



# CONTRACT

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

<b>Begin Date</b> May 1, 2023	<b>End Date</b> December 31, 2029	<b>Agency Tracking #</b> 21386-00171	<b>Edison Record ID</b> 78126
<b>Contractor Legal Entity Name</b> Aon Consulting, Inc.			<b>Edison Vendor ID</b> 12537

**Goods or Services Caption** (one line only)  
Actuarial and OPEB services

<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>
2024			\$956,250		\$956,250
2025			\$1,946,250		\$1,946,250
2026			\$2,025,000		\$2,025,000
2027			\$2,115,000		\$2,115,000
2028			\$2,205,000		\$2,205,000
2029			\$2,295,000		\$2,295,000
2030			\$1,170,000		\$1,170,000
<b>TOTAL:</b>			<b>\$12,712,500</b>		<b>\$12,712,500</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)
- Disabled Owned Business (DSBE)
- 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.
- Government  Non-Minority/Disadvantaged  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.

**Speed Chart** (optional) **Account Code** (optional)

**CONTRACT**  
**BETWEEN THE STATE OF TENNESSEE,**  
**Department of Finance & Administration, Division of Benefits Administration, State Insurance**  
**Committee, Local Education**  
**Insurance Committee, Local Government Insurance Committee**  
**AND**  
**Aon Consulting, Inc.**

This Contract, by and between the State of Tennessee, Department of Finance & Administration, Division of Benefits Administration, State Insurance Committee, Local Education Insurance Committee, Local Government Insurance Committee ("State") and Aon Consulting, Inc. ("Contractor"), is for the provision of Scope of Goods or Services Caption, 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: Chicago  
Contractor Edison Registration ID # 12537

**A. SCOPE:**

- A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.
- A.2. Definitions. For purposes of this Contract, definitions shall be as follows and as set forth in the Contract:
- a. **Actuarial Standards of Practice (ASOPs):** The Actuarial Standards Board sets standards for appropriate actuarial practice in the United States through the development and promulgation of ASOPs. These ASOPs describe the procedures an actuary should follow when performing actuarial services and identify what the actuary should disclose when communicating the results of those services.
  - b. **Actuarially Determined Contribution (ADC):** A target or recommended contribution to a defined benefit OPEB plan for the reporting period, determined in conformity with ASOPs based on the most recent measurement available when the contribution for the reporting period was adopted.
  - c. **Auditee:** An insurance company, Third Party Administrator, Pharmacy Benefit Manager, or other contractor providing services to the State Group Insurance Program being audited under this contract.
  - d. **Benefits Administration (BA):** The division of the Tennessee Department of Finance & Administration that administers the State Group Insurance Program.
  - e. **Business Days:** Traditional workdays, including Monday, Tuesday, Wednesday, Thursday, and Friday. State Government Holidays are excluded.
  - f. **Claim:** Notification to an insurance company, TPA or Pharmacy Benefit Manager (PBM) requesting payment of an amount due under the terms of the policy.
  - g. **Decision Support System (DSS):** A database and query tool containing health care information and Claims data which allows for analytics and executive decision making.
  - h. **Dependent:** The child or spouse of an employee or retiree.
  - i. **Fiscal Year:** The State's accounting year running from July 1<sup>st</sup> to June 30<sup>th</sup>.
  - j. **Governmental Accounting Standards Board (GASB):** Established in 1984, the Governmental Accounting Standards Board is the independent, private-sector organization

that establishes accounting and financial reporting standards for U.S., State and local governments that follow Generally Accepted Accounting Principles.

- k. **Holidays:** Days on which official holidays and commemorations as defined in Tenn. Code Ann. § [15-1-101](#) *et seq.*, are observed.
- l. **Incurred But Not Reported (IBNR):** A provision for medical services that have occurred but have not yet been reported to the carriers.
- m. **In Writing:** Written communication between the Parties, which may be in the form of an official memo, or documents sent via postal mail, fax, or email communications.
- n. **Member(s):** Employees and their eligible Dependents, retirees and their eligible Dependents and/or survivors, and individuals qualified under The Federal Consolidated Omnibus Budget Reconciliation Act ("COBRA") and their eligible Dependents who are enrolled in the Plan sponsored by the State, Local Education, and Local Government Insurance Committees.
- o. **Other Post-Employment Benefits (OPEB):** Benefits (such as death benefits, life insurance, disability, and long-term care) that are paid in the period after employment and that are provided separately from a pension plan, as well as healthcare benefits paid in the period after employment, regardless of the manner in which they are provided. OPEB does not include termination benefits or termination payments for sick leave.
- p. **Pharmacy Benefits Manager (PBM):** The State's contracted pharmaceutical contractor responsible for processing pharmacy Claims and providing other administrative support for the Plan.
- q. **Plan Documents:** The legal publication that defines eligibility, enrollment, Benefits, and administrative rules of the State Group Insurance Program.
- r. **Plan Year:** January 1 through December 31 of the same calendar year.
- s. **Protected Health Information (PHI):** Individually identifiable health information that is transmitted by electronic media, maintained in electronic media; or transmitted or maintained in any other form or medium.
- t. **Reference Based Pricing:** A set price for healthcare services that an employer chooses to pay.
- u. **Required Supplemental Information (RSI):** Information that a designated accounting standard setter requires to accompany an entity's basic financial statements. Required supplementary information is not part of the basic financial statements; however, a designated accounting standard setter considers the information to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. In addition, authoritative guidelines for the methods of measurement and presentation of the information have been established.
- v. **Service Organization Controls (SOC) Reports:** Reports that follow the Auditing Standards Board of the American Institute of Certified Public Accountants Statements for reporting on controls at a service organization.
- w. **State Group Insurance Program (Plan):** Refers to all benefit options sponsored by the State, Local Government, and Local Education Insurance Committees (e.g., health plan options, disability insurance, life insurance, other voluntary benefits).
- x. **State, Local Government, and Local Education Insurance Committees -** Policy making bodies for the State, Local Government, and Local Education agencies established under Tenn. Code Ann. § 8-27-101, 8-27-207, and 8-27-301 respectively.

- y. **Third Party Administrator (TPA):** The State's contracted medical contractor(s) responsible for processing medical Claims and providing other administrative support for the Plan.

A.3. The Contractor shall provide the State with actuarial and benefit-consulting services to assist the State in determining present and future funding needs and recommended benefit modifications necessary to maintain the financial stability for the Plan and both self-insured and fully-insured voluntary benefit plans. The Contractor shall provide the State with OPEB actuarial valuation services in accordance with applicable ASOPs ensuring the State's compliance with requirements of the GASB Statement No. 74, *Financial Reporting for Postemployment Benefit Plans Other Than Pension Plans*, and Statement No. 75, *Accounting and Financial Reporting by Employers for Postemployment Benefits Other Than Pensions*. The Contractor shall also provide the State with annual funding reports that will present an ADC for any trusted OPEB plan as well as other OPEB related actuarial services, as requested by the State.

A.4. Actuarial and Financial Services

- a. The Contractor shall assist the State in analyzing the funding requirements of each Plan at the product level including the review of premium levels by coverage tier based on employee and employer contribution policy, projected Claims, and other Plan expenses. Projections shall show the projected revenue, projected Claims, and other Plan expense for the current Plan Year and three future Plan Years.
- b. The Contractor shall provide actuarial services to assist the State in evaluating the actuarial and financial differences between various health Plan benefit designs for both the Plan and Members.
- c. The Contractor shall assist the State in the review, analysis, forecasting and reporting of financial data to ensure Plan solvency, which shall include the submission of quarterly IBNR calculations.
- d. The Contractor shall, at the direction of the State, the Contractor shall complete or assist with an evaluation of actual Plan performance.
- e. The Contractor shall assist the State in determining the anticipated impact of benefit, financial and administrative modifications to the Plan.
- f. The Contractor shall, at the direction of the State, the Contractor shall evaluate other State contractor's compliance with contract requirements.
- g. The Contractor shall perform evaluations to determine whether local education agencies not currently on the local education plan have benefits actuarially deemed equal or superior under State law and policy.
- h. The Contractor shall perform IBNR evaluation, reports, and schedules in support of the year end closing of the Annual Comprehensive Financial Statements.
- i. The Contractor shall provide a minimum actuarial value certification that the health plans offered by the Plan are in compliance with the minimum value requirements of the Affordable Care Act as required by 45 CFR Section 156.145.
- j. The Contractor shall, at the request of the State, the Contractor shall perform analysis of medical Claims to determine the cause of financial and medical trends.

A.5. Contracting and Procurement Services

The Contractor shall support the State in the design, development, preparation, review, and analysis of contracts and procurements for new and existing benefits and programs. The

Contractor must sign the State's development disclosure/confidentiality statement per procurement rules.

- a. Contract and procurement support may include, but is not limited to, the following benefits and programs: medical, pharmacy, employee assistance program, behavioral health and substance abuse, wellness and chronic condition management, lifestyle counseling, employer sponsored health clinics, life insurance, accidental death and dismemberment insurance, dental, vision, short and long term disability, Medicare supplement, health savings accounts, flexible benefits, and other benefits and services as the State deems necessary.
- b. At the request of the State, and as permitted, the Contractor will provide subject matter experts to assist with the preparation of BA's procurements. This assistance will include providing information regarding industry trends, benefit design recommendations, potential scorings, analysis of laws or policies impacting the procurement, or other analyses for which the Contractor has specialized expertise or tools. At the State's request, the Contractor will also analyze and score submitted cost proposals.
- c. In some cases, the Contractor's participation in the development of state procurements or analysis of submitted proposals will prohibit the Contractor from submitting a proposal in response to any procurement on which the Contractor has consulted on and assisted in the procurement. Further, the Contractor is prohibited from refusing to provide consulting services in order to submit a proposal on a potentially more lucrative future procurement. This section in no way prevents the Contractor from responding to any procurement not associated with consulting services provided to BA.
- d. The Contractor shall be available to meet with appropriate State personnel at the State's facilities in Nashville, or virtually, to discuss contracting and procurement activities at the State's direction.

#### A.6. Audit Services

The Contractor shall perform, at the request of the State, financial and/or programmatic audits of the third-party administrators or insurance companies under contract with the State for the administration of the health plans or insured benefit plans sponsored by the State.

- a. Such audits may include, but are not limited to: pre-implementation, readiness reviews, statistically valid sample of adjudicated Claims, shared accumulator audits, clinical audits, medical pharmaceutical rebate audits, pharmacy rebate audits, operational audits, targeted Claims audits, full review of administrative procedures including customer service, utilization review, care management, case management, chronic condition management, system capability, eligibility review, Claims overpayments, Claims accuracy and timeliness, cost recovery, performance of Claims adjudication procedures, the processing of Claims, as well as performance against contract guarantees and other services in accordance with the Plan Documents and contractor contractual requirements.
- b. The Contractor shall perform, at the request of the State, audits of the pharmacy benefit manager administering the pharmacy benefits for the Plan. Such audits may include, but are not limited to, those required to be in compliance with Tenn. Code Ann. § 4-3-1021. The Contractor shall have the necessary qualified staff and separation of functions as required by the PBM in order to conduct these audits. The final audit reports associated with Tenn. Code Ann. § 4-3-1021 shall be provided to the State no later than May 31<sup>st</sup> of each year.
- c. The Contractor, at the request of the State, shall review and audit the provision of the benefits and services provided by insurers, administrators, and other contractors under contract with the State. This item may involve readiness reviews and/or evaluations of SOC reports as described in E.7.e.
- d. The Contractor shall execute confidentiality agreements with the State and the State's contractors when the information to be made available as part of a consulting or auditing

engagement is considered, or has been identified as, proprietary by one of the parties. Any proprietary data obtained by the Contractor while performing services under this Contract shall be separated from other work not directly related to services performed for the State.

- e. At the beginning of each audit, the Contractor shall provide the State with a scope of audit activities and a timeline of for completion of each audit activity.
- f. While audits are in process, the Contractor and the State shall conduct at a minimum monthly meetings to monitor progress of the audits and to exchange information and feedback.
- g. The Contractor shall provide preliminary results, including findings, to the Auditee and the State for review and comment on a timeline agreed upon by the State.
- h. The Contractor shall produce reports detailing any issues identified, the cause and impact of each issue, and recommended corrective actions for any identified issues. The Contractor will provide draft reports to the State and the Auditee. The Auditee will receive its report and will have an opportunity to provide a written response to each issue identified in its report. Issues that are proved resolved by written responses, either by the State or Auditee, will be omitted from the final report. For remaining issues, the Auditee's unedited written response will be incorporated into its final report. The final report will be delivered to the State and the Auditee. All draft and final reports are considered the property of the State and should not be disseminated, in full or part, by the Contractor, except as expressly written above.
- i. The Contractor shall provide a final report to the State and the entity being audited within 30 calendar days of receiving comment.
- j. The Contractor shall provide completed reports to the State and the entity being audited on a timeline agreed to by the State and shall present audit results in person or virtually, as requested by the State, to the audit committee.

#### A.7. Consulting Services

- a. The Contractor shall provide assistance to the State in the development, design, evaluation, and review of benefits plans sponsored by the State and identify strategies, goals and objectives and modifications which address the need to provide quality, cost effective benefits to Members.
- b. The Contractor shall provide to the State timely information, analysis and recommendations concerning Federal laws and regulations and proposed changes to State law and their present and future impact on the provision of Plan benefits.
- c. As requested by the State, the Contractor shall assist in the development and/or review of plan benefit communications materials (i.e., summary Plan Documents, plan brochures, certificates of coverage etc.) as well as administrative procedure manuals.
- d. The Contractor shall assist the State in the review and analysis of contractor contractual requirements, including but not limited to, performance guarantees, trend guarantees, and risk sharing arrangements.
- e. The Contractor shall assist the State in the review and analysis of various benefit and medical management activities, including but not limited to, chronic condition management, lifestyle counseling and case management to determine the efficacy of such programs and their return on investment and/or impact to the Plan.
- f. The Contractor shall work with the State's DSS, to analyze Plan performance and develop strategies to enhance and improve the provision of benefits.
- g. The Contractor shall provide assistance to the State in the evaluation, design and/or implementation of various medical delivery systems and alternative payment models. Such systems and models may include, but are not limited to, patient centered medical homes,

employer-sponsored health clinics, tiered networks, narrow networks, specialty networks, centers of excellence, episodes of care, accountable care organizations, bundled payments, and Reference Based Pricing.

- h. The Contractor shall provide medical expertise and support to include general and specific review and comment on benefit design, medical Claims data analysis and coverage issues in addition to physician review and comment, by the appropriate specialist, on medical necessity and appropriateness reviews when fraud or abuse is suspected, and experimental/investigative medical procedure determinations.
- i. The Contractor shall assist the State in review and analysis of supplemental policies offered by agencies participating in the Plan.
- j. At the State's request, the Contractor shall assist with review, development, or revision of the Plan Documents.
- k. At the State's request, the Contractor shall assist the State with legislative analyses and responses and be required to testify at legislative hearings. Legislative analyses may require 24-36 hour turnaround.
- l. At the State's request, the Contractor shall assist the State with Insurance Committee, audit committee, and OPEB trustee meeting materials and be available to present at requested meetings.
- m. The Contractor shall provide or subcontract for other benefits consulting services as requested by the State.
- n. At the State's request, the Contractor shall provide the State with any public publications, newsletters, white papers, or access to webinars produced or sponsored by the Contractor.
- o. At the State's request, the Contractor shall assist the State in developing and deploying surveys to Plan members.

#### A.8. OPEB Actuarial Services

- a. The Contractor shall perform annual valuations in accordance with *ASOPs* for the State of Tennessee's OPEB — Health Plans that will ensure compliance with the requirements of the GASB Statement No. 75, *Accounting and Financial Reporting by Employers for Postemployment Benefits Other Than Pensions or any applicable guidance or policies set by governing organizations* or any additional or replacement GASB Statements. The valuations shall include the detailed accounting entries and other information needed to prepare the note disclosures and RSI prescribed by the statement. The required accounting entries shall cover the activity of the measurement period as well as entries related to the period subsequent to the measurement date. The employer results shall be presented in separate reports that are addressed to the management of each participating entity identified by the State.

Further, each separate report shall contain appropriate certifications and be in a form as agreed to by the State and the Contractor. A database of the unamortized elements of the OPEB liability and expense calculation, by participating employer, shall be maintained by the Contractor. These requirements shall extend to any OPEB plan administered by the State, whether explicitly listed in this document or implemented during the term of this contract. The State reserves the right to make changes to the structure of current OPEB plans. Changes to Plan structure shall not limit the Contractor responsibilities.

The Contractor shall provide reporting in accordance with the structure of the State's Plans described below. The State currently administers four separate self-insured health plans - three health plans, collectively known as the Plan, and a fourth plan, the Tennessee Plan (TN) which provides benefits for Medicare retirees over the age of 65. The following is a brief description of the four financially independent defined benefit OPEB plans administered by the State:

- (1) For GASB Statement 75 purposes, the State employee Group OPEB Plan is considered a single-employer defined benefit OPEB plan and is pre-funded through a qualifying OPEB trust where the employer contributions and retiree premium payments are deposited into a trust fund and Claims are paid directly from the trust. The trust will meet all criteria established in paragraph 4 of GASB Statement 75. Employer contributions, to the plan, will be based on an ADC rate. Approximately 65 employers are individually identified as participants in this plan.
- (2) For GASB Statement 75 purposes, the Local Education OPEB Plan is considered a multiple-employer defined benefit OPEB plan and is funded on a pay-as-you-go basis in that future Claims and administrative expenses are generally estimated based on past Claims and the resultant estimates are utilized to establish funding requirements, primarily monthly premiums. There are approximately 125 employers that participate in this plan. Typically, employers provide an implicit subsidy to the retirees through contributions towards the blended premium rate charged to active employees, however, some employers also provide explicit subsidies. This plan includes a special funding situation where the State is a governmental non-employer contributing entity for retired teacher premiums.
- (3) For GASB Statement 75 purposes, the Local Government Plan is considered a multiple-employer defined benefit OPEB plan and is funded on a pay-as-you-go basis in that future Claims and administrative expenses are generally estimated based on past Claims and the resultant estimates are utilized to establish funding requirements, primarily monthly premiums. There are approximately 359 local governments and quasi-governmental organizations that participate in this plan. Typically, employers provide an implicit subsidy to the retirees through contributions towards the blended premium rate charged to active employees, however, some employers also provide explicit subsidies.
- (4) For GASB 75 purposes, the Tennessee Plan is considered a multiple-employer defined benefit OPEB plan and is funded on a pay-as-you-go basis. This plan consists of retirees who are eligible (over the age of 65) for Medicare coverage and elect to participate in this supplemental plan. Many of the participating employers are also participants in one of the pre-65 OPEB plans mentioned above. Contributing employers provide an explicit subsidy primarily based on length of service. This plan includes a special funding situation where the State is a governmental non-employer contributing entity for retired teacher premiums.

Prior to commencement of detailed calculations and with prior approval In Writing by the State, the Contractor shall provide written documentation of the 1) recommended actuarial methods and assumptions and 2) age distribution and category to be used on each of the four valuations. The recommended actuarial methods and assumptions are subject to approval In Writing by the State. The valuations under this section of this contract shall provide the actuarial valuations and other required reporting information as of and by the dates as listed in section A.8.g of this contract, for GASB 75 valuations. The Contractor shall use the most recently completed valuation as its base for analysis and shall address any changes resulting from future GASB pronouncements.

- b. The Contractor shall perform an annual valuation in accordance with ASOPs for the State of Tennessee's trusted OPEB—Health Plan, as discussed in Section A.8.a.(1), that will ensure compliance with the requirements of the GASB Statement No. 74, *Financial Reporting for Postemployment Benefit Plans Other Than Pension Plans or any applicable guidance or policies set by governing organizations* or any additional or replacement GASB Statements. The valuation shall include the information needed to prepare the note disclosures and RSI prescribed by the statement and shall be presented by each identified participating employer. This requirement extends to any other State administered OPEB Plan that the State decides to pre-fund, through a qualifying trust, over the life of this Contract.



Prior to commencement of detailed calculations, and with prior approval In Writing by the State, the Contractor shall provide written documentation of the recommended actuarial methods and assumptions to be used in the valuations. The recommended actuarial methods and assumptions are subject to approval by the State. The valuations under this section of this contract shall provide the actuarial valuations and other required reporting information as of and by the dates as listed in section A.8.g of this contract, for GASB 74 valuations. The Contractor shall apply appropriate update procedures to roll the actuarial information forward from the actuarial dates to the reporting date. The Contractor shall use the most recently completed valuation as its base for analysis and shall address any changed resulting from future GASB pronouncements.

- c. The Contractor shall perform actuarial services in accordance with ASOPs to provide the State with an annual funding report that details an ADC rate for the State of Tennessee's trusted OPEB—Health Plan, as discussed in Section A.8.a.(1). This report will consider State funding goals and provide a three year projection of the ADC to be used for planning purposes. Results shall be presented by each identified participating employer, and in a format agreed upon by the State and the Contractor. This requirement extends to any other State administered OPEB Plan that the State decides to pre-fund, through a qualifying trust, over the life of this Contract.

Prior to commencement of detailed calculations, and with prior approval In Writing by the State, the Contractor shall provide written documentation of the recommended actuarial methods and assumptions to be used in the funding reports. The recommended actuarial methods and assumptions are subject to approval by the State. The funding reports under this section of this contract shall be provided by the dates as listed in section A.8.g of this contract, to be used for the Fiscal Year represented by the associated reporting date. The Contractor shall use the actuarial valuations as of the dates listed in section A.8.g, of this contract, as its base for this funding analysis and shall apply updated methods and assumptions to roll forward the ADC, as appropriate, to properly reflect the ADC of the reporting period.

- d. At the State's request In Writing, the Contractor shall provide the State with other actuarial services related to OPEB. Such services may include actuarial valuation of proposed methods for addressing the OPEB liability and technical assistance and analysis, either orally or in written form, in connection with concerns and questions that may arise from time to time relative to OPEB and the funding and operation of the OPEB plans in Contract Section A.8.a, including, but not limited to, review of proposed legislation and review of proposed accounting standards and other operational issues.

If the Contractor intends to bill the State for any other advice or service requested by the State under this Contract Section A.8.d, the Contractor shall notify the State prior to providing such advice or service. The Contractor shall provide to the State a written statement specifying the work to be performed, the name of each individual, the individual's job title, the number of hours required, the applicable hourly fee, the total compensation requested for each individual, and the total cost for providing the advice or service. The cost for providing the advice or service shall be based on the number of hours required multiplied by the corresponding payment rates set forth in Section C.3.b. of this Contract. Such statement shall be provided to the State as soon as possible after receiving approval In Writing from the State, but in no event more than ten (10) calendar days thereafter. The Contractor shall not provide such assistance or service until the statement specifying the work and the number of hours required and the cost is approved in Writing by the State.

- e. The Contractor shall be available to meet with appropriate State personnel at the State's facilities in Nashville or virtually, at the State's discretion, to discuss the valuations and reports listed in Sections A.8. and related questions or problems.

f. The State shall provide to the Contractor the following information and documentation relative to the State administered OPEB plans to assist the Contractor in performing the services under this Contract section:

- (1) Demographic data in electronic format. Data could come in multiple files and will be as of July 1, 2024, for the initial valuations required under Contract Sections A.8.a and A.8.b.
- (2) A list of employers, by plan, along with appropriate employer codes and crosswalks.
- (3) A list of the explicit subsidy, if applicable, that each employer provides to the OPEB plans for their retiree’s cost of care.
- (4) A list of Local Government Agencies and whether they offer pre-65 retiree coverage.
- (5) A list of agencies that have passed resolutions to subsidize retiree premiums for the Tennessee Plan at the same level as the State does for state retirees.

Upon receipt of the above information and documentation and any other information reasonably requested by the Contractor in connection with its performance of the services under this Contract, the Contractor shall review such information and documentation for basic reasonableness and consistency and notify the State of any obvious concerns with the information and documentation so provided. Subject to its obligations in the preceding sentence, the Contractor may rely upon such information and documentation provided to it by such parties and is not required to verify or audit any information or documentation so provided, nor is it liable to the State if such information and/or documentation is inaccurate, misleading, or false

g. The Contractor shall provide results for the deliverables mentioned in this section in accordance with the table below:

	6/30/2025 Reporting Date	6/30/2026 Reporting Date	6/30/2027 Reporting Date	6/30/2028 Reporting Date	6/30/2029 Reporting Date
<b>GASB 75 Valuations</b>					
Actuarial Date	7/1/2024	7/1/2025	7/1/2026	7/1/2027	7/1/2028
Final Report Due Date	7/1/2025	7/1/2026	7/1/2027	7/1/2028	7/1/2029
<b>GASB 74 Valuations</b>					
Actuarial Date	7/1/2024	7/1/2025	7/1/2026	7/1/2027	7/1/2028
Final Report Due Date	7/31/2025	7/31/2026	7/31/2027	7/31/2028	7/31/2029
<b>Annual Funding Reports</b>					
	<b>Fiscal Year Ended 6/30/2027</b>	<b>Fiscal Year Ended 6/30/2028</b>	<b>Fiscal Year Ended 6/30/2029</b>	<b>Fiscal Year Ended 6/30/2030</b>	<b>Fiscal Year Ended 6/30/2031</b>
Actuarial Date of Valuation Used as Base for ADC	7/1/2024	7/1/2025	7/1/2026	7/1/2027	7/1/2028
Final Report Due Date	10/1/2025	10/1/2026	10/1/2027	10/1/2028	10/1/2029

h. The Contractor shall provide the State a final census file of the actual census data used for the evaluation inclusive of any edits or changes made by the actuary within ten (10) Business Days of the GASB 75 Final Report Due Date.

A.9. Ownership of Data

- a. The State owns all the data submitted or produced under this Contract. Any such data may not be used by any entity for any purpose other than performance of this Contract by Contractor without written permission of the State. If a need arises by the Contractor to use the data provided under this Contract outside the scope of the Contract, a written request detailing the nature and scope of the data to be used must be submitted to the State and the Contractor shall receive written approval by the State before such data can be used.
- b. The Contractor shall use the data only to accomplish the nature and scope of this Contract. The Contractor is expressly prohibited from sharing or publishing State information and reports or releasing such information to external entities, affiliates, parent company, or subsidiaries without the prior written consent of the State. If a need arises by the Contractor to use the data provided under this contract outside the scope of the Contract, a written request detailing the nature and scope of the data to be used must be submitted to the State and the Contractor will receive written approval by the State before such data can be used.
- c. Contractor shall retain all rights, title and interest (including, without limitation, all copyrights, patents, service marks, trademarks, trade secret and other intellectual property rights) in and to all technical or internal designs, data, databases, methods, ideas, concepts, know-how, techniques, generic documents and templates ("Tools") that have been previously developed by Contractor or for the Contractor's general book of business provided such Tools do not contain and/or are not based upon or derived from any State Confidential Information or proprietary data. Rights and ownership by Contractor of its Tools shall not extend to or include all or any part of the State's proprietary data or State Confidential Information. To the extent that Contractor may include in the materials any Tools, Contractor agrees that the State shall be deemed to have a fully paid up perpetual license to make copies of the Tools as part of this engagement for its internal business purposes and provided that such Tools cannot be modified or distributed outside of the State without the written permission of Contractor or except as otherwise permitted herein. The State retains the rights to Tools specifically developed at the request of the State.

A.10. Audit Authority

- a. Upon thirty (30) days written notice and the establishment of applicable third party confidentiality agreement(s), if any, reasonably required by the Contractor, the State and/or its representative shall have the right to examine and audit the Contractor services and pricing to ensure compliance with all applicable requirements. For the purpose of this requirement, the term, "Contractor," shall include its parent organization, affiliates, subsidiaries, and subcontractors.
- b. The State has sole authority to determine who to choose for any kind of audit related to the services contained in the contract. This includes, but does not limit the selection to, state employees, state employees from the Comptroller's audit staff, or other contracted representatives.
- c. If the State contracts with a private entity (non-state employees) to conduct an audit of the Contractor, the State will require the auditing entity to negotiate a reasonable confidentiality agreement with the Contractor. The Contractor shall not attempt to limit the State's audit rights or timeframe in any way; the State in its sole authority and with execution of any confidentiality document shall be allowed to audit the Contractor on any contracted service or any other provision of this contract by whomever the State in its sole authority deems appropriate.
- d. In no instance shall the Contractor advise the State that one set of auditors is appropriate while another set is not. In addition, the State may audit or re-audit any time period in accordance with the timeframe for audits listed in Contract Section D.11. Previous audits of a set of data, time periods, or any other sort of audit does not negate the State's right to re-audit the same information again later. There shall be no audit blackout periods at any point during a year nor any charges or fees in any form for any audits that the State chooses to exercise.

- e. The Contractor shall provide access, at any time during the term of this contract and for five (5) years after final contract payment (longer if required by law), to the State and/or its representative to examine and audit Contractor services, payments, and pricing pursuant to this Contract. The State reserves the right to request that documentation be provided for review at the representative's location, the State's location, or at the Contractor's corporate site.
- f. The Contractor shall, at its own cost, provide the State and/or its representative with prompt and complete access to any data, data extracts, documents, access to systems, and other information necessary to ensure Contractor compliance with all requirements of this Contract.
- g. 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 provide written responses to all 'findings' received during the audit process to assist in clarification and suggested resolutions. The Contractor shall also provide a formal audit response within thirty (30) days of the audit conclusion, or at a later date if mutually determined with the State to be more reasonable based on the number and type of findings.
- h. 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.
- i. If the outcome of the audit results in an amount due to the State, the Contractor shall pay the amount due within (30) thirty days of final audit report notification from the State. Any amount due the State which is not paid within (30) thirty days of the final audit report will be deducted from the total amount due from the fees due to the Contractor pursuant to C.3 and C.7 until the full amount due is paid. 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.11. Staffing

The Contractor shall maintain an organization sufficient to administer, manage and oversee all aspects of the contract

- a. The Contractor shall establish a team of qualified employees assigned to the State and shall be able to adjust staffing needs to appropriate levels in order to provide services as required by the State.
- b. The Contractor shall ensure that the principal project staff have, at a minimum, the Society of Actuaries, legal, medical, pharmacy and other educational backgrounds and certifications commensurate with the nature and scope of services in accordance with the Contractor's Proposal and as required by the State.
- c. The Contractor shall assign the following individuals assigned to the State:
  - (1) **Principal/account executive** – individual responsible for the work of the state assigned team, who has at least ten (10) years of experience in benefits management consulting and in design and analysis of employee benefit plans and strategies.
  - (2) **Senior consultant/lead actuary** – individual who is a Fellow in the Society of Actuaries and Member of the American Academy of Actuaries (MAAA) with over ten (10) years of actuarial consulting work with large employers.
  - (3) **Senior consultant** – professional with at least six (6) years of experience in benefits consulting, including design and analysis of employee benefits for large

employers. This individual will serve as the back-up for the Principal/Account Executive.

- (4) **Consultants** – mid-level professionals with a minimum of five (5) of increasingly responsible benefit consulting or OPEB valuation experience.
  - (5) **Analysts** – entry-level professionals working under the direction of Senior Consultants or Consultants and have less than five (5) years of experience.
  - (6) **Medical professional (physician, dentist, pharmacist)** – properly licensed physicians, dentists, pharmacists, or other medical professional with experience in providing benefit consulting services requiring clinical expertise specific to benefit issues, medical necessity review and determination of experimental and investigative procedures.
  - (7) **Lead auditor** – professional with at least ten (10) years of experience in auditing medical, pharmacy, and other benefits for large employers. This position is responsible for coordination of audit efforts and serves as point of contact for all audit activities.
  - (8) **Senior auditor** – professional with at least six (6) years of experience in auditing medical, pharmacy, and other benefits for large employers. This individual will serve as the back-up for the Lead Auditor.
  - (9) **Auditors** – mid-level professionals with a minimum of five (5) years of experience in auditing medical, pharmacy, and other benefits for large employers.
  - (10) **Entry-Level auditors** - entry-level professionals working under the direction of Senior Auditors or Auditors and have less than five (5) years of experience.
- d. At the request of the State, the Contractor's principal in charge of the State account, and other consultant staff as necessary, shall attend in-person all State Insurance Committee meetings, including subcommittees, and OPEB Trustee meetings.
  - e. At the request of the State, the Contractor's principal in charge of the State account, and other consultant staff as necessary, shall attend in-person and testify at legislative hearings.
  - f. The Contractor shall notify the State In Writing within thirty (30) days of any changes in the individuals holding these designations. The individuals within these positions must be acceptable to the State during the full term of the contract. Any replacement to the designated individuals occupying these positions shall possess equal qualifications and experience. The Contractor shall assign alternative personnel to this Contract if requested by the State.

#### A.12. Administrative

- a. The Contractor shall meet with the State at the State's request at least weekly either in-person or via teleconference or webinar to review ongoing projects, benefit plan status or other activities as required by the State. The Contractor shall also attend at least one virtual or in-person planning meeting annually as requested by the State.
- b. The Contractor shall maintain an administrative structure to oversee the monthly billing, payment, and processing of invoices to the State for work performed under the contract and specifically authorized by the State. Invoices must be in the content and format as required by the State detailing the project and time spent by person and position.

- c. As directed by the State, the Contractor shall develop prospective work plan(s) and budget(s) for the State's approval In Writing in response to specific request(s) by the State prior to commencing consulting or actuarial services.

- A.13. Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

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

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

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

- A.14. 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 May 1, 2023 ("Effective Date") and extend for a period of eighty (80) months after the Effective Date ("Term"). This provides for eight (8) months of implementation and seventy-two months of service delivery to the State. The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date. While the benefit consulting and auditing services begin January 1, 2024, the OPEB Actuarial Services described in Contract Section A.8. shall begin on October 1, 2024 and run through December 31, 2029.

**C. PAYMENT TERMS AND CONDITIONS:**

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Twelve Million Seven Hundred Twelve Thousand Five Hundred Dollars (\$12,712,500) ("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:

Category*	Calendar Year 2024	Calendar Year 2025	Calendar Year 2026	Calendar Year 2027	Calendar Year 2028	Calendar Year 2029
Principal/ Account Executive	\$625/hour	\$650/hour	\$675/hour	\$705/hour	\$730/hour	\$760/hour
Senior Consultant/ Lead Actuary	\$490/hour	\$510/hour	\$530/hour	\$550/hour	\$575/hour	\$595/hour
Senior Consultant	\$490/hour	\$510/hour	\$530/hour	\$550/hour	\$575/hour	\$595/hour
Consultants	\$360/hour	\$375/hour	\$390/hour	\$405/hour	\$420/hour	\$440/hour
Analysts	\$230/hour	\$240/hour	\$250/hour	\$260/hour	\$270/hour	\$280/hour
Medical Professional (physician, dentist, pharmacist, etc)	\$525/hour	\$545/hour	\$570/hour	\$590/hour	\$615/hour	\$640/hour
Consolidated Rate for Benefit Consulting, Procurement, and OPEB Valuation Services (regardless of category)**	\$425/hour	\$440/hour	\$460/hour	\$480/hour	\$500/hour	\$520/hour
Lead Auditor	\$490/hour	\$490/hour	\$505/hour	\$525/hour	\$545/hour	\$560/hour
Senior Auditor	\$360/hour	\$360/hour	\$375/hour	\$400/hour	\$415/hour	\$430/hour
Auditors	\$360/hour	\$360/hour	\$375/hour	\$400/hour	\$415/hour	\$430/hour
Entry-Level Auditors	\$230/hour	\$230/hour	\$245/hour	\$255/hour	\$265/hour	\$275/hour
Consolidated Rate for Auditing Services (regardless of category)**	\$425/hour	\$425/hour	\$440/hour	\$455/hour	\$470/hour	\$485/hour

\*Benefit consulting and auditing services begin 1/1/2024 through 12/31/2029. OPEB valuation services will cover reporting periods listed in A.8.g.

\*\*The State reserves the right to initiate payment under the consolidated rates for all categories listed above. The State may initiate payment using one or both consolidated rates listed above for services included in the consolidated rate. Prior to the commencement of each contract year, the State will notify the Contractor as to whether the consolidated or individual rates for each service category will be utilized for billing purposes.

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

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

Christa Martin  
 Finance and Administration, Division of Benefits Administration  
 William R. Snodgrass TN Tower, 19th Floor  
 312 Rosa L. Parks Ave.  
 Nashville, TN 37243  
[christa.martin@tn.gov](mailto:christa.martin@tn.gov)

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

- (1) Invoice number (assigned by the Contractor);
- (2) Invoice date;
- (3) Contract number (assigned by the State);
- (4) Customer account name: Department of Finance & Administration, Division of Benefits Administration;
- (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
- (6) Contractor name;
- (7) Contractor Tennessee Edison registration ID number;
- (8) Contractor contact for invoice questions (name, phone, or email);
- (9) Contractor remittance address;
- (10) By work product, list the name of individual who worked on the project, the individual's contract designation in A.11.c., hourly rate, number of hours worked, subtotal for individual;
- (11) Applicable payment methodology (as stipulated in Section C.3.) of work product invoiced;
- (12) Amount due for each work product; and
- (13) 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, Director of Procurements and Contracts  
Finance and Administration, Division of Benefits Administration  
William R. Snodgrass TN Tower, 19th Floor  
312 Rosa L. Parks Ave.  
Nashville, TN 37243  
[seannalyn.brandmeir@tn.gov](mailto:seannalyn.brandmeir@tn.gov)  
Telephone # 615-532-4598  
FAX # 615-253-8556

The Contractor:

Colleen Huber, Senior Vice President  
Aon Consulting Inc.  
4 Overlook Point  
Lincolnshire, IL 60069  
[Colleen.huber@aon.com](mailto:Colleen.huber@aon.com)  
Telephone: m +1.303.521.4372  
Fax: 847-554-1046

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

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.

- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall provide written notice to Contractor specifying the Breach Condition. If within thirty (30) days of notice, the Contractor has not cured the Breach Condition, the State may terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor and the State may seek other remedies allowed at law or in equity for breach of this Contract.
- D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.
- The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.
- D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.

- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
  - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
  - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
  - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless from any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position,

time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.

- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death. For clarity, except as otherwise expressly set forth in this Section, Contractor's indemnification obligations and other remedies available under this Contract are subject to the limitations on liability set forth in this Section.
- D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys' fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract.

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

- D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.
- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
  - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
  - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
  - d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a

government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

- e. The Contractor shall not sell Public Sector Plan Member information or use Member information unless it is aggregated blinded data, which is not identifiable on a Member basis. The State must approve, In Writing, the use of and sale of any of our Member or Plan data, even if being used in an aggregated, blinded data format.
  - f. The Contractor shall not use Plan Member identified or non-aggregated information for advertising, marketing, promotion or any activity intended to influence sales or market share of any product or service except when permitted by the State, such as advertisements of the Program for enrollment purposes.
  - g. The Contractor shall have full financial responsibility for any penalties, fines, or other payments imposed or required as a result of the Contractor's non-compliance with or violation of HIPAA or HITECH requirements, and the Contractor shall indemnify the State with respect to any such penalties, fines, or payments, including the cost of credit protection. At the request of the State, the Contractor shall offer credit protection for those times in which a Member's PHI is accidentally or inappropriately disclosed.
- D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.
- D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
  - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
  - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
  - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees for the affected obligations until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.
- D.25. State and Federal Compliance. The Contractor shall comply with all State and federal laws and regulations applicable to Contractor in the Contractor's performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 408.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
  - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes:
    - (1) Contract Attachment A Attestation;
    - (2) Contract Attachment B Liquidated Damages; and
    - (3) Contract Attachment C HIPAA Business Associate Agreement;

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

To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an aggregate meeting or exceeding the required coverage amounts is acceptable. For example: If the required policy limit under this Contract is for two million dollars (\$2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars (\$1,000,000) combined with an umbrella policy for an additional one million dollars (\$1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers' Liability Accident), Contractor shall provide a copy of the umbrella insurance policy coverage to ensure that no aggregate limit applies to the umbrella policy for that coverage area. In the event that an umbrella policy is being provided to achieve any required coverage amounts, the umbrella policy shall be accompanied by an endorsement at least as broad as the Insurance Services Office, Inc. (also known as "ISO") "Noncontributory—Other Insurance Condition" endorsement or shall be written on a policy form that addresses both the primary and noncontributory basis of the umbrella policy if the State is otherwise named as an additional insured.

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

Contractor's letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses. In the event of a claim or litigation naming the State, the State reserves the right to require complete copies of all required insurance policies, including endorsements required by these specifications, at any time.

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

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

a. Commercial General Liability ("CGL") Insurance

- 1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises and operations products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The Contractor shall maintain single limits not less than one million dollars (\$1,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this policy or location of occurrence or the general aggregate limit shall be twice the required occurrence limit.

b. Workers' Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:
  - i. Workers' compensation in an amount not less than one million dollars (\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit by disease, and one million dollars (\$1,000,000) per employee for bodily injury by disease.
- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
  - i. The Contractor employs fewer than five (5) employees;
  - ii. The Contractor is a sole proprietor;
  - iii. The Contractor is in the construction business or trades with no employees;



- iv. The Contractor is in the coal mining industry with no employees;
- v. The Contractor is a state or local government; or
- vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

c. Professional Liability Insurance

- 1) Professional liability insurance shall be written on an occurrence basis or on a claims-made basis. If this coverage is written on a claims-made basis, then:
  - i. The retroactive date must be shown, and must be on or before the earlier of the Effective Date of the Contract or the beginning of Contract work or provision of goods and services;
  - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) full years from the date of the final Contract payment; and
  - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date on or prior to the Contract Effective Date, the Contractor must purchase "extended reporting" or "tail coverage" for a minimum of five (5) full years from the date of the final Contract payment.
- 2) Any professional liability insurance policy shall have a limit not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the aggregate; and
- 3) If the Contract involves the provision of services by medical professionals, a policy limit not less than three million (\$3,000,000) per claim and three million dollars (\$3,000,000) in the aggregate for medical malpractice insurance.

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

- 1) The Contractor shall maintain cyber liability (which includes technology an professional liability coverage)/privacy insurance appropriate to the Contractor's profession in an amount not less than ten million dollars (\$10,000,000) per occurrence or claim and ten million dollars (\$10,000,000) annual aggregate, covering all acts, claims, errors, omissions, negligence, infringement of intellectual property (including copyright, patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, information theft, damage to destruction of or alteration of electronic information, breach of privacy perils, wrongful disclosure and release of private information, collection, or other negligence in the handling of confidential information, and including coverage for related regulatory fines, defenses, and penalties.
- 2) Such coverage shall include data breach response expenses, in an amount not less than ten million dollars (\$10,000,000) and payable whether incurred by the State or Contractor, including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services and expenses in the performance of services for the State or on behalf of the State hereunder.

e. Crime Insurance

- 1) The Contractor shall maintain crime insurance, which shall be written on a "loss sustained form" or "loss discovered form" providing coverage for third party

fidelity, including computer fraud , theft, forgery and intentionally committed wrongful acts. The policy must allow for reporting of circumstances or incidents that may give rise to future claims, include an extended reporting period of no less than one (1) years with respect to events which occurred but were not reported during the term of the policy, and not contain a condition requiring an arrest or conviction.

Any crime insurance policy shall have a limit not less than one million dollars (\$1,000,000) per occurrence and one million dollars (\$1,000,000) in the aggregate. Any crime insurance policy shall contain a Social Engineering Fraud Endorsement with a limit of not less than two hundred and fifty thousand dollars (\$250,000). This insurance may be written on a claims-made basis, but in the event that coverage is cancelled or non-renewed, the Contractor shall purchase an extended reporting or "tail coverage" of at least two (2) years after the Term.

- D.33. Major Procurement Contract Sales and Use Tax. Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Contractor and the Contractor's subcontractors shall remit sales and use taxes on the sales of goods or services that are made by the Contractor or the Contractor's subcontractors and that are subject to tax.
- D.34. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. 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. 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. Additional lines, items, or options. At its sole discretion, the State may make written requests to the Contractor to add lines, items, or options that are needed and within the Scope but were not included in the original Contract. Such lines, items, or options will be added to the Contract through a Memorandum of Understanding ("MOU"), not an amendment.
- a. After the Contractor receives a written request to add lines, items, or options, the Contractor shall have ten (10) Business Days to respond with a written proposal. The Contractor's written proposal shall include:
    - (1) The effect, if any, of adding the lines, items, or options on the other goods or services required under the Contract;
    - (2) Any pricing related to the new lines, items, or options;
    - (3) The expected effective date for the availability of the new lines, items, or options; and
    - (4) Any additional information requested by the State.
  - b. The State may negotiate the terms of the Contractor's proposal by requesting revisions to the proposal.
  - c. To indicate acceptance of a proposal, the State will sign it. The signed proposal shall constitute a MOU between the Parties, and the lines, items, or options shall be incorporated into the Contract as if set forth verbatim.
  - d. Only after a MOU has been executed shall the Contractor perform or deliver the new lines, items, or options.

- E.3. 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.4. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's Response to 31786-00171 (Attachment B) and resulting in this Contract.

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

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

- E.5. Liquidated Damages. If the Contractor fails to perform in accordance with any term or provision of this contract, only provides partial performance of any term or provision of the Contract, violates any warranty, or any act prohibited or restricted by the Contract occurs, ("Liquidated Damages Event"), the State may assess damages on Contractor ("Liquidated Damages"). The State shall notify the Contractor of amounts to be assessed as Liquidated Damages. The Parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for Contractor's failure to fulfill its obligations regarding the Liquidated Damages Event as these amounts are likely to be uncertain and not easily proven. Contractor has carefully reviewed the Liquidated Damages contained in Attachment B and agrees that these amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of a Liquidated Damages Event, and are a reasonable estimate of the damages that would occur from a Liquidated Damages Event. The Parties agree that the Liquidated Damages represent solely the damages and injuries sustained by the State in losing the benefit of the bargain with Contractor and do not include any injury or damage sustained by a third party. The Contractor agrees that the Liquidated Damages are in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or any other sections of this Contract.

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

- E.6. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used

to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify or ensure that Contractor is in full compliance with its obligations under this Contract in relation to PII. In accordance with the timeframe for audits listed in Contract Section D.11 and in consultation with the State, 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. The obligations set forth in this Section shall survive the termination of this Contract.

#### E.7. Contractor Hosted Services Confidential Data, Audit, and Other Requirements

- a. "Confidential State Data" is defined as data deemed confidential by State or Federal statute or regulation. The Contractor shall protect Confidential State Data as follows:
  - (1) The Contractor shall ensure that all Confidential State Data is housed in the contiguous United States, inclusive of backup data.
  - (2) The Contractor shall encrypt Confidential State Data at rest and in transit using the current version of Federal Information Processing Standard ("FIPS") 140-2 validated encryption technologies.
  - (3) The Contractor must annually perform Penetration Tests and Vulnerability Assessments against its Processing Environment. "Processing Environment" shall mean the combination of software and hardware on which the Application runs. "Application" shall mean the computer code that supports and accomplishes the State's requirements as set forth in this Contract. "Penetration Tests" shall be in the form of attacks on the Contractor's computer system, with the purpose of discovering security weaknesses which have the potential to gain access to the Processing Environment's features and data. The "Vulnerability Assessment" shall be designed and executed to define, identify, and classify the security holes (vulnerabilities) in the Processing Environment. The Contractor shall allow the State, at its option, to perform Penetration Tests and Vulnerability Assessments on the Processing Environment.
  - (4) Upon State request, the Contractor shall provide a copy of all Confidential State Data it holds. The Contractor shall provide such data on media and in a format determined by the State. The Contractor shall maintain a duplicate set of all records relating to this Contract in electronic medium, usable by the State and the Contractor for the purpose of Disaster recovery. Such duplicate records are to be stored at a secure fire, flood, and theft-protected facility located away from the storage location of the originals. The Contractor shall update duplicate records, at a minimum, on a daily basis and shall retain said records for a period of sixty (60) days from the date of creation.
  - (5) In accordance with the timeframe for audits listed in Contract Section D.11 and in consultation with the State, the Contractor shall destroy all Confidential State Data it holds (including any copies such as backups) in accordance with the current version of National Institute of Standards and Technology ("NIST")

Special Publication 800-88. The Contractor shall provide a written confirmation of destruction to the State within ten (10) Business Days after destruction.

- (6) Contractor must enter into a Business Associate Agreement (BAA) with the State.

b. Minimum Requirements

- (1) The Contractor and all data centers used by the Contractor to host State data, including those of all Subcontractors, must comply with the State's Enterprise Information Security Policies as amended periodically. The State's Enterprise Information Security Policies document is found at the following URL: <https://www.tn.gov/finance/strategic-technology-solutions/strategic-technology-solutions/sts-security-policies.html>.
- (2) The Contractor agrees to maintain the Application so that it will run on a current, manufacturer-supported Operating System. "Operating System" shall mean the software that supports a computer's basic functions, such as scheduling tasks, executing applications, and controlling peripherals.
- (3) If the Application requires middleware or database software, Contractor shall maintain middleware and database software versions that are at all times fully compatible with current versions of the Operating System and Application to ensure that security vulnerabilities are not introduced.

c. Comptroller Audit Requirements

Upon reasonable notice and at any reasonable time, the Contractor and Subcontractor(s) agree to allow the State, the Comptroller of the Treasury, or their duly appointed representatives to perform information technology control audits of the Contractor and all Subcontractors used by the Contractor. Contractor will maintain and cause its Subcontractors to maintain a complete audit trail of all transactions and activities in connection with this Contract. Contractor will provide to the State, the Comptroller of the Treasury, or their duly appointed representatives access to Contractor and Subcontractor(s) personnel for the purpose of performing the information technology control audit.

The information technology control audit may include a review of general controls and application controls. General controls are the policies and procedures that apply to all or a large segment of the Contractor's or Subcontractor's information systems and applications and include controls over security management, access controls, configuration management, segregation of duties, and contingency planning. Application controls are directly related to the application and help ensure that transactions are complete, accurate, valid, confidential, and available. The audit shall include the Contractor's and Subcontractor's compliance with the State's Enterprise Information Security Policies and all applicable requirements, laws, regulations or policies.

The audit may include interviews with technical and management personnel, physical inspection of controls, and review of paper or electronic documentation.

For any audit issues identified, the Contractor and Subcontractor(s) shall provide a corrective action plan to the State within 30 days from the Contractor or Subcontractor receiving the audit report.

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

- d. **Business Continuity Requirements.** The Contractor shall maintain set(s) of documents, instructions, and procedures which enable the Contractor to respond to accidents, disasters, emergencies, or threats without any stoppage or hindrance in its key operations (“Business Continuity Requirements”). Business Continuity Requirements shall include:
- (1) “Disaster Recovery Capabilities” refer to the actions the Contractor takes to meet the Recovery Point and Recovery Time Objectives defined below. Disaster Recovery Capabilities shall meet the following objectives:
- i. **Recovery Point Objective (“RPO”).** The RPO is defined as the maximum targeted period in which data might be lost from an IT service due to a major incident: one (1) hour.
  - ii. **Recovery Time Objective (“RTO”).** The RTO is defined as the targeted duration of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity: seventy-two (72) hours.
- (2) The Contractor shall perform at least one Disaster Recovery Test every three hundred sixty-five (365) days. A “Disaster Recovery Test” shall mean the process of verifying the success of the restoration procedures that are executed after a critical IT failure or disruption occurs. The Disaster Recovery Test shall use actual State Data Sets that mirror production data, and success shall be defined as the Contractor verifying that the Contractor can meet the State’s RPO and RTO requirements. A “Data Set” is defined as a collection of related sets of information that is composed of separate elements but can be manipulated as a unit by a computer. The Contractor shall provide written confirmation to the State after each Disaster Recovery Test that its Disaster Recovery Capabilities meet the RPO and RTO requirements.
- e. The Contractor and any Subcontractor used by the Contractor to host State data, including data center vendors, shall be subject to an annual engagement by a CPA firm in accordance with the standards of the American Institute of Certified Public Accountants (“AICPA”) for a System and Organization Controls for service organizations (“SOC”) 2 Type II audit. The State shall approve the SOC audit control objectives shall include all five trust services principles. The Contractor shall provide the State with the Contractor’s and Subcontractor’s annual audit report within 30 days from when the CPA firm provides the audit report to the Contractor or Subcontractor in addition to periodic bridge reports as requested by the State. The Contractor shall submit corrective action plans to the State for any issues included in the audit report within 30 days after the CPA firm provides the audit report to the Contractor and Subcontractor.

If the scope of the most recent SOC audit report does not include all of the current State Fiscal Year, upon request from the State, the Contractor must provide to the State a letter from the Contractor or Subcontractor stating whether the Contractor or Subcontractor made any material changes to their control environment since the prior audit and, if so, whether the changes, in the opinion of the Contractor or Subcontractor, would negatively affect the auditor’s opinion in the most recent audit report.

No additional funding shall be allocated for these audits as they are included in the Maximum Liability of this Contract.

- E.8. **Extraneous Terms and Conditions.** Contractor shall fill all orders submitted by the State under this Contract. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this Contract shall contain any terms or conditions other than as set forth in the Contract. Any such extraneous terms and conditions shall be void, invalid and unenforceable against the State. Any refusal by Contractor to supply any goods or services

under this Contract conditioned upon the State submitting to any extraneous terms and conditions shall be a material breach of the Contract and constitute an act of bad faith by Contractor.

E.9. Survival. The terms, provisions, representations, and warranties contained in this Contract which by their sense and context are intended to survive the performance and termination of this Contract, shall so survive the completion of performance and termination of this Contract.

IN WITNESS WHEREOF,

Aon Consulting, Inc.:



DocuSigned by:  
*Robert Lynch*  
BE1106F007FE424...

April 6, 2023

**CONTRACTOR SIGNATURE**

**DATE**

Robert Lynch COO, North America Health Solutions

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

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

**James E. Bryson, CHAIRMAN**

**DATE**

**ATTACHMENT A**

**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

<b>SUBJECT CONTRACT NUMBER:</b>	
<b>CONTRACTOR LEGAL ENTITY NAME:</b>	Aon Consulting, Inc.
<b>EDISON VENDOR IDENTIFICATION NUMBER:</b>	12537

**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.**

DS  
Wt

DocuSigned by:  
*Robert Lynch*  
BE1166F007FE424...

**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.

Robert Lynch                      COO, North America Health Solutions

**PRINTED NAME AND TITLE OF SIGNATORY**

April 6, 2023

**DATE OF ATTESTATION**



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

To effectively manage contractual performance, the State has established Liquidated Damages associated with 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. Damages are included in this Attachment.

The Parties agree that the Liquidated Damages represent solely the anticipated 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.

**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, the Liquidated Damages amount may be withheld from future payments by the State without further notice.

<b>PERFORMANCE GUARANTEES</b>	
<b>1. Audit Reports Related to Tenn. Code Ann. § 4-3-1021</b>	
<i>Guarantee</i>	The Contractor shall provide the finalized audit reports that meet the requirements of Contract Section A.6.b to the State no later than May 31 <sup>st</sup> of each year.
<i>Assessment</i>	Five hundred dollars (\$500) for each Business Day beyond the deadline that the finalized audit reports are not provided to the State not to exceed ten thousand dollars (\$10,000).
<i>Justification</i>	Tenn. Code Ann. § 4-3-1021 requires the State to provide a report of audit and monitoring activities of the PBM to the Speaker of the Senate, Speaker of the House of Representatives, and the Fiscal Review Committee by July 1 <sup>st</sup> of each year. The reports referenced in Contract Section A.6.b. are essential for completion of this requirement.
<i>Measurement</i>	Measured, reported, assessed, and paid no later than August 1 <sup>st</sup> of each year.
<b>2. OPEB Valuation and Funding Reports</b>	
<i>Guarantee</i>	The Contractor shall provide the finalized valuation and funding reports that meet the requirements of Contract Sections A.8.a, A.8.b, and A.8.c to the State by the deadlines listed in Contract Section A.8.g.
<i>Assessment</i>	One hundred dollars (\$100) for each individual agency report and funding report for each business day beyond the deadlines that the reports are not provided to the State not to exceed (\$30,000).
<i>Justification</i>	The OPEB Valuation and funding reports are used for State budgeting purposes and the financial statements of the State, local education, and local government agencies. Delay in receiving these reports can jeopardize required reporting requirements set forth by GASB for the State, local education, and local government agencies. The reports referenced in Contract Sections A.8.a, A.8.b. and A.8.c. are essential for completion of financial reporting requirements.
<i>Measurement</i>	Measured, reported, assessed, and paid no later than 45 days after the deadline.
<b>3. Privacy and Security of Member Information Impacting 1 to 499 Members</b>	

<i>Guarantee</i>	In accordance with Contract Section E.8., the Contractor shall not release, intentionally or unintentionally, Members' personal information, enrollment information, or claims information to unauthorized parties.
<i>Assessment</i>	<p>Five Thousand Seven Hundred dollars (\$5,700) per incident basis.</p> <p>This assessment is based on the previous experience BA has had in responding to similar incidents impacting less than five hundred (500) Members which includes the following predicted costs to BA:</p> <ol style="list-style-type: none"> <li>1. Compliance Officer time including investigating the breach, monitoring the privacy hotline and email address estimated at seventy-five (75) hours;</li> <li>2. Director of Financial Management and Program Integrity time and work estimated at seven and half (7.5) hours;</li> <li>3. Program Director associated with this contract time and work estimated at fifteen (15) hours;</li> <li>4. Executive Director's time and work estimated at one (1) hour;</li> <li>5. Department attorney time including legal review estimated at one (1) hour; and</li> <li>6. Service Center staff time and work answering Member questions/concerns estimated at fifteen (15) hours.</li> </ol>
<i>Justification</i>	The guarantee and assessment estimate the impact on the State including the unpredictability of the timing of a breach; specifics of the breach's scope; length of time of investigation completion; number of Member calls to the BA service center; and level of legislative inquiries.
<i>Measurement</i>	Measured, reported, assessed, and paid after each occurrence.
<b>4. Privacy and Security of Member Information Impacting 500 or more Members</b>	
<i>Guarantee</i>	In accordance with Contract Section E.8., the Contractor shall not release, intentionally or unintentionally, Members' personal information, enrollment information, or claims information to unauthorized parties.
<i>Assessment</i>	<p>Twenty-One Thousand Two Hundred dollars (\$21,200) per incident basis. This assessment is based on the previous experience BA has had in responding to similar incidents impacting five hundred (500) or more Members which includes the following predicted costs to BA:</p> <ol style="list-style-type: none"> <li>1. Compliance Officer time including investigating the breach, monitoring the privacy hotline and email address estimated at one hundred thirty two (132) hours;</li> <li>2. Director of Financial Management and Program Integrity time and work estimated at thirty (30) hours;</li> <li>3. Program Director associated with this Contract time and work estimated at forty- five (45) hours;</li> <li>4. Executive Director's time and work estimated at eighteen (18) hours;</li> <li>5. Department attorney time including legal review estimated at thirty(30) hours;</li> <li>6. Service Center staff time and work answering Member questions/concerns estimated at one hundred (100) hours;</li> <li>7. Public Information Officer ("PIO")'s time and work estimated at forty-five (45) hours; and</li> <li>8. Communications Director's time and work estimated at thirty (30) hours.</li> </ol>
<i>Justification</i>	The guarantee and assessment estimate the impact on the State including the unpredictability of the timing of a breach; specifics of the breach's scope; length of time of investigation completion; number of Member calls to the BA service center; and level of legislative inquiries.
<i>Measurement</i>	Assessed, reported, reconciled, and paid after each occurrence.

**CONTRACT ATTACHMENT C****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 **Aon Consulting, Inc.** (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:****Actuarial and OPEB services****May 1, 2023**

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

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

**DEFINITIONS**

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

- i.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
- i.2 "Business Associate" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.
- i.3 "Covered Entity" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.
- 1.4 "Designated Record Set" shall have the meaning set out in its definition at 45 C.F.R. § 164.501.

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

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

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

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

2.3 Business Associate shall use appropriate administrative, physical, and technical safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement, Services Contract(s), or as Required By Law. This includes the implementation of Administrative, Physical, and Technical Safeguards to reasonably and appropriately protect the Covered Entity's PHI against any reasonably anticipated threats or hazards, utilizing the technology commercially available to the Business Associate. The Business Associate shall maintain appropriate documentation of its compliance with the Privacy Rule, including, but not limited to, its policies, procedures, records of training and sanctions of members of its Workforce.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.13.3 Business Associate acknowledges that if Business Associate is also a covered entity, as defined by the Privacy Rule, Business Associate is required, independent of Business Associate's obligations under this Memorandum, to comply with the Privacy Rule's minimum necessary requirements when making any request for PHI from Covered Entity.

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

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

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

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

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

3.2 Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of the covered entity as required by the Security Rule and Public Law 111-5. This includes specifically, but is not limited to, the utilization of technology

commercially available at the time to the Business Associate to protect the Covered Entity's PHI against any reasonably anticipated threats or hazards. The Business Associate understands that it has an affirmative duty to perform a regular review or assessment of security risks, conduct active risk management and supply best efforts to assure that only authorized persons and devices access its computing systems and information storage, and that only authorized transactions are allowed. The Business Associate will maintain appropriate documentation to certify its compliance with the Security Rule.

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

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

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

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

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

State of Tennessee  
Benefits Administration  
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

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:

Email: [privacy@aon.com](mailto:privacy@aon.com) (Privacy/Security Officer)  
Address: 200 East Randolph Street Chicago, IL 60601

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

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

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

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

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

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

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

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

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

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



## 5. OBLIGATIONS OF COVERED ENTITY

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

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

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

## 6. PERMISSIBLE REQUESTS BY COVERED ENTITY

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

## 7. TERM AND TERMINATION

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

### 7.2 Termination for Cause.

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

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

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

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

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

### 7.3 Effect of Termination.

7.3.1. Except as provided in Section 7.3.2. below, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity,

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or created or received by Business Associate on behalf of, Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

- 7.3.2. In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction unfeasible. Upon mutual agreement of the Parties that return or destruction of PHI is unfeasible, Business Associate shall extend the protections of this Memorandum to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction unfeasible, for so long as Business Associate maintains such PHI.

## 8. MISCELLANEOUS

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

8.2 Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy and Security Rules and the Health Insurance Portability and Accountability Act, Public Law 104-191, including any amendments required by the United States Department of Health and Human Services to implement the Health Information Technology for Economic and Clinical Health and related regulations upon the effective date of such amendment, regardless of whether this Agreement has been formally amended, including, but not limited to changes required by the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

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

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

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

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

BUSINESS ASSOCIATE:  
Email: [privacy@aon.com](mailto:privacy@aon.com)  
(Privacy/Security Officer)  
Address: 200 East Randolph Street  
Chicago, IL 60601

With a copy to:  
ATTN: Seannalyn Brandmeir  
Procurements & Contracting Manager

At the address listed above  
Phone: (615) 532-4598  
Facsimile: (615) 253-8556  
E-Mail: [seannalyn.brandmeir@tn.gov](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,**

DS  
WH

DocuSigned by:

*Robert Lynch*

April 6, 2023

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**Aon Consulting, Inc.**

**Date:**

**James E. Bryson, Commissioner of Finance & Administration**

**Date:**