor  
 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, 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.5.

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

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

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

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

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

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

**D. MANDATORY TERMS AND CONDITIONS:**

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

The State:

Seannalyn Brandmeir, Procurement and Contracting Manager  
Tennessee Department of Finance & Administration  
Division of Benefits Administration  
312 Rosa L. Parks Avenue, Suite 1900  
Nashville, Tennessee 37243  
Seannalyn.Brandmeir@tn.gov  
Telephone: 615.532.4598  
Fax: 615.253.8556

The Contractor:  
Adam Scott  
President and CEO  
1333 Broadway, 4th Floor  
New York, New York 10018  
Telephone: (212) 849-0007  
E-mail: ascott@activehealth.net  
Assistant: Aida Branez  
Telephone: (212) 590.2663  
E-mail: abranecz@activehealth.net

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. Either Party may terminate this Contract without cause for any reason. A party's exercise of its right to terminate this Contract for convenience shall not be deemed a breach of contract by either Party. The terminating Party shall give the other Party at least ninety (90) 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, but in no event shall the State be liable to the Contractor for compensation for any good or service that has not been provided, nor shall the Contractor be relieved 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 Contract Attachment A, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
  - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
  - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
  - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
  - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its



business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.

- D.16 Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.
- D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State to enforce the terms of this Contract.

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

- D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy & Security 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 HIPAA 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 & Security 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 & Security 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 & Security 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 & Security Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.
- D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.
- D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
  - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
  - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
  - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its

principals or the principals of its subcontractors are excluded, disqualified, or presently fall under any of the prohibitions of sections a-d.

- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaroud 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
    - 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; and
  - f. the Contractor's response seeking this Contract.
- D.31. Insurance. Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified below. The COI shall be provided ten (10) business days prior to the Effective Date and again upon renewal or replacement of coverages required by this Contract. If insurance expires during the Term, the State must receive a new COI at least thirty (30) calendar days prior to the insurance's expiration date. If the Contractor loses insurance coverage, does not renew coverage, or for any reason becomes uninsured during the Term, the Contractor shall notify the State immediately.

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

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

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

The Contractor agrees to name the State as an additional insured on any insurance policies with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) ("Professional Liability") insurance. Also, all policies shall contain an endorsement for a waiver of subrogation in favor of the State.

The deductible and any premiums are the Contractor's sole responsibility. Any deductible over fifty thousand dollars (\$50,000) must be approved by the State. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements. The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This

Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

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

To achieve the required coverage levels, a combination of a specific policy written with an umbrella policy covering liabilities above stated limits is acceptable (For example: If appropriate limits are two million dollars (\$2,000,000) per occurrence and two million dollars (\$2,000,000) aggregate, acceptable coverage would include a specific policy covering one million dollars (\$1,000,000) per occurrence and one million dollars (\$1,000,000) aggregate written with an umbrella policy for one million dollars (\$1,000,000) per occurrence and one million dollars (\$1,000,000) aggregate. If the deficient underlying policy is for 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 as well.

**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).
- 2) The Contractor shall maintain bodily injury/property damage with a combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate for bodily injury and property damage, including products and completed operations coverage with an aggregate limit of at least two million dollars (\$2,000,000).

b. Workers' Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:
  - i. Workers' compensation and employer liability insurance in the amounts required by appropriate state statutes.
- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
  - i. The Contractor employees 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.

D.32 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.

**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. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the State for the Contractor's use under this Contract. Upon termination of this Contract, all property furnished by the State shall be returned to the State in the same condition as when received, less reasonable wear and tear. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the fair market value of the property at the time of loss.

E.5. 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 RFP-31786-00135 (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 quarterly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, and Tennessee service-disabled veterans. Such reports shall be provided to the state of Tennessee Governor's Office of Diversity Business Enterprise in the required form and substance.

- 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 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. Survival. The terms, provisions, representations, and warranties contained in Sections A.18 and A.20 of this Contract shall survive the completion of performance, termination or expiration of this Contract.

IN WITNESS WHEREOF,

ACTIVEHEALTH MANAGEMENT:



7/16/18

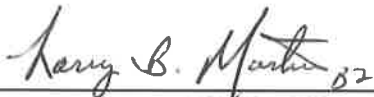
CONTRACTOR SIGNATURE

DATE

Matthew J. Asmus, Chief Financial Officer

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

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



7-18-18

LARRY B. MARTIN, CHAIRMAN

DATE




ATTACHMENT A

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	ActiveHealth Management
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.

Matthew J. Asmus, Chief Financial Officer

PRINTED NAME AND TITLE OF SIGNATORY

7/16/18

DATE OF ATTESTATION

**Contract Attachment B**

**LIQUIDATED DAMAGES**

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 referenced in Contract Attachment C) 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 unless approved otherwise in writing by the State. 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 maximum liability in the Contract or the actual amount paid during the calendar year, whichever is less, during which the assessments occurred. 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. **General Liquidated Damages:** In the event that the Contractor has failed to meet a performance guarantee that is set out in the Contract, but for which the Liquidated Damage standards are not spelled out in this Attachment, the State may assess liquidated damages under this General Liquidated Damages provision. The liquidated damages may be assessed at the rate of five hundred dollars (\$500.00) per business day or percentage point missed until the guarantee has been met.
6. 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.
7. As prior approved by the State in writing, performance guarantees shall be measured specific to the Program.

3. This section does not prohibit or restrict the State's right to claim actual damages pursuant to the Contract.

<b>1. Implementation Plan</b>	
<b>Guarantee</b>	The Contractor shall provide a project implementation plan that meets the requirements of Contract Section A.2. to the State no later than thirty (30) days after the contract start date.
<b>Liquidated Damages</b>	One thousand dollars (\$1,000) for each day beyond the deadline that the plan is not provided to the State.
<b>Measurement</b>	Measured, reported, and reconciled no later than three (3) months after the go-live date by the State.
<b>2. Operational Readiness</b>	
<b>Guarantee</b>	The Contractor shall resolve all findings identified by the State during its operational readiness review, as required in Contract Section A.2., prior to the go-live date.
<b>Liquidated Damages</b>	Five thousand dollars (\$5,000) per finding if the standard is not met. Fifty thousand dollar (\$50,000) maximum.
<b>Measurement</b>	Measured and reported no later than three (3) months after the go-live date by the State.
<b>3. Initial Data Loading</b>	
<b>Guarantee</b>	All data required for implementation other than Member eligibility data, as described in Contract Section A.2., shall be loaded correctly.
<b>Liquidated Damages</b>	Five thousand dollars (\$5,000) if the standard is not met.
<b>Measurement</b>	Measured and reported quarterly; reconciled annually by the State.
<b>4. Eligibility Data Loading</b>	
<b>Guarantee</b>	All Member eligibility data, as described in Contract Section A.17.f, shall be loaded correctly.
<b>Liquidated Damages</b>	One thousand dollars (\$1,000) per finding if the standard is not met.
<b>Measurement</b>	Measured based on a quarterly audit of Member data by the State.
<b>5. Written Member Inquiries</b>	
<b>Guarantee</b>	As required in Contract Section A.7., the Contractor shall respond to ninety-five percent (95%) of written inquiries (mail and email) from members within five (5) business days and one hundred percent (100%) within ten (10) business days.
<b>Liquidated Damages</b>	Five hundred dollars (\$500) for each full percentage under each standard.
<b>Measurement</b>	Measured, reported and reconciled quarterly by the State.
<b>6. Average Speed of Answer</b>	
<b>Guarantee</b>	The Contractor's call center shall maintain a monthly average speed of answer (ASA) of thirty (30) seconds or less, as required in Contract Section A. 8.c.(1). The Contractor shall calculate the number of instances during each day during which a caller's time-to-answer exceeds this threshold (based on Contractor's internal telephone support system reports) compared to the total number of calls per day.
<b>Liquidated Damages</b>	One thousand dollars (\$1,000) for each calendar month that the average speed of answer exceeds the threshold above.

<b>Measurement</b>	Measured and reported on a weekly basis by the Contractor from March 1, 2019 through September 1, 2019. Thereafter, measured and reported monthly by the Contractor. Reconciliation shall be quarterly by the State and quarterly assessment paid annually by the Contractor.
<b>7. Unauthorized Materials</b>	
<b>Guarantee</b>	The Contractor shall obtain the written authorization from the State as required in this contract prior to the distribution of materials.
<b>Liquidated Damages</b>	Ten dollars (\$10) per each individual letter, packet, email or other distribution mechanism that contains any materials that the State has not prior authorized as required. Twenty-five thousand dollar \$25,000 maximum per occurrence.
<b>Measurement</b>	Measured and reported after each occurrence by the State.
<b>8. Reading Level</b>	
<b>Guarantee</b>	The Contractor shall provide to the State a draft of all Member outreach and education materials with both an accurate Flesch-Kincaid reading level analysis that indicates that the materials are at or lower than the 6.0 reading level and a reading level at or below 6.0 as required in Contract Section A. 10.o.
<b>Liquidated Damages</b>	Five hundred dollars (\$500) for each occurrence in which the standard is not met.
<b>Measurement</b>	Measured and reported after each occurrence by the State.
<b>9. Overall Program Satisfaction Survey</b>	
<b>Guarantee</b>	Overall satisfaction defined as members reported to be satisfied or very satisfied using an approved standard 5 pt survey tool. Initial target threshold of 75% in the first program year. Year two 78%, year three 80%, year four 83% and year five 85%. Based on State of Tennessee specific results and sent to all participants required by Contract Section A.12.e.
<b>Liquidated Damages</b>	Ten thousand dollars (\$10,000) for each year that the standard is not met.
<b>Measurement</b>	Measured, reported, and reconciled annually by the State.
<b>10. Account Management Satisfaction</b>	
<b>Guarantee</b>	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. This will be measured quarterly.
<b>Liquidated Damages</b>	Ten thousand dollars (\$10,000) for each year that the standard is not met.
<b>Measurement</b>	Measured, reported, and reconciled annually by the State.
<b>11. Eligibility Posting</b>	
<b>Guarantee</b>	One hundred percent (100%) of electronically transmitted enrollment updates, including the resolution of any errors identified during processing, shall be processed within four (4) business days of receipt of the weekly file, as required in Contract Section A.17.f.
<b>Liquidated Damages</b>	Five hundred dollars (\$500) per day for the first (1 <sup>st</sup> ) and second (2 <sup>nd</sup> ) business days out of compliance; one thousand dollars (\$1,000) per business day thereafter.
<b>Measurement</b>	Measured and reported weekly; reconciled annually by the State.
<b>12. Eligibility Discrepancies</b>	
<b>Guarantee</b>	Resolve all discrepancies (any difference of values between the State's database and the Contractor's database) identified by the processing of the enrollment file within one (1) business days of notification by the State or identification by the Contractor, as required in Contract Section A.17.f.

<b>Liquidated Damages</b>	Five hundred dollars (\$500) per day for the first (1 <sup>st</sup> ) and second (2 <sup>nd</sup> ) business days out of compliance; One thousand dollars (\$1,000) per business day thereafter.
<b>Measurement</b>	Measured and reported quarterly; reconciled annually by the State.
<b>13. Audit Recovery</b>	
<b>Guarantee</b>	As required in Contract Section A.19, any amount due the State which is not paid by the Contractor within (30) days of the Contractor's receipt of the final audit report shall be subject to a compounding interest penalty of one percent (1%) per month.
<b>Liquidated Damages</b>	Compounding interest penalty of one percent (1%) per month for each month payment is not received.
<b>Measurement</b>	Measured, reported, and reconciled after each occurrence by the State.
<b>14. Ongoing Data Loading</b>	
<b>Guarantee</b>	All data required for operations other than Member eligibility data shall be loaded correctly, as required in Contract Section A.17.
<b>Liquidated Damages</b>	Five hundred dollars (\$500) per day for the first (1 <sup>st</sup> ) and second (2 <sup>nd</sup> ) business days out of compliance; one thousand dollars (\$1,000) per business day thereafter, not to exceed \$100,000.00 per year.
<b>Measurement</b>	Measured and reported quarterly; reconciled annually by the State.
<b>15. Call Center and Other Systems Operational</b>	
<b>Guarantee</b>	The Contractor's call centers (Member services and nurse advice line) and other systems shall be fully operational no later than the date specified in Contract Section A.21.
<b>Liquidated Damages</b>	Ten thousand dollars (\$10,000).
<b>Measurement</b>	Measured and reported no later than three (3) months after the go-live date by the State.
<b>16. Program Go-Live Date</b>	
<b>Guarantee</b>	The Contractor shall be ready to go-live according to the date in Contract Section A.21.
<b>Liquidated Damages</b>	Twenty thousand dollars (\$20,000).
<b>Measurement</b>	Measured and reported no later than three (3) months after the go-live date by the State.
<b>17. Website/Portal</b>	
<b>Guarantee</b>	The Contractor's website/portal for the Public Sector Plans shall be available on the Primary Population Health and Wellness Contractor's website and fully operational, with the exception of Member data/Protected Health Information, on or before the date specified in Contract Section A. 21.
<b>Liquidated Damages</b>	One thousand dollars (\$1,000) per day that the standard is not met.
<b>Measurement</b>	Measured, reported, and reconciled no later than three (3) months after the go-live date by the State.
<b>18. Reporting</b>	
<b>Guarantee</b>	The Contractor shall distribute to the State all reports required in Contract Sections A.1 through A. 21. and Contract Attachment C within the time frame specified in the Contract.
<b>Liquidated Damages</b>	Five hundred dollars (\$500) for each report not delivered to the State within the time frame specified in the Contract.
<b>Measurement</b>	Measured, reported, and reconciled after each occurrence by the State.
<b>19. Privacy and Security of Protected Health Information</b>	

<b>Guarantee</b>	In accordance with Contract Section E.9., 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).
<b>Liquidated Damages</b>	For releases affecting fewer than five hundred (500) members: 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. For releases affecting five hundred (500) or more members: Twenty-five thousand dollars (\$25,000) per violation. ***In the event Contractor is responsible for Federal Penalties related to a Privacy or HIPAA violation, the State may, at their discretion waive any Liquidated Damages due the State in association with the same violation.***
<b>Measurement</b>	Measured, reported, and reconciled after each occurrence by the State.

## 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, unless otherwise approved by the State. 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 ninety (90) days notice prior to implementation of a report modification.

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

1. Weekly reports shall be submitted by Tuesday of the following week;
2. Monthly reports shall be submitted by the 15<sup>th</sup> of the following month;
3. Quarterly reports shall be submitted by the 20<sup>th</sup> of the following month;
4. Semi-Annual Reports shall be submitted by the 20<sup>th</sup> of the following month;
5. 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:

1. **Performance Report Card**, as detailed at Contract Attachment B (each component to be submitted at the frequency indicated in Contract Attachment B), submitted by secure email using the template prior approved in writing by the State, which shall include:
  - a. Status report narrative
  - b. Detail report on each performance measure
2. **Weight Management Program Participation Report**, submitted monthly using the template prior approved in writing by the State. The report shall include but not be limited to the number and percent of eligible members who are/are not participants (by the engagement definition), the number of sessions completed; and the number of participants who graduated from the program.
3. **Customer Satisfaction Report**, submitted monthly using the template prior approved in writing by the State. The report shall, at a minimum, report on compliance with the established customer satisfaction standards.
4. **Appeals Report**, submitted monthly using the template prior approved in writing by the State. The report shall, at a minimum, report on the number of members who have filed an appeal to receive the incentive, the reason for the appeal and the appeal resolution.
5. **Call Center Statistics and Summary Report**, Unless otherwise directed by the State, this report shall include but not be limited to the following data:
  - Average Speed of Answer – statistics to support an average speed of answer (ASA) of thirty (30) seconds or less during each month.
  - First Call Resolution – statistics to support a monthly average rate of eighty-five (85%) for first call resolution.
  - Telephone Service Factor (TSF) - percentage of incoming telephone calls answered within 20 seconds.

- Open call/inquiry closure rate – percentage of Member calls/inquiries resolved within five (5) business days.
6. **Quarterly Complaints Report**, submitted quarterly using the template prior approved in writing by the State. The report shall, at a minimum, summarize the number of grievances, by type, the timeframes for resolving grievances and the resolution.
  7. **Body Mass Index (BMI) Report**, submitted annually using the template prior approved in writing by the State. The report shall at a minimum include the percent and numbers of members who were identified as eligible based on the risk criteria outlined in the contract, measure the shift in the participating population's BMI risk profile, total pounds lost, average weight loss and percent of members completing the program.
  8. **Overall Program Satisfaction Survey Report**, submitted monthly 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.
  9. **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.
  10. **Pre-Mailing Report**, submitted as requested by the State, using the template prior approved in writing by the State. The report shall at a minimum summarize the population targeted for a specific mailing so that the state may audit the business logic used to determine if the defined population is accurate.
  11. **BC-DR Results Report**, submitted annually using the template prior approved in writing by the State.
  12. **Program Participation Files to medical TPAs and PBM**, submitted monthly using the template prior approved in writing by the State. The report shall, at a minimum, include information on the members enrolled in a specific program and be specific to each medical TPA.
  13. **Program Completion File to Primary Population Health and Wellness Contractor**, submitted monthly using the template approved by the State and Primary Population Health and Wellness Contractor. This report shall include all members who have completed the weight management program for purposes of providing an incentive to those eligible.
  14. **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 ActiveHealth Management (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:**

**Weight Management Program**

**August 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.

**1. 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 "Marketing" shall have the meaning set out in its definition at 45 C.F.R. § 164.501.
- 1.10 "Privacy Official" shall have the meaning as set out in its definition at 45 C.F.R. § 164.530(a)(1).
- 1.11 "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.
- 1.12 "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.
- 1.13 "Required by Law" shall have the meaning set forth in 45 CFR § 164.512.
- 1.14 "Security Incident" shall have the meaning set out in its definition at 45 C.F.R. § 164.304.
- 1.15 "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.
- 1.16 Other Confidentiality Laws. The parties acknowledge that this BA Agreement is intended to supplement other federal and state laws and regulations that impose obligations to maintain the confidentiality and security of individually identifiable personal information. To the extent not preempted by HIPAA, the parties acknowledge their obligation to comply, where applicable, with all such laws and regulations, including, without limitation, breach notification laws and laws requiring the safeguarding of such information.

## **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 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 an Actual Breach of Unsecured PHI immediately (up to 48 hours) 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 the Individual, 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 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:

Adam Scott  
President and CEO  
1333 Broadway, 4th Floor  
New York, New York 10018  
Telephone: (212) 849-0007  
E-mail: [ascott@activehealth.net](mailto:ascott@activehealth.net)  
Assistant: Aida Branez  
Telephone: (212) 590.2663  
E-mail: [abranez@activehealth.net](mailto:abranez@activehealth.net)

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.

4.9 Business Associate is permitted to de-identify PHI, provided that it does so in accordance with HIPAA de-identification rules. De-identified information does not constitute PHI, and may be used and disclosed by Business Associate for its own administrative purposes, including, for purposes of developing comparative databases, performing statistical analysis and research, and improving the quality of Business Associate's products and services.

## **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 and 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](mailto:benefits.privacy@tn.gov)

BUSINESS ASSOCIATE:  
Adam Scott  
President and CEO  
1333 Broadway, 4th Floor  
New York, New York 10018  
Telephone: (212) 849-0007  
E-mail: [ascott@activehealth.net](mailto:ascott@activehealth.net)

Assistant: Aida Branez  
Telephone: (212) 590.2663  
E-mail: [abranez@activehealth.net](mailto:abranez@activehealth.net)

With a copy to:  
ATTN: Seannalyn Brandmeir, Esq.  
Procurements & Contracting Manager  
At the address listed above  
Phone: (615) 532-4598  
Facsimile: (615) 253-8556  
E-Mail: [seannalyn.brandmeir@tn.gov](mailto: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,

  
\_\_\_\_\_  
CONTRACTOR SIGNATURE

7/16/18  
\_\_\_\_\_  
Date:

  
\_\_\_\_\_  
Larry B. Martin, Commissioner of Finance & Administration

7-18-18  
\_\_\_\_\_  
Date: